the public schools would have to find spaces for 5.5 million students. It should be recognized, however, that there is a basic question of separation of church and state, and that the Federal court has ruled present delivery systems of support of nonpublic schools unconstitutional. Our role should be children centered. We should make sure that those children who are attending nonpublic schools receive the same services as those children who are attending public schools. That is an issue which Congress will be faced with in the coming year.

IMPROVING THE QUALITY OF EDUCATION FOR ALL SCHOOLCHILDREN

In the past year or so the intensity of feeling on the busing issue has somewhat overshadowed two problems in our educational system which may be subject to mutual solution, that is, one may be solved by solving the other.

The first problem concerns teacher load factors in many of our school districts with high concentrations of economically disadvantaged students. Many of these districts carry pupil-teacher ratios of 50 to 1. Although the research on the effects of changing pupil-teacher ratios is decidedly mixed when talking in general statistics it seems clear that additional skilled personnel concentrating on children in these areas will encourage significant gains in cognitive development. The experts do agree that children in these schools have substantially lower achievement results than students from more advantaged areas.

The second problem was brought to light in a recent study by the National Education Association. Their conclusion was that currently 250,000 recent graduates in education are either unemployed or not employed in the field they were trained for. This paradox seems strange in light of the needs for more teachers in so-called inner city schools. The solution to these two problems is proposed in the Teacher Utilization Act of 1972.

My proposal calls for a federally funded program of $400 million to put up to 60,000 teachers in schools with high concentrations of economically disadvantaged students. The teachers' positions would be federally funded, but other details of organization and placement would remain with local school districts. The proposal also includes funds to help sensitize the new teachers to the type of student they will be dealing with. These in-service training programs will assure that teachers hired under the act will be aware of the range of problems facing students in these schools. The Teacher Utilization Act could make a real contribution toward solving the complex educational problems facing these students.

The problems facing our educational system are many and complex. In many ways this system has not been able to meet the needs of its diverse and mobile clients. During the last school year many educators adopted the slogan of quality education. I cautioned then that I hoped that this slogan would not become another one of those annual educational shibboleths which we use for a time and then discard. The level of interest and thoughtful analysis in the problems facing our educational system and the depth and range of proposed solutions coming from all levels has been heartening. The rewards from this critical self-analysis will pay off for many years in the future.

SENATE—*Wednesday, October 11, 1972*

The Senate met at 8:30 a.m. and was called to order by Hon. ROBERT P. GRIFFIN, a Senator from the State of Michigan.

PRAYER

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

O God, our Father, we pause once more in this place of work and worship to turn from our striving, our contention, our industry, and to shut out the tumult of the world and the confusion of many voices that we may "be still and know that Thou art God." Grant us the stillness not of inactivity or passiveness but the stillness of serenity and power. Preserve in our inmost souls a quiet area of peace which only Thou canst give and which no power on earth can take from us. With renewed strength, sharpened minds, and warm hearts send us to our tasks to serve nobly the welfare of the people.

In the name of Him who went about doing good. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 11, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ROBERT P. GRIFFIN, a Senator from the State of Michigan, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, October 10, 1972, be dispensed with.

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

CONSIDERATION OF TWO MEASURES ON CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Nos. 1222 and 1224.

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

LIBERALIZATION OF DISABILITY AND DEATH PENSION

The Senate proceeded to consider the bill (S. 4006) to amend title 38, United States Code, increasing income limitations relating to payment of disability and death pension, and dependency and indemnity compensation, which had been reported from the Committee on Veterans' Affairs with an amendment, to strike out all after the enacting clause and insert:

That (a) subsection (b) of section 521 of title 38, United States Code, is amended to read as follows:

"(b) If the veteran is unmarried (or married but not living with and not reasonably contributing to the support of his spouse) and has no child, pension shall be paid according to the following formula: If annual income is $300 or less, the monthly rate of pension shall be $140. For each $1 of annual income in excess of $300 up to and including $1,000, the monthly rate shall be reduced 3 cents; for each $1 of annual income in excess of $1,000 up to and including $1,500, the monthly rate shall be reduced 4 cents; for each $1 of annual income in excess of $1,500 up to and including $1,800, the monthly rate shall be reduced 5 cents; for each $1 of annual income in excess of $1,800 up to and including $2,200, the monthly rate shall be reduced 6 cents; and for each $1 of annual income in excess of $2,200 up to and including $2,900, the monthly rate shall be reduced 7 cents; for the annual income of $2,900 up to and including $3,000, the rate shall be 10. No person shall be paid if annual income exceeds $3,000."

(b) Subsection (c) of such section 521 is amended to read as follows:

"(c) If the veteran is married and living with or reasonably contributing to the support of his spouse, or has a child or children, pension shall be paid according to the following formula: If annual income is $500 or less, the monthly rate of pension shall be $150 for a veteran and one dependent, $155 for a veteran and two dependents, and $160 for three or more dependents. For each $1 of annual income in excess of $500 up to and including $900, the particular monthly rate shall be reduced 2 cents; for each $1 of annual income in excess of $900 up to and including $3,200, the monthly rate shall be reduced 3 cents; and for each $1 of annual income in excess of $3,200 up to and including $4,200, the monthly rate shall be reduced 5 cents. No pension shall be paid if annual income exceeds $4,200."

(c) Subsection (b) of section 541 of title 38, United States Code, is amended to read as follows:

"(b) If there is no child, pension shall be paid according to the following formula: If annual income is $300 or less, the monthly rate of pension shall be $94. For each $1 of annual income in excess of $300 up to and including $600, the monthly rate shall be reduced 1 cent; for each $1 of annual income in excess of $600 up to and including $1,900, the monthly rate shall be reduced 3 cents; and for each $1 of annual income in excess of $1,900 up to and including $3,000, the monthly rate shall be reduced 4 cents. No pension shall be paid if annual income exceeds $3,000."

(d) Subsection (c) of such section 541 is amended to read as follows:

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"(c) If there is a widow and one child, pension shall be paid according to the following formula: If annual income is $600 or less, the monthly rate of pension shall be $111. For each $1 of annual income in excess of $600 up to and including $1,400, the monthly rate shall be reduced 1 cent; for each $1 of annual income in excess of $1,400 up to and including $2,700, the monthly rate shall be reduced 2 cents; and for each $1 of annual income in excess of $2,700 up to and including $4,200, the monthly rate shall be reduced 3 cents. Whenever the monthly rate payable to the widow under the foregoing formula is less than the amount which would be payable to the child under section 542 of this title if the widow were not entitled, the widow will be paid at the child's rate. No pension shall be paid if the annual income exceeds $4,200."

SEC. 2. Section 4 of Public Law 90–275 (82 Stat. 68) is amended to read as follows:

"SEC. 4. The annual income limitations governing payment of pension under the first sentence of section 9(b) of the Veterans' Pension Act of 1959 hereafter shall be $2,600 and $3,900, instead of $2,200 and $3,500, respectively."

SEC. 3. (a) Subsection (b) of section 415 of title 38, United States Code, is amended to read as follows:

"(b)(1) Except as provided in paragraph (2) of this subsection, if there is only one parent, dependency and indemnity compensation shall be paid to him according to the following formula: If annual income is $800 or less, the monthly rate of dependency and indemnity compensation shall be $108. For each $1 of annual income in excess of $800 up to and including $1,200, the monthly rate shall be reduced 3 cents; for each $1 of annual income in excess of $1,200 up to and including $1,600, the monthly rate shall be reduced 4 cents; for each $1 of annual income in excess of $1,600 up to and including $1,900, the monthly rate shall be reduced 5 cents; for each $1 of annual income in excess of $1,900 up to and including $2,100, the monthly rate shall be reduced 6 cents; and for each $1 of annual income in excess of $2,100 up to and including $2,800, the monthly rate shall be reduced 7 cents. For annual income of $2,800 through $3,000, the rate will be $4.00. No dependency and indemnity compensation shall be paid if annual income exceeds $3,000.

"(2) If there is only one parent and he has remarried and is living with his spouse, dependency and indemnity compensation shall be paid to him under either the formula of paragraph (1) of this subsection or under the formula in subsection (d), whichever is the greater. In such a case of remarriage the total combined annual income of the parent and his spouse shall be counted in determining the monthly rate of dependency and indemnity compensation under the appropriate formula."

(b) Subsection (c) of such section 415 is amended to read as follows:

"(c) Except as provided in subsection (d), if there are two parents, but they are not living together, dependency and indemnity compensation shall be paid to each according to the following formula: If the annual income of each parent is $800 or less, the monthly rate of dependency and indemnity payable to each shall be $76. For each $1 of annual income in excess of $800 up to and including $1,100, the monthly rate shall be reduced 2 cents; for each $1 of annual income in excess of $1,100 up to and including $1,700, the monthly rate shall be reduced 3 cents; and for each $1 of annual income in excess of $1,700 up to and including $2,800, the monthly rate shall be reduced 4 cents. For annual income of $2,800 through $3,000, the rate will be $4.00. No dependency and indemnity compensation shall be paid to a parent whose annual income exceeds $3,000."

(c) Subsection (d) of such section 415 is amended to read as follows:

"(d) If there are two parents who are living together, or if a parent has remarried and is living with his spouse, dependency and indemnity compensation shall be paid to each such parent according to the following formula: If the total combined annual income is $1,000 or less, the monthly rate of dependency and indemnity compensation payable to each parent shall be $77. For each $1 of annual income in excess of $1,000 up to and including $1,300, the monthly rate shall be reduced 1 cent; for each $1 of annual income in excess of $1,300 up to and including $3,400, the monthly rate shall be reduced 2 cents; and for each $1 of annual income in excess of $3,400 up to and including $4,000, the monthly rate shall be reduced 3 cents. For annual income of $4,000 through $4,200, the rate will be $6.00. No dependency and indemnity compensation shall be paid to either parent if the total combined annual income exceeds $4,200".

SEC. 4. This Act shall take effect on January 1, 1973.

Mr. THURMOND. Mr. President, the effect of the recent 20-percent increase in social security and other retirement benefits on non-service-connected pensions for veterans and their survivors was to subject 2.3 million pensioners to reduction in their pensions. Further, 20,000 additional pensioners would have been dropped from the pension rolls altogether.

I am proud to cosponsor S. 4006, which deals with this problem. It is the purpose of S. 4006 to provide that veterans and their survivors should benefit from social security increases without reduction in their pensions. Failure to pass S. 4006 would penalize veterans while giving nonveterans the full benefit of the 20-percent social security increase.

Mr. President, S. 4006 would increase the annual income limitations by $400 and provide increases in the rates of pension for an average program benefit increase of 8 percent.

Mr. President, it is my pleasure to support this legislation which is of vital importance to our Nation's veterans.

I am proud to have worked with the other members of the committee in securing a liberalization of disability and death pension for our veterans.

The amendment was agreed to.

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

Mr. HARTKE subsequently said: Mr. President, I ask unanimous consent that the vote by which S. 4006 was passed earlier today, the third reading, and the vote by which the committee amendment in the nature of a substitute was agreed to be reconsidered, the figure on page 11, line 23, be changed from "$77" to "$72", and that the committee amendment as so amended be agreed to, the bill be read a third time, and passed again.

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

CONVEYANCE OF CERTAIN LAND, GEORGETOWN, COLO.

The bill (S. 4067) to authorize the Secretary of the Interior to convey certain land situated in the vicinity of Georgetown, Colo., to Frank W. Whitenack, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed to issue, subject to the provisions of section 2, to Frank W. Whitenack of Georgetown, Colorado, a patent in fee (exclusive of oil, gas, and other mineral rights) to the following described tract of land, situated in the vicinity of Georgetown, Colorado:

Beginning at a stake at corner numbered 1, whence the northeast corner section 5, township 4 south, range 74 west, sixth principal meridian bears north 29 degrees 57 minutes west 761.7 feet, thence east 279.7 feet to corner numbered 2, thence south 176.0 feet to corner numbered 3, thence south 82 degrees 16 minutes west 200.5 feet to corner numbered 4 which is also corner numbered 1, survey numbered 18737, Lora Lode, thence south 7 degrees 44 minutes east 150 feet to corner numbered 5, which is also corner numbered 4, survey numbered 18737 Dora Lode, thence north 82 degrees 16 minutes east 180.1 feet to corner numbered 6, thence south 992.6 feet to corner numbered 7, thence west 660 feet to corner numbered 8, thence north 502 feet to corner numbered 9, thence south 60 degrees 20 minutes east 119.4 feet to corner numbered 10, which is also corner numbered 3 survey numbered 408 Mills Placer, thence north 17 degrees 30 minutes east 919.7 feet to the place of beginning.

SEC. 2. The patent in fee authorized by the first section of this Act shall be issued subject to the payment by the said Frank W. Whitenack to the Secretary of the Interior of an amount equal to the fair market value of the property conveyed as determined by the Secretary after appraisal, exclusive of improvements placed thereon by Frank W. Whitenack and his grantees.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States, submitting nominations, were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. GRIFFIN) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 635) to amend the Mining and Minerals Policy Act of 1970.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10420) to protect the marine mammals; to establish a Marine Mammal Commission; and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution (H.J. Res. 984) to amend the joint resolution providing for U.S. participation in the International Bureau for the Protection of Industrial Property.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar, beginning with "New Reports."

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

AMBASSADORS

The second assistant legislative clerk proceeded to read sundry nominations for Ambassadors.

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

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

U.S. ADVISORY COMMISSION ON INFORMATION

The second assistant legislative clerk read the nomination of George H. Gallup, of New Jersey, to the U.S. Advisory Commission on Information.

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

UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION

The second assistant legislative clerk proceeded to read sundry nominations in the United Nations Educational, Scientific, and Cultural Organization.

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

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

Mr. MANSFIELD. Mr. President, I request that the President be immediately notified of the confirmation of the nominations.

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

The ACTING PRESIDENT pro tempore. The distinguished Senator from Pennsylvania, the minority leader, is recognized.

CANDIDATE McGOVERN'S PROPOSALS ON VIETNAM

Mr. SCOTT. Mr. President, I am really shocked at the callous indifference to the destiny of the people of South Vietnam shown by the suggestion of the candidate of the opposition that they be entirely disarmed and left helpless before an advancing army. Moreover, the proposals, involving not only unilateral withdrawal but unilateral disarmament, go beyond even the proposals made by Hanoi, because Hanoi, as quoted only on last night's television, has indicated its willingness to negotiate the question of U.S. military materiel in South Vietnam.

This speech is singularly ill timed and singularly wrongly motivated, coming as it does during a period when the negotiations with the north never have been more sensitive and when there has never been more reason not to upset the apple cart.

In previous campaigns and in the administration of previous Presidents, this kind of thing was not done. It is being done now because the candidate is desperate. It does raise certain questions. For example, why again propose amnesty without any conditions of national service? Why simply say, "If I were doing it, I would offer national service?" There is no requirement, no condition of that; it is absolute, unconditional amnesty 90 days after he would take office, because that is the time within which the candidate of the opposition says he would end the war. So in 90 days amnesty is proposed.

Moreover, on this question of materiel, if it be argued that the title of the materiel has passed to South Vietnam, then there is no materiel to bring home and the offer is a hoax. If, on the other hand, it is U.S. rifles, artilleries, or planes regardless of whether title presently is in the United States or South Vietnam, how does the candidate propose to get the materiel to the United States out of South Vietnam? Forcibly? By violence? Does he plan to take it away from the South Vietnamese and start another war, or does he think the materiel will be given up while these people allow themselves to be unilaterally disarmed and left weakly helpless and waiting for the slaughtering enemy coming down in hordes from the north?

I think the folly of the proposal is about equal to the folly of the candidate making the speech in the first place.

Mr. MANSFIELD. Mr. President, the presidential race will not be decided by what we say on the floor, but by what the American people do on November 7. Neither approbation nor criticism of either candidate, in my opinion, will have much, if any, effect, as far as the Senate is concerned, but I will say this: Whether we disagree with what Democratic presidential candidate GEORGE McGOVERN said last night, he said it. He laid his position out very clearly. It is not for us to judge, except as voting citizens, but for all the people of the United States to judge come November 7.

Mr. SCOTT. I was merely commenting on the decrescent state of the candidate's fortunes.

Mr. MANSFIELD. I was merely commenting on the candor of the candidate's speech.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from North Dakota is recognized for not to exceed 5 minutes.

SENATOR JOHN SHERMAN COOPER

Mr. YOUNG. Mr. President, I cannot help having a feeling of sadness and regret that our good friend JOHN SHERMAN COOPER will be retiring from the Senate. Today will be one of his last few days with us.

I came to the U.S. Senate just a short while before Senator COOPER. Over the years we have worked very closely together on many important problems pertaining to our respective States such as farm programs, farm legislation, and public works projects.

Few, if any, Senators have left a deeper imprint on this kind of legislation than has Senator COOPER. One example on farm legislation was something that occurred shortly after he came to the Senate. He was successful in getting a special provision in the price support legislation of 1948—known as the Aiken-Hope bill—for tobacco. His provision required mandatory 90 percent price supports for tobacco. The Cooper amendment is still in effect today. He was very effective in many other important areas of agriculture, and farmers never had a more understanding and loyal friend than Senator COOPER.

I never knew anyone who worked harder or more effectively than he for water projects and other public works projects in his State. These were good, meritorious projects and the kind that will always be a monument to the work of this fine man.

Senator COOPER has been very active in many other fields of legislation and especially those involving foreign policy. Through his many years of experience abroad, including his service in World War II and as our Ambassador to India, he became one of the most knowledgeable Members of the U.S. Senate on foreign issues and policies, particularly with respect to the Far East.

There are many reasons why our good friend was such an effective legislator. He grew to manhood in the mountainous area of Kentucky, where the people were poor, but hard working and down to earth in their thinking. As is so typical of the people of this area, Senator COOPER has a great sense of humor. One thing about JOHN SHERMAN COOPER that stands out above almost everything else is his always deep concern and interest in the poor and needy. His concern for them permeated, and in a large measure shaped his thinking on almost everything that concerned not only the people of our country, but also of the world.

Senator COOPER is recognized, too, as an able lawyer—a mild-mannered person, but a relentless fighter for those things in which he believes. He is so honest and sincere in his convictions and his

approach in dealing with all legislation that every Member of this body has come to have a special interest in his views and the positions he takes. He is one of the few Senators who, in their time, were accorded this very special recognition; and, even more important, every Senator has a warm spot in his heart for this wonderful person.

JOHN SHERMAN COOPER's leaving the Senate will be a special loss to me not only because we worked closely together on many matters but also because of a very special closeness in our friendship.

Mr. President, I share with every Member of the Senate a feeling of sadness in knowing that this will be one of the last days we will be privileged to serve with JOHN SHERMAN COOPER. May the world always be kind to JOHN SHERMAN COOPER and his lovely wife Lorraine.

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

Mr. YOUNG. I yield.

Mr. MANSFIELD. I wish to join the distinguished senior Senator from North Dakota in everything he has had to say about our distinguished colleague JOHN SHERMAN COOPER. It is with deep personal regret that I see him leave the Senate voluntarily. JOHN SHERMAN COOPER has a special place in my heart, he is a shy, retiring individual, but a man of high intelligence, great integrity, a man whom we will miss.

Words are inadequate really to express my personal feelings toward him. There is no man for whom I have greater affection or greater admiration.

I should like to express the hope that if the present administration is returned to power next November, it will make available to itself the services of this outstanding Senator, this fine gentleman, this good friend, who I think can contribute much to the welfare of the future of this Republic.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Connecticut (Mr. WEICKER) is recognized for a period not to exceed 15 minutes.

FORMER SENATOR PRESCOTT S. BUSH—IN MEMORIAM

Mr. WEICKER. Mr. President, the death of Prescott Bush, U.S. Senator from 1952 to 1963, brings to a close a lifetime that can best be described as filled with unusual ability, love, dedication, and excellence.

"Pres" Bush, a friendly man, excelled in everything he undertook. For him, the spectrum of life was broad and exciting, a challenge to excel.

To those who knew Pres Bush, it seemed that he met that challenge with a surprising ease. It was ease—not lack of effort, because Pres Bush put effort into everything he did.

That effort, coupled with a natural quest for excellence, invariably lifted him above his peers in any competition whether it was sports, music, politics, government, and community service, or the field of finance.

As a young man at Yale, Pres Bush played a caliber of baseball which would have qualified him for the major leagues if he had desired a career in that direction.

Tennis, swimming, golf—body builders that helped him to develop a lean body, and a keen mind. But Pres Bush was not content to be an average tennis player, an average swimmer, or an average golfer. He rose to excellence in each.

That excellence could sometimes lead to embarrassment, but Pres Bush was also a diplomat, and he handled such situations with tact and discretion.

Pres Bush was 56 years old, an age when most professional golfers have gone into graceful retirement, when he scored an 18-hole 66 to win the national senior golf championship of the United States.

Some time later, as a constant golfing companion of President Dwight Eisenhower at Burning Tree, Pres Bush demonstrated his capacity for diplomacy time and again.

Frequently, the eager minions of the press would descend upon him after he had finished a match with the President in an effort to wangle from him their respective scores.

Now, it is quite conceivable that Pres Bush had posted a score that was lower than the score entered on President Ike's card. But, win or lose, Pres Bush held his counsel.

As the New York Times' obituary of Mr. Bush noted, a reply he once gave a reporter was typical of his resourcefulness and his tact. Said Pres Bush:

> Nobody who plays golf with the President ever talks about it. Any other questions?

Pres Bush continued his rapport with President Eisenhower from the golf course to the floor of the U.S. Senate. A banker in private life, he was way ahead of his time in helping to dissolve the image of unconcern and austerity that the public had conceived about financiers.

President Eisenhower's administration was an administration seeded with compassion. It was not difficult for this former banker not only to ride along with the compassionate tide of the Eisenhower years, but to lead its people-oriented programs on the floor and in the committees of the U.S. Senate.

When urban redevelopment and slum clearance were only newly begotten dreams to the social scientists of the 1950's, Pres Bush was working to crystallize those dreams into the law of the land.

As a member of the Committee on Public Works and also of the Committees on Banking and Currency and the Armed Services, Pres Bush drafted and introduced a number of bills which brought him to national attention.

One of those bills did, in fact, provide for the creation of a program to revive dying cities through a program of urban development and slum clearance. It was regarded as a concept that was ahead of its time, but a concept whose day would come.

Senator Bush's bill was not enacted. But its time did come. Even though it does not bear his name, the urban development and slum clearance legislation which has since been introduced and signed into law stands as a monument to Pres Bush, who was a pioneer in its conception.

Senator Bush was not only a confidant and golfing companion to President Eisenhower; he was also a tower of strength as an adviser and authority in matters of Government finance and the national economy.

More than most of his contemporaries, Pres Bush was alert to the dangers of growing inflation. In the 1950's and 1960's, it was his voice that was the first voice to warn of inflation's threat to the economy and it was his voice that sounded suggestions for its control.

Pres Bush carried his penchant for excellence to his human relationships. Tall, with an infectious smile, he was as much at ease in his contacts with the man on the street, the truck driver, the plumber, the carpenter, the small shopkeeper, as he was at an international banking conference.

No one who knew him in his home town of Greenwich, where he had established a reputation for ability, hard work, and firmness as moderator of the representative town meeting for 15 years—no one who knew him in Connecticut ever doubted that Prescott Bush would bring anything but honor and distinction to his service as U.S. Senator when the call to serve came from his Republican Party in 1950.

Pres Bush had shown, from the days of his youth right through his most productive adult years, that his hallmark was the mark of excellence. Not the excellence of the rapacious competitor who reached for it regardless of the consequences to his opponent, but excellence gained by establishing it on a foundation of inordinate ability suffused with sympathy and understanding.

Dominating his formula for living was his love for his family. His relationship with his wife Dorothy was one of togetherness that would pale the current book and movie "Love Story" into insignificance. It was symptomatic of their relationship that Dottie wrote her own tender eulogy to Pres which was read at his funeral services Tuesday at Christ Church in Greenwich. The Prescott Bush integrity and compassion for people that led him into public service has filtered down to his family, a family of which Connecticut is so proud and for which our State has so much affection.

Where Prescott S. Bush, Sr., gained renown as U.S. Senator, national campaign chairman of the USO and National War Fund during World War II, Yale trustee and church layman, his son George followed to serve as a U.S. Representative from Texas and now as the distinguished U.S. Representative at the United Nations.

Where U.S. Senator Prescott Bush won local distinction as Republican State finance chairman, moderator of the Greenwich representative town meeting, and volunteer leader of Community Chest campaigns, as well as in other community service, his son William—"Bucky" to his neighbors in Greenwich—today heads the Republican Finance Committee in Connecticut.

Two other sons, Pres Bush, Jr., and Jonathan Bush, followed in the tradition of their distinguished father: Pres, Jr., as Republican State central committeeman from his Greenwich District, and both Pres, Jr., and Jonathan in volunteer community service.

It is evident that Pres Bush stood tall, not only in physical stature, but in the work product of his heart and mind. In going to the U.S. Senate from service as moderator of the town meeting in Greenwich, he brought to the Senate those special New England qualities of compassion, integrity, and attention to detail.

Mr. President, my wife, Bunny, and I—and the people of Connecticut—join with what I know is the sentiment of this august body in wishing to Senator Bush's wife, Dorothy; to their sons, George, Bucky, Pres Jr., and Jonathan; and to their daughter, Mrs. Alexander Ellis, Jr., God's strength and Connecticut's love at this time of their loss and sorrow.

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

Mr. WEICKER. I yield.

Mr. COOPER. Mr. President, I rise to express my own sorrow with other Members of the Senate who had the honor to serve with Senator Prescott Bush.

It is difficult to think of any man who had such a rounded and successful career in as many fields as had Prescott Bush. Whether it was in his university life, or as a young captain in the artillery in World War I, or working in an industry in St. Louis, Mo., or as a partner in an investment firm in New York City, or whether it was community work and church work in his beloved State of Connecticut, in every capacity, he served with all his heart and ability and with the greatest excellence.

As the Senator from Connecticut (Mr. WEICKER) has told us, Prescott Bush had a variety of other interests—as an athlete, in the arts, in music, and politics. I recall that in 1960, he was chairman of the Republican platform committee, at every level he brought to his service a rare quality of ability and excellence.

Then I, among others, had the opportunity of serving with him in the U.S. Senate, where we recognized his great abilities in all his work and far beyond most of us—practically all of us—in fiscal and monetary affairs. He brought also, a great sense of honor and a quality of character which ennobled the Senate.

I am sure that after he left the Senate, he felt that his work was being projected through that of his son, George Bush, now Ambassador to the United Nations for the United States.

His death is a great personal loss for me. I first knew Prescott Bush about 1923. Since that time it was my opportunity to be a close friend and to know his wife, Dottie, and the members of his family. Since he left the Senate I have kept in very close touch with him.

So today I join in expressing, very inadequately, the sense of loss I feel in the death of this great and noble man. We extend our sympathy to his wife, Dottie, who stood by him in every phase of his work and life, and to a great family.

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

Mr. WEICKER. I yield.

Mr. MATHIAS. Mr. President, I join the Senator from Connecticut and the Senator from Kentucky in expression of deep sorrow at the death of Prescott Bush.

When I first came to the Congress, I knew Prescott Bush, as one of the leaders of the Senate, one of the leaders of the country. I have known his family for many years, and I join other Members of the Senate in expressing my deep sympathy with them.

Senator Bush was one of the Members of the Senate who sustained the reputation of the Senate in time of change. If Senators are the trustees of the integrity and character of the Republic, then Prescott was faithful to his trust.

Nowhere is this more apparent than when we look beyond the public record to Senator Bush's own family. It is no less true of his other children than it is of Ambassador George Bush, our former colleague in the Congress, that they have each demonstrated in their own constructive lives the sense of decency and dedication that Prescott Bush bequeathed to his countrymen as well as to his children.

TRIBUTE TO SENATOR JOHN SHERMAN COOPER, OF KENTUCKY

Mr. MATHIAS. Mr. President, the record of an active political life is usually a mixed bag of successes and failures. JOHN SHERMAN COOPER, I think, has had more than his share of success, but I think this might not be an inappropriate moment to point out that he has had at least one failure. That failure was his attempt to revive the tradition of spontaneous and genuine debate on the Senate floor, real speeches in the U.S. Senate and not stilted recitations of precooked sentiments. He wanted to discourage speeches that are ghostly rather than spiritual.

I think he had in mind situations such as that of a Member of the Senate who told me recently, when he was importuned to read some speeches in the RECORD which were delivered in his absence, that the only speeches he read were his own, and he only read them once.

Mr. President, I think it says something about JOHN COOPER, about his feeling for the Senate, and about what he thinks the Senate ought to mean to the United States, that he wanted to encourage each Member of the Senate to speak from his heart and from his mind, because that is the way the Senator from Kentucky has conducted himself over the years of his service in the Senate. As a special tribute to Senator COOPER, I shall attempt to follow his injunction and speak as simply and directly as I can, from my heart. The inadequacy of the attempt to convey extemporaneously all that is in my heart may serve to illustrate the cause for this single failure.

One of the political customs which has grown in the United States in the past generation is the practice of playing the political numbers game.

The Americans for Constitutional Action among others have a rating system on which we all are scored—our political grades. They tote the score according to their special interest and insight—our ACA score. The Americans for Democratic Action have a similar rating system, and we all get an ADA score. COPE has a rating system, so we get a COPE score. Various other organizations in America attempt to categorize and classify Members of Congress according to their record in a certain fairly limited area of legislative action.

I have always felt that this is a kind of numbers game, that it is an inadequate sort of measure of service in Congress. If I may, I should like to use this occasion not so much to praise the service of the Senator from Kentucky, but to point to him as an example of the fact that a constructive career in the Senate involves far more than can be comprehended in an ACA score or an ADA score or any other kind of score which limits itself to the special objectives of the organization which purports to do the rating.

What has always counted in human affairs is character and moral leadership. And so, what has always made the difference, in political success, using the broad and generous definition of political success, is the kind of moral leadership to which other people turn when they are faced with problems which are too perplexing and too difficult to decide without help.

It is one of the characteristics of human beings that we all seek men of principle in times of stress.

The Senate is no different in this respect than any other group of human beings. As all men do, Senators look to the strong men among us who can lead us with wisdom, with compassion and with the assurance of moral integrity.

Mr. President, I submit that JOHN SHERMAN COOPER is one of these men. What he does in the Senate is so much greater than any single act which is required of a Senator. The fact that he is here, the fact that he provides a standard by which we can all measure our own actions, is of enormous importance to this country.

We can vote right or vote wrong on any single bill or in the introduction of any particular piece of legislation; but being a useful Member of Congress comprehends so much more than the simple legislative activity which is involved here. It means, I think, that we have to help set the standards that will give light and leadership to America. We have to attempt to lead our own lives in ways that will be helpful to other Americans who seek some kind of guidance and example in their own personal lives, as well as in the life of the country.

There is such a feeling about JOHN SHERMAN COOPER. He does set a standard and convey a sense of quality and a concept of excellence that has been important to all of us here in the Senate and which, I think, is transmitted beyond the Senate into American life. It is the quality in our predecessors which made it possible for this Republic to survive and to succeed, the quality that demands so much from every man who carries the responsibility of public office.

Such a man, I would say, Mr. President, demands most of all of himself. He has the perception to place emphasis

on the things that are right, things that are important, and a sense of the priorities that govern our lives. He has the strength and confidence to act on his judgment and his sense of moral values.

I shall attempt to say no more except to express my gratitude for the example he has set, and to say to him that we expect to be following that example for many years to come. It would be incomplete to close without acknowledging the fact that we owe so much to Mrs. Cooper as well as to Senator COOPER. To be a Senate wife is, as we all know so well and so gratefully, to be confronted with many unique and difficult demands. Mrs. Cooper has met these special demands with grace and dignity that is the perfect counterpart of Senator COOPER'S public service.

Mr. President, the distinguished junior Senator from Kentucky (Mr. COOK) is out of the country and he has asked me to request unanimous consent at this point that his remarks may be printed in the RECORD.

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

STATEMENT BY SENATOR COOK

I want to take this opportunity to pay tribute to the leading citizen of the Commonwealth of Kentucky, my colleague and senior Senator, John Sherman Cooper. Upon his retirement from the U.S. Senate at the end of this year he will have given his home State and his Nation more than 40 years of dedicated public service.

John Cooper was born to John Sherman and Gertrude Tartar Cooper on August 23, 1901 in Somerset, Ky., a small town in the southeastern part of the State in the foothills of the Appalachian Mountains. It was here in a highly disciplined and religious home that the precepts of hard work, respect and compassion for his fellow man, were instilled in John Cooper. After establishing himself as an outstanding student and athlete at Somerset High School, he entered Centre College in Danville, Ky., in the fall of 1918. After 1 year at Centre he transferred to Yale University where he received his A.B. degree in 1923 while once again distinguishing himself as a student and athlete.

Upon graduating from Yale University he then enrolled at Harvard Law School in the fall of 1923. His hopes of becoming an attorney were suddenly jeopardized however, when at the end of the first year at Harvard his father died, leaving a wife and six children in addition to John. He was able to spend 1 more year in law school at the end of which he returned to Somerset, passed the Kentucky bar examination and began the practice of law in his home town. Three years later the people of Pulaski County sent John Cooper to Frankfort as their State Representative and after one term there they elected him county judge. After serving two terms as county judge, 1930 to 1938, he then made an unsuccessful bid for Governor, being defeated in the Republican primary by King Swope who was subsequently defeated in the general election by the Democratic nominee, A. B. "Happy" Chandler.

When World War II erupted John Cooper enlisted in the Army as a 42 year old private. Sensing his leadership abilities however the Army quickly sent him to officer's candidate school and he was commissioned a second lieutenant at Fort Custer, Michigan in 1943. He then served with the Third Army in the Normandy, France, Luxembourg, and German campaigns from July of 1944 to the end of the hostilities in Europe at which time he headed the reorganization of the German judicial system in Bavaria. Upon leaving the Army in February of 1946 he had attained the rank of Captain and had been awarded the Bronze Star for his reorganization of the Bavarian Court System.

It was evident upon John Cooper's return to Somerset after the war however that the people of his native southeastern Kentucky had not forgotten him. He had been elected Circuit Judge of a multi-county area several months before while still in Europe as an officer in the U.S. Army. He had served only a short period of time however when he filed for the unexpired Senate term of "Happy" Chandler who had resigned to become commissioner of baseball. His opponent was John Y. Brown, a former Congressman and well-known attorney who was favored in heavily Democratic Kentucky. Nevertheless, after a whirlwind campaign, John Sherman Cooper was selected by the people of Kentucky to serve the remaining two years of that term.

Running as the incumbent in 1948, he was defeated by Congressman Virgil Chapman in a closely contested election. The defeat might well have been a blessing in disguise however since in 1949 Cooper was appointed by President Harry Truman to be the U.S. Delegate to the United States General Assembly. It was this act which proved to be the genesis in making the man from Somerset one of America's foremost authorities in the field of foreign affairs. In 1950, he was named special assistant to Secretary of State Dean Acheson and by virtue of this position served as an adviser to the original North Atlantic Treaty Organization Council of Ministers. When Virgil Chapman died in 1952 Cooper returned to Kentucky and was once again elected to serve a two year term. In 1954 John Cooper was confronted with the most formidable opponent of his career, the beloved "Veep", Alben Barkley, who had just served four years as Vice President of the United States and now desired to return to the Senate. After a long, arduous campaign which attracted widespread national publicity Barkley was once again returned to the Senate by a narrow margin.

The expertise that John Cooper had acquired in the area of Foreign Affairs was not to lie dormant however because in January of 1955 President Dwight D. Eisenhower appointed him Ambassador to India and Nepal. Upon the death of Alben Barkley in April of 1956 Ambassador Cooper was persuaded by the Republican Party to return to the United States and seek the vacant Senate seat. In November of 1956 he defeated former Governor Lawrence Wetherby and has served continuously in the Senate since that time.

Since 1956 Senator Cooper has won by a progressively larger plurality. In 1960 and 1966 he defeated his opponents by record margins.

This brief recapitulation of John Sherman Cooper's career indicates the depth and breadth of his involvement in local, State, National, and international issues over the past forty years. However, such a biography does precious little to depict the man behind such an illustrious career. It is this, the human side of John Sherman Cooper, which is most revealing in any consideration of his accomplishments. His entire career as a public servant is the epitome of goodness, virtue, and compassion. It was these qualities which permeated every decision that he has made as a public official over the last forty years.

As a county judge in southeastern Kentucky during the depression years he was not obligated to buy meals for the rural poor who did not have the money to do so; but he did. As a 42 year old attorney he was not obligated to enlist in the armed forces to aid in the defense of his country during World War II; but he did. He did not have to spend countless sixteen and eighteen hour days during his career in the Senate working on very technical legislation which oftentimes received little or no public notoriety; but he did. He did all these things and more, not because he was obligated to do so, not because he was even expected to do so, but because he cared and he knew it was the good and right thing to do.

His legislative accomplishments have affected and will continue to affect the lives of millions of people in this country as well as around the world. His untiring efforts to bring about better understanding between nations as a working diplomat, Ambassador, and member of the Senate Foreign Relations Committee should be an example to us all. His sponsorship of the Appalachian Regional Development Act with Senator Jennings Randolph has provided better lives for thousands of people in that section of our country. His support for the Tennessee Valley Authority and his diligence as a strong spokesman for the development of our rivers and streams, as ranking Republican on the Senate Public Works Committee deserves the highest commendation. His strong stand in support of education, rural electrification, medical aid for the poor, civil rights, his defense of civil liberties, and the list continues *ad infinitum*, is likewise just as commendable.

John Sherman Cooper is retiring from the Senate at the end of this year but the fruits of his labor will always be with us. It is often said that "the difference between a politician and a statesman is: a politician thinks of the next election and a statesman thinks of the next generation." John Sherman Cooper has never hesitated to take a position on an issue which his innate sense of justice told him was correct, regardless of the unpopularity of his stand. He is a statesman in every sense of the word. I am grateful that I have had the opportunity to serve in the United States Senate with such a a distinguished colleague and I wish him and his wonderful wife, Lorraine, Godspeed in any new endeavor they might undertake. Finally, I would like to submit for the RECORD comments that have been made about John Sherman Cooper by a cross section of distinguished individuals, organizations, and publications.

HERE'S WHAT PEOPLE HAVE TO SAY ABOUT JOHN SHERMAN COOPER

President John F. Kennedy . . . "You have a great Republican in John Sherman Cooper, who represents the best of his party, and votes with us when he thinks we are right."

Senator Everett Dirksen of Illinois . . . "Conscientious, competent, courageous Cooper brought wholesome qualities into public life that give distinction and dignity wherever he sits in the Senate . . . committee or elsewhere."

Syndicated Columnist Robert G. Spivak . . . "When Senator John Sherman Cooper of Kentucky speaks Washington listens because he is a man of judicious temperament, intelligence, wisdom and conscience. What he has to say about the political situation in South Viet Nam is being studied carefully at all levels of government. . ."

Congressional Distinguished Service Award . . . "The American Politicial Science Association takes great pleasure in presenting this Congressional Distinguished Service Award to John Sherman Cooper, Republican of Kentucky—a friendly individualist, versatile, intellectual and distinguished statesman whose honesty and foresight reflect credit on our freely elected legislative institutions."

President Dwight D. Eisenhower . . . "You have represented our country with true distinction, ability and diplomatic skill."

Syndicated Columnist Ruth Montgomery . . . "Handsome, sophisticated and intellectual, Cooper nonetheless retains a frontiersman's practicality which earns him huge electoral majorities in Kentucky . . ."

"In 1960 Cooper won by the largest margin ever accorded a Senate candidate in traditionally Democratic Kentucky—a real tribute to this 'mainstream' Republican."

The Saturday Evening Post . . . Senator Cooper's career "uniquely qualifies him to be

a Senator. He has been both a Washington lawyer and a country lawyer, both a circuit and a county judge, a soldier under General Patton, a state legislator, a working diplomat . . ."

In 1960, a Newsweek Magazine asked the 50 top Washington correspondents to name the "ablest men" in Congress. Senator Cooper of Kentucky was named the ablest Republican in the Senate.

Mr. STENNIS. Mr. President, this is a sad moment, in a way, for me to be talking about the retirement of our esteemed colleague the distinguished Senator from Kentucky (Mr. COOPER). But to review his accomplishments and achievements is, really, to realize that this is an hour of victory and attainment for him.

I like to think of his influence in his earlier days in his home State of Kentucky, in his great profession of the law in his home areas, serving there as a trial judge and the fine influence I know he had on the people there and his fellow lawyers.

I think of his Ambassadorship to India—an outstanding achievement, and an example of his great versatility.

But to me, the crowning part of his fine career is here in the Senate where his character, his honor, his integrity, and his devotion to principles have taken firm and lasting roots and have permeated this Chamber on both sides of the aisle and, to a great degree, among those Senators who came and stayed, and those who left.

These are genuine feelings that I am talking about. We know it. We feel it. We felt it happen. We saw it happen. As long as character, honor, integrity, and true dedication to principles remain a part of our system of Government—and they must remain a part of our system to prevail—JOHN COOPER'S influence will continue to live in this body and affect not only his colleagues now in the Senate but all those to come—even generations to come.

Mr. President, I remember that I told Senator COOPER once that he stands tall and strong. I believe that, as much as any other Member of the Senate I have known, and more than any of us, he has really made an extraordinary effort to cast every vote and every speech on the basis of what he believed to be right and just and the best thing for our country as he saw it.

I believe, Mr. President, to sum up briefly, that as he saw it, JOHN SHERMAN COOPER has spoken the truth and he has lived the truth. And truth is eternal.

So, I say Godspeed to him now from this Chamber. Come back as a visitor and come back to our operations here. I trust that God will continue to bless both Senator COOPER and his wonderful wife Lorraine. I pray they will have many fruitful and useful years ahead, and that is the hope of all Members of the Senate.

Mr. HARRY F. BYRD, JR. Mr. President, JOHN SHERMAN COOPER has had a fine influence on the Senate and that fine influence has been over a period of many years.

Senator COOPER has added much to the policy of the Senate. He is one in whom his colleagues have absolute confidence. It is not a question of whether one may always vote the same way as Senator COOPER votes or whether one may have identical philosophy. All of us know that JOHN SHERMAN COOPER through the years has spoken his convictions regardless of party considerations and regardless of any other considerations. He is one who is a Senator of the highest integrity, the highest patriotism, and the greatest ability.

The senior Senator from Kentucky will be greatly missed when the Senate convenes next January without him. However, he will long be in the hearts of those of us who have served with him. We admire him and we have confidence in him. We like his fellowship. And although, by his own choice, he will no longer be a Member of this body, he will always brighten the Senate Chamber whenever he comes to visit.

I am very proud of my close association with him, and I shall miss him very much.

Mr. AIKEN. Mr. President, for a good many years, JOHN COOPER has been my seatmate and also my counselor. I always find his advice to be fair even though I do not always follow it.

I consider JOHN to be the diplomat of the Senate. His early training as judge of local and higher courts in Kentucky prepared him well for the work which came later. He has always had the faculty to look at an issue or a proposal from both sides and then make his decisions according to the evidence. I have noticed, however, that when the evidence is fairly well balanced that his sympathy invariably lies with the underdog.

His experience in his home State of Kentucky and in the U.S. Senate prepared him well to be Ambassador to India—a post which he held with credit for nearly 2 years.

A few months ago, JOHN COOPER announced that he would be leaving this Senate of his own free will. I'm not going to talk today about how much we will miss him because it goes without saying that he will be back in Government service one way or another before too long. He has already left this Senate several times over the past 20 years, but he always comes back. He comes back into Government service either as a legislator or in the executive branch because he loves the work, and believe me, the United States needs JOHN COOPER.

If he does not come back to the Senate, then we certainly need him to help us maintain the respect and understanding of the rest of the world. No one is better qualified to build respect and friendship for the United States in other countries than our friend JOHN COOPER.

I make this one exception, however. It is possible that his wife, Lorraine, may even excel him in the diplomatic field, and between them they could do an immense amount of good in improving our relations between the United States and almost any other country in the world.

Let us not worry too much, for while JOHN COOPER is leaving the Senate of his own free will, this country is not going to lose him. As General MacArthur said, He will return.

Mr. ALLEN. Mr. President, I am pleased and honored to have this opportunity to speak at this time of Senator JOHN SHERMAN COOPER, who has long been one of my heroes. In my opinion, he is one of the alltime great Senators, a veritable giant in the Senate. Few Senators have made the imprint on the U.S. Senate that Senator COOPER has. If the Senate is, as has been said, the greatest deliberative body in the world, it is Senators like Senator JOHN SHERMAN COOPER who have made it so.

Mr. President, when Senator COOPER retires from the Senate the Senate is going to lose some of its luster; it is going to lose some of its brilliance; it is going to lose some of its character. Senator COOPER has always set principle above partisanship. He looks like a Senator in the highest sense of the word, and I dare say that the average citizen seeking to conjure up in his mind and to personify for himself a picture of a U.S. Senator in the highest sense of the word would picture JOHN SHERMAN COOPER as being that U.S. Senator. He talks like a Senator; he thinks like a Senator; he deports himself like a Senator. We are going to miss him in the Senate. The country is going to miss him.

Mr. President, above all else Senator COOPER has character. Without character life would not be worth living. A person who loses character would be better off if he were not living. Senator COOPER has character. He is a great U.S. Senator. The people of the State of Kentucky are proud of Senator COOPER; the people of the Nation are proud of him.

In many ways the person who serves a State in the U.S. Senate typifies the people of that State. Many persons form their judgment of the people of a State by the Senators who represent them in the U.S. Senate. The people of Kentucky are proud of Senator COOPER, the representation he has given them in the Senate, the high caliber of his service, his dedication to duty, and his patriotism.

Since coming to the Senate I have followed closely the career of my dear friend, Senator COOPER. He has stood for the principles that have made ths country great. He has stood for separation of powers, and that is one of the fields in which he has excelled: the field of the separation of powers, the prevention of the erosion of the powers and duties of the legislative branch. He has stood for the separation of powers prescribed by the Constitution.

I have admired him in the stands he has taken in the Senate, although we have not always agreed in our positions.

My wife and Mrs. Cooper are the dearest of friends, and we are going to miss not only Senator COOPER but his lovely wife, Lorraine Cooper. We wish them Godspeed; we wish them the best that life could possibly hold for them in the future.

SENATOR JOHN SHERMAN COOPER, A BELOVED COLLEAGUE, RETIRES FROM CONGRESS

Mr. RANDOLPH. Mr. President, it is a personal and official pleasure to join my colleagues in expressions of affection and respect to a Member of this body who will soon retire from his labors on Capitol Hill. JOHN SHERMAN COOPER has, through a dedicated and a productive

career of public service, earned a rest from his labors.

We can hardly think of JOHN really ever resting from his labors. His departure from this Chamber, however, will deprive the Senate of one of its most beloved Members, and certainly one of its most effective legislators.

Senator COOPER has fully earned all the tributes which we can express in these commendations to him for his career as spoken today under these special orders. During a long and distinguished career, JOHN SHERMAN COOPER has steadfastly resisted pressures that would cause him to deviate from his ideals in serving the people of the Commonwealth of Kentucky and the United States of America. When he speaks, Senator COOPER is heeded in this forum. We know that he speaks with knowledge and with understanding, based on a thorough evaluation of the issues, and that he always brings to his work a highly developed set of moral principles.

As a locally elected official, as an Ambassador representing the United States in India, and as a Member of the Senate, JOHN SHERMAN COOPER has left a lasting imprint on this country and our people. The Senate will miss his wise leadership, but we know that Senator COOPER has achieved during his time with us far more than most men even dare to dream. I know that his retirement from the Senate will not mean inactivity for this man, who has been a vigorous advocate of peace, of justice, and of a better life for all Americans. He will continue, in whatever capacity when he departs officially this Hill, to serve the cause of providing for dignity and fair dealing in all matters in which people have justifiable concerns

For almost 14 years, Mr. President, it has been my privilege to be closely associated with JOHN SHERMAN COOPER in the Senate Committee on Public Works. I know intimately of the substantial influence he has had during those years that we have worked together on the legislation heard in subcommittee, heard in full committee, marked up in subcommittee, marked up in full committee, and reported with his input, so very valuable, to the floor of this forum.

He is always—not reluctantly, but ready and eager—to consider all the factors and all the issues, not on a partisan basis, but with a consideration for the people, always the people, of this country. His stature among his colleagues has, on many occasions, enabled us, because we have confidence in him, to aid in the solution of difficult problems.

Yes, I will personally miss this rewarding association with a colleague who is also a valued personal friend. On behalf of the staff of the Committee on Public Works, I express their great respect for JOHN SHERMAN COOPER, as a man and as protector of the public good. They have asked me to express their feelings for him and their sense of the loss they will experience when his participation in committee activities will cease.

Lorraine and JOHN SHERMAN COOPER have graced every occasion and every responsibility which they have shared so happily together.

Now these thoughts in conclusion: We could describe JOHN SHERMAN COOPER as a humanitarian because he is a humanitarian. We could call him a man of peace because he is a man of peace. We could refer to him as a seeker of social justice because he is a seeker of social justice. All of these descriptions, and many others, could properly be applied to JOHN SHERMAN COOPER of Kentucky, but I believe that the very, very best manner in which I can summarize the qualities of JOHN SHERMAN COOPER is to say that he represents the people of Kentucky, and he represents the citizenry of the United States. No provincialism, as right as that is, can encompass his career. He is truly a great American, but also, because he thinks in terms beyond narrow confines, today, he is a citizen, a good and great citizen, of the world.

Mr. HART. Mr. President, for those of us in the Senate, this is really a moving, personal moment; for each of us who would want to capture a word combination that could express with some degree of fullness, with a feeling which is our own, as we thank and bid goodby to a good friend and a good man.

There are many aspects of his career to which we could address ourselves; and in the course of this special morning, I am sure most will be touched. I would suggest that we consider this particular significance as we think of JOHN COOPER.

All of us are aware that the people of the United States are, at the moment, manifesting in various ways a growing disenchantment with government in general and with politicians in particular. A recent newspaper story reports that only used-car salesmen rank lower than politicians in terms of public trust. It is just too bad that those who sweepingly question the integrity of Members of Congress or who seek to put a label on all politicians could not have had the opportunity to know JOHN SHERMAN COOPER.

Except as they might be in this Chamber or by accident or circumstance permitted personally to meet him, the people would not have such an opportunity, because JOHN COOPER is a quiet man. Perhaps an exception among politicians, he is not given to trumpeting his own virtues. For this all the more do we prize him.

Others of my colleagues will have noted Senator COOPER'S long years of public service; his distinguished service in the Army, which, characteristically, he entered as a private; his years at the United Nations; his ambassadorship to India; and lastly his several terms in the Senate.

Among his many contributions to the public good, outstanding in world terms has been his leadership of the fight against this thing we call the anti-ballistic-missile system.

His conviction that the ABM was wrong for the Nation and wrong for the world was based on more than instinct. He consulted continuously with authorities from all points of view; he read exhaustively; he traveled to Helsinki and to Vienna while the SALT talks were in progress. And then he never gave up.

In my few years in the Senate, I have never been associated with a more honorable, more dedicated man, a more believable man. Soft spoken and unassuming in manner, tentative and openminded in his judgments, a gentle man who treated all human beings with equal courtesy.

Four years of leadership on his part brought us to a single ABM rather than a series covering the United States. He brought us to a realistic assessment of this system. Yet at no time did Senator COOPER put his own convictions ahead of the larger picture: successful negotiations with the Soviets on mutual arms reduction.

In these days when Congress is being weighed, its structure and procedure examined—as they should be—perhaps too little attention is given to the basic fact that the caliber of Congress depends primarily on the quality and the decency of the men and women elected to it. So it is to be regretted, particularly at this time of stress and of doubt in this land, that we should be saying goodbye to one of the finest ever to sit in our midst.

I have no idea how many men and women have been permitted to sit in the Senate. It is in the range of 1,500. Many of them had impressive careers and were influential; but few, I suspect, had the mark of authentic greatness about them.

It is encouraging that in this testing place of character it is demonstrated in the life and career of JOHN COOPER that one need not be shrill, one need not suggest that he possesses answers to everything, to recognize his moving, powerful figure.

I wish very much for Senator COOPER many years of interesting, satisfying experiences and activity; and he can be sure in all those years that his spirit will be alive and, I hope, his example powerful on those of us who have been permitted to know him.

Mr. SCOTT. Mr. President, we come to praise our colleague, JOHN SHERMAN COOPER. We do not come to bury him in praise, to his unbearable embarrassment. I am sure that anyone who hears the tributes of his colleagues is, by virtue of his own modesty, subjected to that kind of embarrassment. But we do want him to know that we do not mean it that way; that this is our opportunity to send with him, as he continues on to larger careers, the warm and friendly good wishes of those who serve with him.

He has had unique experiences, having come to this body three times after two absences; having reached the top of the Committee on Public Works and very near to the top of the Committee on Foreign Relations; having grown in prominence not simply as a member of committees, but as a Senator, as a highly respected colleague whose perseverance, good judgment, and rational powers have extended his influence far beyond what would normally accrue to a single Senator.

He has, in fact, been for many of us a paraclete, in the sense of one whom we call on to aid us or to intercede for our point of view; a paraclete who on every occasion in which he has advocated or supported a cause has engendered the support of numerous of his colleagues through his advocacy. To put it more

simply, or as we would ordinarily put it, JOHN COOPER is worth many more votes than his own to any cause he supports.

He has distinguished himself on and off the floor and in his career before he became a Senator, in his service as Ambassador to India, in his ability as a lawyer, and on this floor, in his refusal to hide from any issue and his willingness to meet each one headon. His decisive manner has been an inspiration to all of us.

On one occasion at Senator COOPER'S home, one evening in the summer when the interns were there, they occupied his time most of the evening. They were fascinated by the depth of his perceptions, his ability to talk their language. That certainly had to be one of the high points of their service in this body.

JOHN COOPER is not one whose influence would diminish but rather would increase after he leaves the Senate. We look for him to continue to be here as a guide and a philosopher and a friend to all of us.

He is not the sort of man who would deliquesce or melt away from our minds and our thoughts, nor in his own career would he be deliquescent. He will, on the contrary, as we expect him, leave here in full power and full strength of conviction and with the strongest and deepest respect of all his colleagues.

There will be no replacement in this body for JOHN SHERMAN COOPER: military officer, descendant of a long line of sturdy supporters of the cause of the Union, lawyer, legislator, judge, ambassador, delegate to the United Nations. He has been an outstanding public servant, a strong and wise and philosophical leader, a good friend of all of us, an altogether admirable person.

I could not end what I have to say without a tribute, also, to his lovely and attractive wife, who has been so wonderful a helpmate to him; and we rejoice in our continuing friendship with them both.

As was written in the book of Tao:

> When a truly good man does something, he leaves nothing to be done.
> When a truly just man does something, he leaves a great deal to be done;

And so it is with JOHN COOPER—his entire service, within the Senate and without, has gone beyond what is merely just to what is good.

Mr. President, I yield to the distinguished Senator from Tennessee such time as remains.

Mr. BAKER. Mr. President, I thank the Republican leader for yielding so that I may add my comments to those of all our colleagues in congratulations to JOHN SHERMAN COOPER for a magnificent career.

Knowing JOHN COOPER as I do, I suspect that one of the most difficult things he has had to endure in his tenure in the Senate is to sit here and listen to these encomiums; because I know him to be a man of modesty and one who does not indulge in self-adulation. But I suspect, Mr. President, that all our colleagues will join me in the assistance that he do exactly that and hear these much-deserved tributes that come now, at the end of his long term service to his country.

I have known JOHN COOPER possibly longer than any other Member of the Senate has known him; in my early years as well as those spent in the Senate, over a long period of time. I say without reservation, and I do not mean it to sound excessively maudlin, that of all the men I have known in my lifetime, only one has had a greater influence on my thinking and my conduct as respects my career.

JOHN COOPER has served in the U.S. Senate with great distinction. He has served his county and his State, but most of all I believe that history will record that he served his party; because he has served his party with great sensitivity and understanding of the traditions and the beginnings of the Republican Party, the concepts and the principles that make it great. He has been, in his own words, a Republican longer than most, as his family was before him, dating back to the beginnings of this party, in his native Pulaski County, Ky.

This has been the great contribution that JOHN COOPER has brought to his country and to his party: an abiding sense of the responsibility, of moral courage, of conscientious dedication to principle. He has been the personification of these ideals throughout his service to his country.

God willing, and with JOHN COOPER'S continuing help, I expect that our system will continue to flourish and serve the country and that his party will continue to flourish and serve in the noble tradition that he has become so much a part of.

I thank the distinguished Republican leader for yielding to me so that I might make these brief remarks—a much deserved tribute to a great man, JOHN COOPER.

Mr. CASE. Mr. President, it is good of the Chair to remind me that time is limited, because there is great danger on an occasion such as this, with the subject we are discussing, that one would run on indefinitely.

I cannot imagine, JOHN, anything worse than listening to your own obituary. In a sense, that is what this is, of course; and perhaps it is a kind of fun experience. It is very pleasant, indeed, to be able to say a little of what we feel about a man while he is still around to hear it.

It is difficult to know where to begin, especially when I have listened to my colleagues dealing with the subject with the eloquence and understanding they possess. All we can do is say something that we think, as an individual.

When I think of JOHN, there are so many facets of his career that it is difficult to sort them out and put them down in order. I believe that one of the great things all of us have seen in JOHN and have taken inspiration from is his deep love of his country, his patriotism. This is not the kind of flag-waving business that often passes for patriotism, though, in one sense, flag waving is a part of it—that is to say, the traditional observance of the rituals of remembrance of times past and things gone by and historical events and people. This is not an improper part of our patriotic heritage; and JOHN is fully aware of this, has always known of this, and never has been ashamed to express that knowledge.

I speak of his love of his own place, his State, the creeks and mountains and lovely country, as well as the blighted areas, that make up that tremendous State of his, and the people there and their traditions. He has never been ashamed to discuss and express his reverence for the heroes of his State. This is great; this is a wonderful thing; especially at a time when so many influences seem to be tearing down the traditions that are an inseparable part of what we are.

But, as I say, this is not a blind adherence to country or to place or even to friends that JOHN possesses, because underlying all that is a deep feeling that it is because of what we, at our best, stand for that he is fond of us. When I say "us," I mean country, State, the Senate, our institutions, and us as individuals. So he never hesitates to try to make us better, whether it be our country, or his State or our institution here, the Senate, and, even in his very sensitive way, ourselves. The courage he possesses is something that has guided all of us. I only know a couple things in which I would not trust JOHN'S unbiased judgment. One of them would be probably with Soft Red Winter Wheat. But who is going to take care of Soft Red Winter Wheat in Kentucky if the Senator does not?

Very seriously, on matters of deep importance, of great matters, and hard principles, we are going to miss him more than I like to say.

He has a good intellect. He can get to the heart of a matter, and he has done it and he sees it through. We are going to miss him very much.

He has foibles. He is a persistent fellow. He is persistent even to the point of stubbornness sometimes. This is an element of strength for him and for us.

It is maddening, of course, sometimes, to have to deal with him. He takes a long time, sometimes, to make up his mind, but that is because he is careful. We know that when he reaches a decision it is a decision that is worth waiting for. I shall miss him very much. We all will.

He has a keen sense of humor, a sensitivity to the foibles of humankind, his fellow men and himself, as a matter of fact. He has foibles. He recognizes it and we all do, too. It is part of what we love about him.

How he ever finds a cigarette in his pocket, I will be darned if I know, but he always manages to get one for us. He knows where to go to get one himself.

Again, seriously, he is a lovable person. We are all going to miss him, even more than we realize now. Yet when we get to the point that we have troubles, concerns, and want some kind of guidance, instinctively we will turn to that place in the Chamber where he has sat so long with dignity, to get some kind of inspiration from the knowledge that he possesses. And if we think hard enough, we will know what JOHN would have done; we will get courage from it, in-

spiration from it, and understanding from it.

We hope, even though he will not be here every day, that occasionally we will have a chance to see him, that he will not be altogether removed from this city or from our presence.

This, of course, goes too for Lorraine. It is a wonderful team. They complement each other in an extraordinary fashion. I am certain they will give strength and inspiration to each other. That is, of course, the most important aspect of any relationship that human beings can have. We want to see her, too.

Thank you, Mr. President.

Mr. ROBERT C. BYRD. Mr. President, without prejudice to the Senator from New York (Mr. JAVITS) who is next on the list, I ask unanimous consent that the time which was allotted to the Senator from Mississippi (Mr. STENNIS) be allotted to the Senator from Missouri (Mr. SYMINGTON). Ordinarily it is required that a Senator be here to control his own time, but because of this extraordinary situation with Senators wanting to pay tribute to the Senator from Kentucky (Mr. COOPER), I make this unanimous-consent request.

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

JOHN SHERMAN COOPER—AMERICAN PATRIOT

Mr. SYMINGTON. Mr. President, I thank the able majority whip for his courtesy in yielding to me at this time.

Not long ago it was my privilege to participate in an award ceremony in honor of the distinguished Senator from Kentucky (Mr. COOPER) and I would now summarize for my colleagues and the permanent RECORD some remarks I made at that time.

It is extraordinary, even hard to believe, that one can know a man for over half a century and still hear no criticism of him. Nevertheless that is true about our colleague, JOHN SHERMAN COOPER.

JOHN and I entered college in the same freshman class and have been friends ever since.

In that he was the most popular member of that class and is its most distinguished member, along with his classmates and the people of this Nation, I have followed his career over the years with steadily increasing admiration.

Many aspects of that career are unique. As but one example, JOHN COOPER is the only man of Yale who ever captained a sports team—in this case basketball—not only in his senior year but also in his junior year.

After being a member of the Kentucky Legislature, as well as first a county judge and then a circuit judge, at the age of 40 he enlisted in the U.S. Army as a private. JOHN served during World War II in Europe with great distinction, and left the Army with the rank of captain.

We all know also that he first went to the U.S. Senate in 1946, and that his stature as a statesman has increased steadily since that time. Today he is a leading member of the Foreign Relations Committee, the ranking minority member of the Public Works Committee, and because of the respect in which he is held by his colleagues, an original member of the Senate Select Committee on Standards and Conduct.

Some of us might forget, however, that JOHN COOPER was a delegate to the fourth United Nations General Assembly of 1949; also that he was an alternate delegate both in 1950 and 1951, and that he was a principal adviser to Secretary of State Dean Acheson at the London and Brussels meetings of the North Atlantic Treaty Organization's Council of Ministers in 1950.

With that background, in 1955 President Eisenhower sent Senator COOPER and his gracious and lovely wife, Lorraine, who has had so much to do with his extraordinary career, to be our representatives in India.

Following their assignment and his return to the Senate, it was my privilege to serve with him when we were the two congressional delegate members to the 23d session of the United Nations General Assembly in 1968; and it was with special pride during those months that I noted the universal respect in which he, our former Ambassador to India, was held by all members from all nations.

To me this was no great surprise, because when my wife and I visited India in 1961, we were told by our Ambassador there at that time that JOHN COOPER was the one American Prime Minister Nehru continually quoted.

Last year my sister visited India, and observed upon return that apparently Ambassador Cooper was the most popular American ever to represent us in that great country.

We were told in 1961 that what Mr. Nehru respected most about this Kentuckian was the fact that, although completely sympathetic with the problems of India, and his successful efforts to help solve those problems, Ambassador Cooper never deviated from his primary mission—the promotion of the best interests of the United States.

In recent years, the U.S. Senate has embarked on what could be a long road to redress the balance in the exercise of the decisionmaking powers of our Government, in matters of both war and peace.

The American tragedy that is Vietnam furnished the impetus for turning away from years of congressional acceptance of Executive determination of "national security" requirements; and the gentleman in the Senate who more than any other had the capacity, the judgment, and the respect to inspire his colleagues to examine and respond to constitutional responsibilities is JOHN SHERMAN COOPER.

Senator COOPER is also the coauthor of the amendment bearing his name which prescribed a limitation on U.S. involvement in Cambodia—perhaps the first concrete step taken in many decades by the Congress to reactivate its constitutional power in matters of war and peace.

Firm in his belief that the proposed legislative action was proper and necessary, however, Senator COOPER demonstrated the qualities that characterize his leadership—patience, persistence, integrity, and a respect for the integrity of others who expressed contrary views.

It has been said that we are living in an age which knows no heroes; but if we find the pathway to peace that our Nation so earnestly seeks, I predict that historians will discover, although their garbs were not flamboyant, that heroes were nevertheless present. Such a man is our esteemed colleague, JOHN SHERMAN COOPER, American patriot.

Every Member of this Senate, on both sides of the aisle, will miss JOHN COOPER. He has proven to the people of Kentucky, the Nation, and the world that he is a statesman in the true sense of the word.

I shall miss him as a respected and beloved friend.

Mr. JAVITS. This is a very personal matter to me. And I would have felt very badly if I had not been able to make the statement that I wish to make about my brother—because that is what he is, more than a friend—in its rightful order and place in respect of the statements made by others of my colleagues.

Mr. President, perhaps among all our colleagues here, in terms of being a Senator, I have enjoyed an unusually close relation with Senator COOPER in a personal and in a spiritual sense.

We sat together for the first 8 years of my service here, notwithstanding the fact that seniority might have moved us to other parts of the Chamber separately and to better places because we profited so deeply from each other's company.

I speak today filled with sadness that Senator COOPER is leaving the Senate. I thoroughly agree with Senator AIKEN that the Nation will command his services and in his typical generosity, he will serve the Nation in whatever capacity the President or Congress may ask him to serve it.

Mr. President, the position that Senator COOPER has held here and the relationship that I and some of the others have had with him, like everything in life, must end. So, while it is a matter of great sadness to me that anything so lively in life should end, it is also a matter of great joy to me that Senator COOPER, my friend, should have made so great a record for the Nation and the world in his capacity as a Senator.

Many men have been called keepers of the conscience of the Senate from time to time. That title has been applied to Senator COOPER. However, I would like, if I may, to communicate to my colleagues a rather different title for JOHN SHERMAN COOPER.

To me, he was in a real sense the keeper of the trust of the Senate, always sensitive to our position in our Government and our history. He has a unique ability, because of his amazingly high character, to make that count in our history.

Judge COOPER—and I will call him that because I refer now to his legal attainments—knows that famous adage of the trial lawyers, "It isn't what the facts are. It is what the judge thinks they are that counts."

We are all grateful that Senator COOPER is a man of high probity and integrity and spirit. The Senator recognizes that this is of enormous consequences. And we are most grateful to

him and to his delightful and beautiful wife Lorraine.

Mr. President, I count Senator COOPER as a keeper of the trust of the Senate. When we had problems concerning ethics, it was he who came up with a joint committee and decided upon a way to administer our ethics which would be less onerous. When we had difficulty with the obedience of the military to the limitations we had placed upon them in respect to the war in Cambodia, it was Senator COOPER who came up with a solution in that regard. When we had problems about the cities being disadvantaged, although he is a farmer and comes from a State which has enormous rural interests and rural population, and when we had problems about utilizing the highway funds for our problems of mass transit, it was Senator COOPER who came up with the ideas on how to do it. When we had grave problems with environmental affairs and that became a new issue, with that tremendous adaptability that is JOHN COOPER'S, he became one of the most intelligent and outspoken and capable advocates of the environmental problem without its being used as a means of oppression.

It has been said of Senator COOPER by an editorialist in his own State that:

As a Senator, it was as though his whole life had been spent preparing for the position.

Senator ALLEN spoke so beautifully about the fact that in every fiber of his being he is a Senator. That means to me that it makes each of us proud to be a Senator. It makes us want to equal the model which he has set which is so enviable and so beautiful.

In terms of our personal comradeship, that is something that he and I must communicate to each other. However, in terms of what he meant and what he will mean in the days ahead, notwithstanding my own pride in my talent for words, I must yield to the description of Senator COOPER given by the State senate minority leader of his own State, Harold De-Marcus, when he paid a magnificent tribute to Senator COOPER and said:

John Sherman Cooper is the only man I have known who has traveled the spectrum of social and political life and left only dignity, honor and respect wherever he walked.

It is my fervent hope that my friend will have rich and fruitful years full of service in the years that lie ahead and that he may always merit this description.

Mr. PERCY. Mr. President, it is with a deep sense of pleasure that I join with my colleagues in paying tribute to JOHN SHERMAN COOPER. Ever since Lorraine and I arrived in Washington and she was advised that her Senate sister would be Lorraine Cooper we have been very close, indeed. I look upon him as one of the truly good men of the Senate. I know when men are asked what they thought of Dwight D. Eisenhower, more people have said he was a good man than ever so described any other man in the world. When people say JOHN SHERMAN COOPER is a good man, that sums up a tremendous number of qualities and characteristics we have seen in him.

Mr. President, I am honored to speak in behalf of JOHN SHERMAN COOPER, as I have been honored to serve with this distinguished man for the past 6 years in the U.S. Senate. His career has been marked by courage, foresight, diligence, and dedication. When I first came to the Senate, I quickly learned that no other Senator had earned higher respect from his colleagues than had Senator COOPER.

Senator COOPER first came to the Senate in 1946 and has served in this body since that date, with the exception of two brief periods, the first when he served as alternate delegate to the General Assembly of the United Nations and performed other public service roles, and the second when he served as President Eisenhower's Ambassador to India. Since 1956 he has served continuously as U.S. Senator.

The Senate will sorely miss his guidance and leadership, his expertise in foreign affairs, and his record will serve as a fine example for all of us.

As a Senator he has been a strong proponent of international cooperation and broad international communication and dialog. He was among the first to see the folly of our involvement in Southeast Asia long before many of his colleagues. He has been in the forefront of our ranks to seek a solution to the war in Vietnam. His opposition to this struggle as early as 1964 has proven to be prophetic.

JOHN SHERMAN COOPER has received many verbal accolades in his long career. The New York Herald Tribune called him "one of the ablest men in politics." The Louisville Courier Journal stated that "the goodness that looks from COOPER'S face is a passport of respect among humans everywhere."

This Government, I feel certain, will not want to lose the tremendous contributions of JOHN SHERMAN COOPER, especially in the area of foreign policy. I refer to his deep interest in the Middle East, Israel, and the Arab Republic, his dedication to India, and his knowledge of that country, his interest in NATO and European countries, and countries such as Germany and Italy. I feel he can continue for years to make valuable, creative, resourceful, and useful contributions to our foreign policy.

The U.S. Senate will sorely miss his guidance and his leadership. His expertise in foreign affairs and his record have served as a fine example to us all. JOHN SHERMAN COOPER is a great man and a fine American. I am proud to have known him and to have served with him.

Mr. President, it is on the note that we will continue our relationship together but in a different form than being colleagues in the Senate that we all pay tribute to him.

Mr. ROBERT C. BYRD. Mr. President, I yield 4 minutes to the able Senator from Wyoming (Mr. HANSEN).

Mr. HANSEN. Mr. President, Senator JOHN SHERMAN COOPER was an outstanding national and international figure long before the junior Senator from Wyoming became a Member of this body. His varied and brilliant career includes nearly all branches of government service. Enlisting as a private in World War II at the age of 42, under General Patton he rose to a captaincy before the war's end.

He set up the postwar legal system in Bavaria, thus putting to use once again his legal talents and expertise that earlier were employed when he served first as a county judge and then later as an appellate judge.

In 1946 he first came to the Senate and served with distinction. He was narrowly defeated for election in 1948, and was appointed Representative to the United Nations and worked on the questions of helping to bind up the wounds of World War II and trying to find solutions to the then new Middle East crisis.

He later served as special assistant to Secretary of State Dean Acheson, particularly as political adviser, and worked closely with him in the process of creating the NATO Alliance, which has been and remains so vital to our security.

In 1954 President Eisenhower named him Ambassador to India, and during his 2 years' service he did much to strengthen relations between the United States and the important Asian country lead by Prime Minister Nehru.

JOHN COOPER was returned to the Senate for the third time in 1956, and he has served with dedication to this day.

Few men commanding influence comparable to his, exhibit the thoughtful consideration toward very junior colleagues, unfailingly typical of this true gentleman.

I have not voted with Senator COOPER on more occasions than is true of many in the Senate. But no man has been more considerate or willing to listen and to oppose without rancor or acrimony.

His life and goals would be worthy of emulation by any American. To those of us who have been privileged to serve and work with him has come the special reward of knowing a great citizen.

JOHN and Lorraine Cooper are loved and cherished friends. We wish them well.

Mr. ROBERT C. BYRD. Mr. President, I wish to join with my colleagues who have expressed very fitting tributes to JOHN SHERMAN COOPER. A word fitly spoken is like "apples of gold in pictures of silver," and every word of tribute that has been spoken by our many colleagues already today has been fitly and most deservedly spoken.

I have known JOHN COOPER for almost two decades. When I was a Member of the House of Representatives, I traveled as a member of the Foreign Affairs Committee to India, where JOHN COOPER was serving as our Ambassador.

Through the years, I have grown to know JOHN SHERMAN COOPER as a friend. "He that hath friends must show himself friendly." JOHN COOPER shows himself friendly, and he has an army of friends. I have never heard any voice raised against him. I have never heard ill spoken of him. All that I have ever heard said about JOHN COOPER was said in the highest and most complimentary and respectful sense.

He is a man who is extremely thorough in his every undertaking. He is a man of calm, even judgment, and a man of compassion. We have heard it said that some men are born great, others have greatness thrust upon them. I believe that one's colleagues can best testify to one's greatness as a man. We who serve

with a Senator know him best. We know of the tender mercies, the compassionate and reasoned judgment of Senator COOPER. We know him best. And those of us who do know him best, would all say that JOHN COOPER is a great American.

Mr. President, it is not within the reach of every man to build for himself a great shaft of granite or to emblazon his name upon a plate of bronze, but it is within the reach of every man and within the possibilities and the purview of every man to so live that all who know him will be inspired by that flower of love and compassion and gentleness that emanates from his life.

Someone has said that character is that which draws a man toward God and other men toward him. If I could single out what, in my judgment, is the foremost ingredient of greatness, it would be character; and JOHN SHERMAN COOPER, in his every act and word in the Senate over the years that I have known him, has been the epitome of sterling character.

He is a man who is devoted to duty. One of the favorite words of our late colleague, Senator Richard Russell, was the word "duty." Senator Russell was a man who admired Robert E. Lee, and often stated that Robert E. Lee had referred to the word "duty" as the "sublimest word in the English language."

Senator COOPER has been devoted to duty in his committee work, in his floor work, and in all of the myriads of tasks that go with the office of being a U.S. Senator. He is a great Senator and his work has been tireless on behalf of his people, and it has been well done.

Mr. President, I hope that Senator COOPER will continue to visit this Chamber after he has retired. Tennyson said in his Ulysses, "I am a part of all that I have met." We are all a part of JOHN COOPER, having lived with him and served with him, and I know that we all want to have him continue to walk among us. We will desire his counsel and advice, and he will certainly have our continued friendship and admiration, because he has been such an inspiration to all of us.

For his wonderful wife Lorraine and for him, my wife Erma and I will always wish these things:

Work for your hands.
A straight path for your feet.
A coin for your purse.
Sunshine on your window pane at morning.
A song in your treetop at evening.
The hand of a friend on your latchstring.
Soft rains for your garden.
Love at your fireside.
Happiness in your hearts.
And God's wonderful blessing always.

Mr. GOLDWATER. Mr. President, during the nearly three terms that I have served in the U.S. Senate I, of course, have met many Members of this body, have come to know them, varying from just a little bit to a point that brings admiration. I have known JOHN SHERMAN COOPER nearly all of those years, and I have served with him on a committee. I can say from the dictates of my heart and my conscience and my memory that I have never known a man who so completely fills the descriptions or the expectations of the word "gentleman." He is that in every fine and true sense of the word, and I will treasure his friendship throughout life for those qualities he has so generously displayed not only in this body, but outside.

I recall very vividly my campaign for the Presidency in 1964 in which some Republican Senators found it more expedient to be elsewhere when I showed up or failed to support me at all. Not so with JOHN COOPER. When I visited his State he was there and he was generous to me beyond all expectations. JOHN COOPER is a man of honor. I have never known him to hesitate or go back on his word, and that trait is one that is not easy to find in these hectic days.

We are all going to miss JOHN COOPER when he returns to Kentucky after this term in the Senate, but the Senate will be forever a better body simply for his having served here, and I know that my life will be a better life for having known this fine gentleman and for his having displayed to me the many attributes of a gentleman and a man of honor.

Mr. BEALL. Mr. President, when one is first elected to the U.S. Senate, he has an almost unavoidable tendency to move into the body with an understandable trepidation, realizing as he does the heavy burden that rests upon this institution. But he also knows that his responsibilities to his constituents and his Nation require that he become as effective as possible in the shortest possible time. Thus, the freshman Senator's attentions naturally gravitate to those Senators who are considered as giants in this body, much as a student follows the guidance of his teacher.

Such a giant, and such a teacher, is JOHN SHERMAN COOPER of Kentucky. When I came to the Senate in 1971, I already knew of the many far-reaching accomplishments of the Senator from Kentucky from my father, who served with Senator COOPER for many years in this Chamber. Yet, it did not take me long at all to conclude on my own that JOHN SHERMAN COOPER would be ranked with the great legislators in the annals of the Senate.

Indeed, it was my good fortune on coming to the Senate to be assigned to the Public Works Committee where Senator COOPER serves as the ranking Republican member. As a member of this committee, I was able to witness first hand the able and effective manner with which JOHN COOPER conducted himself and I have profited greatly by this experience.

The public service career of JOHN SHERMAN COOPER is virtually unmatched in versatility and accomplishment. He has compiled a list of achievements, any one of which could easily suffice as a pinnacle of success for most men. Senator COOPER began his public life in 1928 as a member of the Kentucky House of Representatives. When World War II called, JOHN COOPER stepped forward to join the U.S. Army, eventually rising from private to captain.

Additionally, he was awarded the Bronze Star and officially commended for his work on the reorganization of the Bavarian judicial system.

Following a stint as a circuit court judge, JOHN SHERMAN COOPER began his distinguished Senate career in 1946, when he was elected to fill a vacancy caused by resignation. Four more times since then, the people of Kentucky have called upon JOHN COOPER to serve again in the Senate. His work here has been interrupted two times since 1949, but Senator COOPER has made the most of these absences. Twice he has represented his Nation at the United Nations General Assembly, and in 1955 was chosen by President Dwight D. Eisenhower to meet the unique challenges posed by an emerging nation by serving as our Ambassador to India. Clearly, JOHN SHERMAN COOPER knows the demands of statesmanship and leadership as few men do, and certainly no man has fulfilled these responsibilities better than him.

I do not have to remind anyone in this body of the major contributions that the senior Senator from Kentucky has made to legislation affecting the people of this Nation. Of particular note has been his work in the area of foreign policy, both in the Foreign Relations Committee and on the floor of this Chamber. His eloquent and effective statements on the international problems facing our country has brought him national recognition and respect.

Thus, it is only natural that those in this body and those in this Nation look up to JOHN SHERMAN COOPER. He has made an impact upon this body and upon its Members as few Senators ever have. It will seem strange indeed that when the gavel falls to open the 93d Congress next January, the imposing figure of JOHN COOPER will not be in this Chamber. The people of Kentucky will miss him, the Members of the Senate will miss him, and I will miss him. But most of all, this Nation will miss the moderate reasoning and dedicated approach of the man from Kentucky. I wish him a most enjoyable retirement, and we look forward to his friendship and his counsel throughout the coming years.

Mr. COTTON. Mr. President, JOHN SHERMAN COOPER is one of those rare men who not only restore our faith in the Senate but in the whole system of representative government. He is and always has been completely incapable of being false to, or even in the slightest degree compromising, his own honest convictions.

As I think of him, I remember the whimsical remark of another staunch and conscientious Senator who was taken from us long ago, "There comes a time when you have to forget principle and just do what is right."

JOHN SHERMAN COOPER has never posed as a saint or a shining example. His keen, down-to-earth sense of humor would never permit him to look at himself in that light—and yet that is exactly what he is.

Whenever he directs the penetrating power of his keen, legal, analytical mind to a specific problem before the Senate and arrives at a considered conclusion, no consideration of expediency or political advantage or disadvantage could budge him. It matters not to him what group, faction, or party he finds himself

alined with on any particular issue or whether he stands all alone. Still he adheres to his own carefully thought-out conclusions.

No wonder, the entire Senate has always trusted him and listened to him. No wonder, his own people back in Kentucky love him and believe in him. His retirement from the Senate had to be of his own volition for, if his people had their way, they would keep him here forever.

The Senate will miss his quiet, powerful influence, his thoroughness both in committee and in the Senate, and his zeal for refining the functions of government and thereby bettering the lot of our people.

We shall all be poorer for his absence.

May he and his loving wife have the joy and happiness they so richly deserve.

Mr. JORDAN of Idaho. Mr. President, for nearly 20 years JOHN SHERMAN COOPER has made his mark in the U.S. Senate. It has been my privilege to work with him for 10 of those years. We have served together on two committees and I have especially benefited from the association, as I believe every Member of this body has and would readily admit.

At the time of his graduation from Yale in 1923, JOHN COOPER was voted by his classmates "most liked" and "most likely to succeed." In public life, as a lawyer, a judge, a State legislator, an Ambassador, a United Nations delegate and a U.S. Senator he has succeeded and he has been liked. One of his fellow Kentuckians said it this way:

> John Sherman Cooper is the only man I know who has traveled the spectrum of social and political life and left only dignity, honor and respect wherever he walked.

He has endeavored to place national issues above party and in so doing has won the respect necessary to do an effective job. He is a beloved figure in the State of Kentucky where his nonpartisan service is supported by the majorities of all political persuasions—his first full term was won by nearly 200,000 votes and his latest mandate in 1966 went over the 200,000 vote margin.

First and foremost JOHN COOPER is known as a man of conscience. He has said:

> Criticism directed to finding the truth is necessary.

During the first decades of the nuclear age he has been in the forefront of efforts to secure disarmament and peace. With courage and dedication he has "waged peace."

It is not age nor the prospects of an election which have caused JOHN COOPER's decision to retire from the Senate. Regarding his retirement he is quoted as saying:

> I felt that it was a new day, a new era; this is almost a new world. The things we have fought for have changed nature, direction, emphasis. Civil rights has shifted from constitutionality to practicality. TVA, flood-control dams, soil conservation—all the things once sought by conservationists—are now suspect. There are the problems of the cities, next to arms control probably the toughest we face, and I know, really, very little about urban problems. There are whole new sets of problems, and they are not as distinct and clear as they used to seem. I decided that maybe a younger man, not tied to the old problems and their solutions, could do as well or better.

Faith in our people and our Government have made this 20th century American experiment in democracy the success it is. Senator COOPER remarked in January when he announced his retirement that:

> Our system of government is a delicate one, depending in great measure on the respect of its three branches for each other, and the trust of the people in their government and in each other.

I hope JOHN COOPER will have the satisfaction of knowing that he has done more than most to increase the trust and respect Americans can have in their elected officials, not only for the citizens of Kentucky but for his colleagues in the Senate.

Mr. HANSEN. Mr. President, I ask unanimous consent that a statement by the distinguished Senator from Colorado (Mr. ALLOTT) be printed in the RECORD.

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

STATEMENT BY SENATOR ALLOTT

This had been a long, and at times heated session. To certain of our colleagues we owe a great debt for reminding us of our obligation to debate the question of the hour while observing the proper amenities.

I know of no one who better personifies the tradition of tough, reasoned argument cast in the most gentlemanly terms than does John Sherman Cooper of Kentucky.

His entrance into Senate debate, no matter how partisan or divisive it may have become, meant that his fellow Senators lowered their voices and listened instead of just attacking.

The remarkable thing is that John Sherman Cooper's arguments could have considerable bite to them, and indicate he felt very deeply about the matter. Nevertheless, whether we were in agreement or in opposition, discussion thereafter proceeded at a cooler, more even pace.

I suppose John Cooper personifies the skill of that famous breed known as "border politicians"; that is a certain gentlemanly geniality which the Senate has always prized.

I know that on our side of the aisle, we will also remember John Cooper for his dogged determination to serve as a Republican Senator from his State. He was part of the post-war revival of the Republican Party which made Kentucky a two-party State. He served twice and was defeated twice, before the great majority of Kentucky voters realized how much they wanted and needed this man in Washington.

So popular is he today, that he could remain the senior Senator from Kentucky for as long as he wished. Unfortunately for them, unfortunately for the Senate, he has chosen to retire.

But he has not served in the Senate for a total of twenty years, sixteen of them consecutive, simply because of his native integrity and charm. He has been an enormously hardworking Senator, on a variety of Committees, including Agriculture and Foreign Relations.

Yet he will be remembered for service to State and Nation because of his devoted service on the Public Works Committee, of which he is ranking minority member at present. He showed unusual interest in environmental problems, in preserving the quality of our water, and improving pollution control systems. He attempted to legislate in terms of tomorrow's needs while remembering today's fiscal resources. His record can serve as a model for those who follow him.

When John Sherman Cooper retires, we will have lost a fine Senator, and I will personally miss his friendship and counsel. To John, and to his wife, Lorraine, who personifies the gracious Washington hostess, I wish many more happy years.

Mr. BROOKE. Mr. President, the Senate and the Nation have indeed been privileged to benefit from the service of our beloved colleague, JOHN SHERMAN COOPER.

Senator COOPER has long enjoyed an extensive grasp of foreign affairs. Through his years of service as our Ambassador to India and Nepal, through his representation of this country in the councils of the United Nations, and through his long and tireless service on the Senate Foreign Relations Committee, he has applied both wisdom and understanding to the conduct of our foreign policy.

I have been privileged to work with Senator COOPER on a number of issues, and I have long admired his leadership.

It was JOHN SHERMAN COOPER who began the fight to block deployment of unneeded—and untested—antiballistic missiles. His efforts to limit their production and emplacement—now formalized in the SALT treaty between the United States and the Soviet Union—have saved the American taxpayers uncounted billions of dollars. And may have saved the world from the horrors of another nuclear arms race.

It was JOHN SHERMAN COOPER who led the fight against expansion of the war in Indochina. When South Vietnamese forces and American advisers moved into Cambodia in 1970, Senator COOPER promptly introduced legislation which prevented "another Vietnam", in which thousands more American men would have ground and air combat roles. Repeatedly, his Senate colleagues endorsed his efforts, and the prohibition on the use of U.S. ground forces in Cambodia was enacted into law. The first clear limits on the use of American power in Indochina had been established.

But victory has never led JOHN SHERMAN COOPER to relax his efforts. He fought on: seeking to impose limits on our role in Laos and Thailand. Calling for complete U.S. withdrawal from Vietnam when it became clear that we had met and even exceeded our responsibilities for the future of that tragic land.

In all of these efforts, JOHN SHERMAN COOPER has had my continuing respect and admiration.

But JOHN SHERMAN COOPER is more than an "internationalist." He has also been an effective spokesman for the domestic needs of the American people. He has been a leader in the field of air and water pollution control. He has pioneered in the development of scenic highways, and the elimination of unsightly debris from our Nation's roads. And the Appalachian regional development program, which has brought utilities, transportation, and economic advancement to millions of underprivileged Americans, is in large part the creation of the senior Senator from Kentucky.

Mr. President, I am proud to have known and worked with the Senator from Kentucky. The people of Kentucky can be proud that they have recognized his talents, and availed themselves of his services for the past 44 years. And Sen-

ator COOPER himself can be proud of his many distinguished accomplishments on behalf of the people of this Nation and the world.

As he leaves this body for a well-deserved retirement, I extend my personal best wishes to him and to his lovely wife Lorraine. I have enjoyed their hospitality and friendship, and wish them well in the years ahead.

Mr. BOGGS. Mr. President, I am indeed honored to have this opportunity to pay tribute to our distinguished colleague, the senior Senator from Kentucky (Mr. COOPER). And it is with real appreciation that I say to JOHN COOPER:

"Thank you for your friendship, your counsel, and your service to America."

Mr. President, JOHN SHERMAN COOPER has rendered great public service to the American people for more than a quarter of a century. His roles have been many: diplomat, legislator, and statesman. To each he has brought a blend of understanding, ability, and compassion that has enabled him to excel in the work he undertook.

Very few men have achieved the diversity of interest that have characterized the career of Senator COOPER. His foreign affairs record is nationally known: twice a delegate to the United Nations General Assembly, Ambassador to India and Nepal, adviser to Secretary of State Acheson at the London and Brussels meetings of the NATO Council of Ministers, twice an alternate delegate to the United Nations General Assembly, and adviser to the U.S. Delegation at the Treaty Signing Conference establishing the Asian Development Bank.

Here in the Senate, Senator COOPER has consistently offered cogent, informed opinions on foreign policy questions that we have always valued highly.

The record of Senator COOPER in domestic affairs is equally noteworthy. Personally, I have been particularly aware of his leadership in the field of conservation and ecology. His work has been particularly noteworthy in conserving many areas in the beautiful State of Kentucky. He has been an active supporter of wilderness legislation, the National Historic Preservation Act, and the Wild Rivers Act.

Mr. President, I have served with JOHN SHERMAN COOPER on the Public Works Committee for nearly 12 years, a period encompassing my entire service in the Senate. In that time, we have all come to know his real concern over the pollution of our environment, and his desire to improve our environment.

It was also my privilege to serve with him for a number of years on the Agriculture Committee. On that committee, he was greatly interested in sound conservation practices.

On both committees, and in the Senate, it has been an honor to serve with him. It has been a privilege that I will not forget. His advice has always been welcome. And it is always sound advice.

Just recently we served on the committee on conference on the water pollution control legislation. That conference met on 39 occasions. During that period, we were once again able to observe Senator COOPER's untiring dedication to the best possible legislation.

We know that JOHN SHERMAN COOPER will be missed greatly on the Public Works Committee and in the full Senate.

Mr. President, I think I state the sentiment of my colleagues on both sides of the aisle when I say that JOHN SHERMAN COOPER has been one of our finest Senators in this century. His opinions are always fair and well reasoned. His integrity and courage have spoken for themselves over the years JOHN SHERMAN COOPER has been in the Senate.

In closing, I want to say that we will miss you and your lovely and gracious wife, Lorraine.

But we know that you will continue to serve our Nation. Whatever you may do beginning next January, we wish you the best of luck. We will remember you with great affection.

Mr. SCHWEIKER. Mr. President, I would like to associate myself with the remarks of my colleagues who rise to pay tribute today to the distinguished Senator from Kentucky, JOHN SHERMAN COOPER.

It has been a privilege to work with JOHN SHERMAN COOPER in the Senate, and to have the benefit of his wisdom and his example in statesmanlike dedication to the Senate, and to the best interests of this Nation.

The dictionary defines a "statesman" as "one who exercises political leadership wisely and without narrow partisanship in the general interest." It would be difficult to think of a Senator, in the entire history of our Nation, who better fits this definition than JOHN SHERMAN COOPER.

In carrying out his duties in the Senate, Senator COOPER always has exhibited complete fairness to his colleagues, and has always been concerned with preserving the dignity of the Senate and his respect for each individual Senator.

On vital issues of war and peace, on defense matters and on domestic priorities, Senator COOPER has always spoken his mind, and his views and convictions have always had an enormous influence on the course of the Senate debate and on the positions and views of his colleagues.

For many years he has served with distinction on the Senate Foreign Relations Committee. His concern for American foreign relations, his dedication to peace, and his deep knowledge of diplomacy and foreign affairs have made him one of the most valuable members of this committee.

The deep respect of all his Senate colleagues for Senator COOPER's judgment, his concern for the welfare of all human beings, and his high integrity have greatly enhanced the influence that he has been able to exercise in foreign relations matters. I feel our foreign policy has been positively influenced by the contributions that Senator COOPER has made in this area.

JOHN SHERMAN COOPER has served his State, his Nation, and mankind with courage and humility. He has made a lasting mark on the Congress and will be deeply missed by all of his colleagues.

Mr. HUGHES. Mr. President, among the distinguished citizens of our land, very few suggest the title "Great American" as unmistakably as JOHN SHERMAN COOPER. Outstanding Senator, jurist, soldier, diplomat, Kentuckian, he is above all a great and beloved American.

Both of my parents came from Kentucky and as a boy I spent some time in Pulaski County of that State. For years Senator COOPER was a hero to me; I thought of him with a proprietary regard as my own Senator. When I came to the Senate myself and had the privilege to work with him as a colleague, my admiration was reinforced by a warm and wonderful friendship.

No Senator will be missed more from the Senate than this compassionate man of deep conviction and many talents. He is a true statesman in the estimation of his colleagues on both sides of the aisle and a legend in the hearts of the people.

It is difficult for me to think of JOHN in "retirement"—for the simple reason that I know he will not retire as others might but will go on to new vistas of creative activity and public service. But I do want to take this opportunity to wish JOHN and his lovely lady the best of health and happiness in the good years ahead.

In conclusion, I would observe that among all of JOHN SHERMAN COOPER's notable achievements, he will perhaps be best remembered for his courageous leadership for peace. What more beautiful way could there be in which to remember a rare and beloved man?

Mr. PEARSON. I rise, Mr. President, to speak briefly about the distinguished Senator from Kentucky, my friend and colleague, JOHN SHERMAN COOPER. As one who has been privileged to serve in the Senate with this able gentleman legislator, I honestly wonder whether the gap resulting from his absence by retirement can ever be filled, in this body or in the legislative branch of our Nation's Government.

Senator COOPER is more than a thoughtful and farsighted Republican legislator. His diverse experience in war and diplomacy and the law and the protection of our natural environment, and above all in preserving the vision of peace in an era of nuclear rivalry—bespeaks and indomitable man of courage and understanding. While his achievements in life have been many and productive, Senator COOPER's whole approach to his responsibilities in the Senate reveals a man who knows that hard work and determination, tempered always by humanity and good humor, bring achievements in our democratic process.

By a fortunate merging of his own initiatives and the will of the Senate, Senator COOPER's thoughtful leadership has been sought out in times of trouble and crisis not only in this body but in the Nation as a whole. It happened to be my lot to serve with him as a member of the Senate Special Committee on Standards and Conduct during one of the most difficult times of agonized self-assessment faced by the Senate in this century. There I learned to listen to Senator COOPER's counsel and respect his often simple, commonsense advice. He is a

man who has devoted himself to strengthening our institutions and the rule of law. And the Senate has come to rely on his instincts and judgment to a degree greater than any of his contemporaries.

This is not to say he is a stranger to the work of the executive branch or its programs as proposed in the Congress. As the sponsor of President Nixon's environmental legislation, Senator COOPER has carried to the Senate for its deliberation the priorities and specific requests of President Nixon in this increasingly important field. The groundwork he has laid as a member of the Senate Public Works Committee provides what I hope will become a significant opening chapter in the legislative effort to assure clean air and clean water for future generations.

In his role as a foreign policy spokesman, Senator COOPER is his own man. But even when he differed with this administration or a previous one over the conduct of our policies in Southeast Asia or on the question of the exercise of the Senate's constitutional responsibilities relating to hostilities abroad, there was always in his remarks and his attitude a willingness to carry on the dialog which is so essential between the two branches. It is superficial to remark that this quality of strength which marked Senator COOPER's balanced approach to foreign policy is a result of his combined experience as a Senator and a diplomat. He sought these experiences and the career he achieved was very much of his own making, a product of the man as well as the times. And it is in this breadth of human qualities that the greatness of JOHN SHERMAN COOPER may be found.

As a political person, he retained an unfailing sense of right and wrong, and upheld the sense of courtesy and the ability to differ with reason on issues. His work to protect the rights of minorities is itself a story of political courage, but one which clearly demonstrates not only the political sensitivity but the moral strength of the man as well. He sought to make the law a working instrument for the solution of real problems and he was willing to take the law into the uncharted areas which develop after the emotions and exhaustion of war. As a man of peace, he was always mindful of the demand for justice among those peoples who are directly affected by the pacts of great nations. He shows that he was capable of understanding that the measure of a great nation is the way in which it treats those who happen to find themselves powerless in a given circumstance.

Among his many contributions to the conduct of our Nation's foreign policy, Senator COOPER served as a delegate to the United Nations General Assembly in 1949 and 1968 and in 1950 and 1951, he served as an alternate. It is my privilege this year to share the assignment as a Senate representative in the U.S. delegation, and I feel fortunate to be able to carry to that job the associations of service with Senator COOPER in the Senate and the guidance, counsel and advice which he as a respected colleague on the Foreign Relations Committee has over the years provided.

I recall his courtesy in entering into the CONGRESSIONAL RECORD a speech which I delivered in Kansas on the subject of the Safeguard antiballistic missile system, during the nation debate on that program in 1970. That debate was, I am persuaded, one of the significant phases of the education of the American people on the dangers of unbridled weapons development in the nuclear age. While there is always room for differences in method and approach to any given issue relating to the maintenance of world peace, a strong bond of basic agreement on the principle of mutual destruction and the realinement of our national priorities, was forged in that debate. I believe the understanding of the American people was increased to a degree by those deliberations in the Senate and that the success of the first phase of the SALT agreements would have been far less likely had that debate never taken place. Perhaps historians will come to recognize that as JOHN SHERMAN COOPER devoted himself to a balance between the branches of government in the making of foreign policy, that indeed our present foreign policy owes in great part to the weight of his thought even as this precious balance was being sought.

Mr. SPARKMAN. Mr. President, I am pleased to join my colleagues here in the Senate in paying tribute to one of the noblest men that ever served in this body. I refer to Senator JOHN COOPER of Kentucky. I have known JOHN COOPER from the time that he first entered the Senate in 1946. I had the pleasure in 1950 of serving with him on the U.S. Delegation to the United Nations. I have had the pleasure of serving with him on congressional committees, primarily the Foreign Relations Committee. He has always shown himself to be a tower of strength for the things which he believes to be right and for the good of the country. In all of his service, he has worked without partisanship for those things that he believed to be right.

It has been a pleasure to watch him in action on the floor of the Senate where he can always be depended upon to defend the position that he believes to be right, regardless of whether he is on the side of one party or the other, or whether he has the support of his colleagues on the Senate floor. No one ever questions his sense of rightness and of duty.

JOHN COOPER has had a remarkable career. He has served in so many different capacities—in the military, in civilian life, as a diplomat. His work has always been outstanding, whatever his task. To serve with him has always been, for me, a great pleasure. I salute him as a statesman and as a man who has served his country well throughout the years.

Mr. KENNEDY. Mr. President, I take great pleasure in joining today in praise of the senior Senator from Kentucky, JOHN SHERMAN COOPER. I also join in the profound regret we feel, that this body will no longer be graced by the wisdom, the judgment, and the intelligence of this distinguished Senator and friend.

Throughout his years in public life, JOHN SHERMAN COOPER has stood above the crowd, finding his way by the guideposts of the public good, respected by all Members on both sides of the aisle.

As Carl Schurz wrote of Henry Clay, Senator COOPER is a man whose spirit is "illumined by a grand conception of the destinies of his country, a glowing national spirit, a lofty patriotism."

It is in that tradition and in that manner of his Senate predecessor that the present senior Senator from Kentucky has represented his State and his Nation.

And his support and following extends beyond the breadth of continents, from the hidden hollows of Kentucky to the teeming cities of India, where he served so ably and so well as Ambassador.

It was said of Calhoun, that more than others, he sought to make men think clearly and carefully on fundamental political questions. He was a model Senator in his dedication to the public good, in his incessant industry, and in his efforts to master completely the main issues of his day.

And so too can it be said of JOHN SHERMAN COOPER, for I can well recall the discussions in this body on the ABM and the Vietnam war and the clear thoughtfulness that Senator COOPER brought to the debate.

Partly from his study of history and partly from his vast experience with events of the past half century in the field of foreign affairs, Senator COOPER has been preeminent.

For he has been in at the start of the great enterprises of foreign affairs, always sensitive to the changing tide of events around the world.

As one of our first delegates to the United Nations, Senator COOPER participated in decisions that brought permanence and respectability to a still-fledgling international organization.

And as an adviser to the Secretary of State, JOHN SHERMAN COOPER was one of the chief authors of the North Atlantic Treaty Organization. For it was during those first meetings of the Council of Ministers at London and Brussels that the NATO shield was forged and the recovery of Europe secured.

Senator COOPER shared this concern for the changing role of the United States in world affairs with John Kennedy. And together they worked on a variety of issues. I recall their conviction that India's development was vital to the stabilization of South Asia and the legislation they sponsored to assist India in its first 5-year plan.

And just as President Kennedy valued the counsel and wisdom of the Senator from Kentucky, so too have I shared that esteem for our distinguished colleague.

For I have seen this Senator, without regard to partisanship or narrow interest, persistently choose the hard path toward his vision of what was right for the Nation.

Thus, during the ABM debate 3 years ago, it was the calm and reasoned intelligence of the Senator from Kentucky that helped inform the Nation of the flaws of the ABM proposal. That debate, more than any other event, created an atmosphere that has permitted this Nation to move forward in the field of arms

control, and to assess the true priorities of our country in the areas of national defense and domestic need.

National interest above party interest, and the interest of all of the people over the special interests—those have been the characteristics of the Senator from Kentucky.

Lincoln once referred to Henry Clay as "my beau ideal of a statesman." I can think of no man who has served in the Senate in recent years who can wear that title as well as the distinguished Senator from Kentucky.

The Senate will miss him dearly.

Mr. HRUSKA. Mr. President, there is always an element of sadness in this body when one of our colleagues prepares to retire to private life. Our deprivation is felt more keenly than ever today as we contemplate the departure of our good friend from Kentucky, Mr. COOPER.

Senator COOPER's impending retirement from public service removes from the national scene after many fruitful years one of the most able and dedicated public servants this country has known.

His long and distinguished career is notable not only for its tenure, but for his many impressive achievements in many varied fields of endeavor.

We are all familiar with the wisdom, patience, experience, good humor, and strength which he has brought to our legislative considerations in this body for many years.

Because we are so accustomed to benefiting from these contributions to our own deliberations, we may be inclined to forget the other great contributions he has made to our Nation and to his home State: Ambassador to India; delegate and adviser to both the United Nations and the North Atlantic Treaty Organization; member of the President's Commission on the Assassination of President Kennedy; and in Kentucky, both a member of the State legislature and the judiciary of that great State.

In all of these diverse assignments Senator COOPER exhibited the same high qualities of leadership which we have come to know so well in this body. His service also has been marked with the singular selflessness which led him to discontinue a most successful civilian career to enlist as a private in World War II. But in the Army, as in his other endeavors, he soon rose to a position of leadership and eminence.

For all these accomplishments, Senator COOPER is richly deserving of a long, happy, and fulfilling retirement. I join my colleagues in wishing him the best of everything as he leaves us to pass on into another phase of his most distinguished career.

Mr. SAXBE. Mr. President, my esteemed colleague, the venerable JOHN SHERMAN COOPER, of Kentucky, steps down from public office at the conclusion of this Congress. He joins a long list of distinguished Kentuckians who have served in this body, including such distinguished Americans as John Breckenridge and Henry Clay. Truly, Kentucky has always sent her outstanding sons to serve in this body, and certainly JOHN SHERMAN COOPER has earned the right to be included among the best of those who have represented his State.

His return to the Senate in 1952 and in 1956 after having been defeated in the preceding elections serves as an inspiration to all Americans—both those in public life and those who are not—of exactly what can be achieved if an individual refuses to accept defeat and has the foresight and determination to face the future with a positive outlook.

It has been my distinct pleasure to have served with Senator COOPER in the 91st and in the 92d Congresses. Over these past 4 years I have admired both his courage and legislative skill as he articulately battled in behalf of those causes in which he believed.

His stands in support of improved health care for all Americans, against the incursion into Cambodia, and against expanded antiballistic missile deployment, are some of the items that I distinctly remember. These were stands which were and are not universally popular. Senator COOPER was, however, steadfast in his defense of these regardless of the amount of pressure to which he was subjected.

This body constantly changes as the composition of its membership varies. The old order gives way to the new and that is as it should be. The Senate, however, will not be the same without our good friend and colleague JOHN SHERMAN COOPER. We shall indeed miss his presence.

Mr. ROTH. Mr. President, I would like to take time out of our crowded schedule here on the Senate floor to give much due recognition to someone who never failed to take time out from his busy schedule whenever I needed his advice or council—our friend and colleague, Senator JOHN COOPER. JOHN has always been able to offer some realistic word whenever I find myself confused or confounded, whether the subject be parliamentary procedure or foreign affairs—and could always be counted on for an honest opinion when one was requested. I will miss, as you know you will, working with JOHN on a day-to-day basis, but if anyone deserves a rest, it is he. I hope his memories of many years in the U.S. Senate will be as colorful and rewarding as our memories of him. He has done the citizens of the United States and the residents of Kentucky, in particular, a great service—the most selfless service possible—in giving himself and his time so that they may prosper and grow in a well-governed land. For them, and from those of us here who will miss him, I say "thank you JOHN, for doing a job—and for doing it so well. You have helped set a standard we will do well to maintain."

Mr. DOLE. Mr. President, it would be dwelling on the obvious to point out that Senator JOHN SHERMAN COOPER is one of the most distinguished and outstanding Members of the Senate. All of us who serve with him in the Senate have a clear understanding of his contributions to the work of this body. But at the risk of covering familiar territory I wish to take a moment to express my appreciation for the senior Senator from Kentucky's unique record of service to the Senate as an institution, the people of his State, and our Nation.

All of us who engage in debate and discussion on the floor know how effective and important Senator COOPER's efforts have been in setting the tone for thorough consideration of the issues before us in an atmosphere of respect, understanding for the opposite point of view, and desire to achieve progress. Fewer of us, however, have had the pleasure of serving on a committee with Senator COOPER and working with him in the detailed formulation of legislation. I feel fortunate to be counted as one who has sat on the Public Works Committee where Senator COOPER is the ranking Republican Member. Watching the Senator from Kentucky approach a great range of issues—from the approval of Federal building construction prospectus to the most refined and controversial alternatives for improving and protecting the environment—has been a unique experience for this freshman Senator, and it is virtually impossible to place any adequate value on the leadership, the standard of integrity, and the example of plain old-fashioned hard work that Senator COOPER brought to that committee. No detail or point of principle is ever too small for Senator COOPER to give it his unhurried and most careful scrutiny, regardless of the lateness of the hour or the press of other matters. Time and again later events have proven that his basic fairness and determination to do the right thing were perhaps the most valuable and important elements of the committee's deliberations, and what has been true in the Public Works Committee has, I am sure, been equally so in the Foreign Relations Committee on which he also serves.

Few Americans have had outstanding careers in the Senate, but fewer still have combined a distinguished Senate record with major accomplishments in so many other fields as Senator COOPER. State legislator and judge, military officer, United Nations delegate, NATO adviser, Ambassador to India under President Eisenhower, and now as a Member of this body—in each of these endeavors Senator COOPER has left his mark and set new standards of excellence and achievement.

With this record in mind it is not difficult to understand the esteem felt by the people of Kentucky for their senior Senator, nor is it hard to see why his retirement will leave a great void in the membership of the Senate. We shall all miss the dignified and warm presence of this great gentleman from the Blue Grass State, but I know that all of us wish Senator COOPER and Mrs. Cooper every happiness in the years ahead.

Mr. WEICKER. Mr. President, a great voice of humanity, dignity, and justice will be lost to the Senate with the retirement of the distinguished senior Senator from Kentucky, JOHN SHERMAN COOPER. Throughout his 20 years of service, Senator COOPER has exhibited the kind of selfless leadership which has always marked the greatest Members of this body.

I deeply regret that I have had so

brief an opportunity to serve with and learn from this fine American, but one experience alone has been enough to assure my everlasting respect and admiration for his ideals and insistence on doing "right" rather than "expedient."

Kentucky is a rural State yet Senator COOPER is an American Senator who sees national problems and applies national solutions. His efforts in the Public Works Committee and on this floor to promote a balanced national transportation system, to break the stranglehold of concrete on those of us in urban areas who need steel rails and flexibility have seen few victories. Yet COOPER fought on. Finally, this year the Senate saw the wisdom of his words and accepted his long standing advice. The door to the highway trust fund was opened and, thanks to his tireless efforts, it will never again be slammed shut. Mr. President, all of us owe Senator COOPER our gratitude and our respect. I am pleased to join with my other colleagues in saying "we will not soon forget you."

Mr. GRIFFIN. Mr. President, I wish to associate myself with the many fine tributes that have been expressed here today for our good friend and colleague Senator COOPER.

An occasion of this kind arouses very mixed emotions. While we all appreciate the personal reasons which have led John to bring his long public career to an end, we cannot help but regret, perhaps in a selfish way, that, come January, we will no longer have the benefit of his wisdom and counsel on the day-by-day basis which we have enjoyed in the past.

In the 200-year history of our country few men have served the Nation with such distinction—and with such honor. No one has earned more respect.

As he so often has demonstrated to us here in the Senate, he is a man of deep and abiding convictions—one who brings to all he does great human compassion and understanding.

If my arithmetic is correct, his public career will have spanned 45 years when he completes his Senate term and embarks, as I understand, on still another pursuit in the private practice of law. He has been a Kentucky State representative, a county judge, a circuit judge, a soldier in Europe during World War II, our ambassador to India and, in all, a U.S. Senator for 20 years. But, it is the quality of his public service, not the extent, which makes Senator COOPER as outstanding as a legislator and statesman. It has touched on many facets of our life here at home and abroad—in agriculture, in education, in conservation, in concern for our cities and in untiring efforts to foster peace and understanding in the world.

It was the poet, William Wordsworth, I believe, who wrote:

> Enough, if something from our hands have power
> To live, and act, and serve the future hour.

As our friend approaches a well-earned retirement, he can be assured that what he has accomplished, what he has stood for, will live to serve the future hour—and to the betterment of all.

Mr. FANNIN. Mr. President, as a native of the great State of Kentucky, it is my special privilege to join today in saluting our distinguished colleague, Senator JOHN SHERMAN COOPER.

Surely few men have contributed so much to their State and Nation. He has been a member of the State legislature, a county judge, circuit judge, delegate to the General Assembly of the United Nations, adviser to the Secretary of State, and Ambasador to India and Nepal.

He had a distinguished record in World War II, rising from private to captain and winning the Bronze Star Medal. And after the war he headed reorganization of the German judicial system of Bavaria.

Senator COOPER'S service in the U.S. Senate goes back a quarter of a century. His wisdom and firm hand have played a great role in shaping our Nation since World War II.

He is a man of strong convictions who speaks out for what he believes in. There have been occasions when I have disagreed with him, but I have always respected the devotion and high purpose which have dictated his stands.

Senator COOPER also must be recognized as one of the pillars of the modern Republican Party. He has contributed immensely to his party in Kentucky, and in the Nation.

Mr. President, I can testify personally that the people of Kentucky have great love and affection for their senior Senator. I have observed this while traveling with the Senator through his State. This respect is well deserved.

He is a great Kentuckian, and a great American, and the Senate is a much richer institution for his service.

Mr. COOPER. Mr. President, I shall be brief. I know this has been a burdensome time for Members of the Senate, particularly in these last days when there is so much yet to be done. But you have paid me and my wife, Lorraine, an honor in according to us at this time your very generous remarks.

I need not say that this is a moving day in my life. I thank all of you for your too generous statements—statements which I will remember as coming from the Members of the Senate, the men and women with whom I have worked, whom I have come to know, and who I believe are as fine a group of men and women as can be found in this great country of ours.

I recall the day I first came to the Senate, in 1947; and as I leave, there are only eight Members of the Senate now who were serving in 1947: Senator AIKEN and Senator YOUNG on the Republican side; Senator FULBRIGHT, Senator MCCLELLAN, Senator STENNIS, Senator EASTLAND, Senator SPARKMAN, and Senator MAGNUSON on the Democratic side. In the years that have elapsed, while I have not been here all the time, I believe I have served with approximately 250 Members of the Senate. It has been an association which one can never forget.

I appreciate very much the expressions of friendship, and particularly the expressions from my two seat mates, Senator JAVITS and Senator AIKEN, with whom I have been associated so closely, and from a friend I hold in high respect, Senator MANSFIELD.

It is sad to leave the U.S. Senate. I shall miss the bond with this body, with its Members. I shall miss very much my close association and communication with the people of my own State of Kentucky. I am grateful that I have had the opportunity to serve here, and I am very grateful to the people of my State of Kentucky. It is not only an opportunity to serve the United States, but also, it is a great responsibility. I suppose that despite the difficulties and frustrations and high hopes, one is sustained by the hope that one may do something here—that is worthwhile, that is good, great, or small—which will influence for good this country of ours and its people. This trust and this hope sustains us above pathos, above tragedy, and gives conviction and purpose to our efforts.

I realize, as we all do, that there are strains in our Government and in our society, and there are some who believe they cannot be healed, that they cannot be corrected. I do not think that. I believe that our system of government is the best in the world. I believe that these divisions, these wounds, these strains can be corrected. In saying that, I have great hopes for Congress and particularly for the Senate, for its 100 Members, because I believe that with their character and intellect and love of this country they can help heal and bind the wounds of our Nation.

I would like to repeat the words of Lincoln, who near the close of the Civil War, said:

> Thanks to all for the great Republic, for the principles it lives by and keeps alive, for man's vast future. Thanks to all.

The principles which were expounded by him and by Woodrow Wilson and many other great leaders, I believe encompass equal justice under law for all, liberty, compassion, equal opportunity, the determination to make this country not only a symbol but a living example of the very best of our country and its people for the world.

A French philosopher of the 17th century, Malebranche, said:

> Lord, the truth is for thee alone. Give me the pursuit.

I know that this body will continue in its search for truth, truth as applied to the country, truth as applied to the people. I can only say that I am grateful that I have been here. Thank you.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

COMMITTEE MEETINGS DURING SENATE SESSION TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a subcommittee

of the Committee on the Judiciary 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.

POLITICAL CONTRIBUTIONS

Mr. HARRY F. BYRD, JR. Mr. President, on the Senate Calendar is a bill (H.R. 15276) amending the law governing political contributions. It proposes an easing of restrictions on political contributions.

I question whether that is the way we should be moving. On the contrary, I feel, we should be making the law governing political contributions more restrictive rather than less so.

I recognize that the legislation pending on the Senate Calendar is of limited application. It would apply only to firms receiving Government business and unions representing the employees of such firms. Also, I understand that the proposed easing of the law does not sanction outright donations by these corporations or unions, but only specific types of purportedly voluntary contributions.

Nevertheless, it seems a step in the wrong direction.

If we are going to change the political contribution laws, let us consider how we can prevent single contributors from making enormous donations—sometimes many thousands of dollars to one or even both sides in an election campaign—through a multiplicity of dummy campaign committees. I think the potential for improper influence in such huge contributions is far more dangerous than any imagined restriction of political liberty in the present law.

Mr. President, in that connection the senior Senator from Kentucky (Mr. COOPER) and I later today will introduce an amendment in the Senate to limit the amount of contributions that can be made by any individual to a political campaign. That amount will be $50,000.

The Senator from Kentucky and I will discuss the amendment at a later date when it is presented. However, I am most pleased to associate myself with the distinguished senior Senator from Kentucky in presenting this proposal. I think it is very important that a ceiling be placed on the vast amounts of money that have been contributed to political campaigns. And this applies to both political parties. It is not a partisan issue. It is not a party issue.

We have had instances where persons have contributed hundreds of thousands of dollars to a political campaign through using a multiplicity of committees. One individual in Texas contributed $300,000 to the primary campaign of a Democrat seeking nomination. And now more recently this individual has contributed $257,000 to the Republican candidate for President. So it is not a party issue.

We can take the State of New York in a little different context, which will not be touched by the amendment to be offered by the Senator from Kentucky and myself. In the State of New York in 1970 the Democratic candidate for the Senate—according to public reports that have not been denied—and his family contributed a total of $2 million to his campaign.

The Republican Governor of that State—according to public reports—and his family contributed $5 million to his campaign.

It seems to me that it is very bad for our country when such huge sums of money can be plowed into political campaigns. An effort will be made by the Senator from Kentucky and myself to limit the amount of money that can be contributed by any individual to any political campaign.

No new legislation is needed to protect the right of any citizen to make a political contribution.

No sanction for special organizations, sponsored by corporations or unions, is required to safeguard individual rights.

No American is barred by Federal law from simply writing a check to his party or campaign committee.

The real trouble is that some of those checks are entirely too large and too numerous.

Published reports indicate that some individuals have made astoundingly large contributions to the current presidential campaigns.

Stewart Mott, the General Motors heir, is reported to have made gifts and loans to the McGovern campaign totaling as much as $375,000.

A retired Texas rancher and auto dealer, Walter T. Duncan, is listed as a $275,000 contributor to the Nixon campaign—after contributing $300,000 to the pre-convention campaign of Senator HUMPHREY.

And as I have pointed out, wealthy candidates have spent huge sums on their own behalf in some campaigns of the recent past.

Former Representative Richard L. Ottinger, of New York, reportedly spent at least $2 million of his family's money in a 1970 Senate race.

In the same State, and the same year, Gov. Nelson Rockefeller reportedly spent $5 million of Rockefeller money in his most recent reelection campaign.

Emormous amounts like these, spent by candidates and their supporters, are in my view a threat to the democratic process.

So I say let us not ease the restrictions on political donations. Instead, let us tighten them up so that big concentrations of wealth do not become big concentrations of political power.

ALCOHOLISM AND DRUG ADDICTION WITHIN THE ARMED SERVICES AND CIVILIAN LIFE OF OUR COUNTRY

Mr. HUGHES. Mr. President, on Monday of this week I took the floor of the Senate to express my profound concern over what I believe to be a growing national complacency with regard to the terrible scourges of alcoholism and drug addiction with the armed services as well as in civilian life of our country.

As a Nation, we do have a tendency to focus our emotions and attention on a particular problem, and then, after taking a first step toward a solution in the form of legislative action, our attention wanders. All too often this tendency is encouraged by official spokesmen who, however well-intentioned, make statements that victories are being won when, in fact, the battle is still in serious doubt.

In this case everything is not under control. We have a long way to go. There has been commendable progress, but there has also been coasting and regression.

This morning I want to discuss in more detail some of the difficulties that have arisen in the efforts of the armed services to cope with drug abuse and addiction.

Title V of the Draft Extension Act of 1971 directs the armed services to identify, treat, and rehabilitate. In response to an Executive order of the President in June of 1971 the services had begun a large-scale program for identifying heroin users among our forces in Vietnam. This program was expanded to cover our military personnel throughout the world.

Identification is still the cornerstone of the military approach to drug abuse, and the statistics produced by the identification program have been widely published to prove that heroin usage by our personnel in Vietnam was being successfully discouraged. Information obtained over the past several months by the staff of our subcommittee now suggests that these statistics have always been doubtful because the scientific methods by which heroin usage was measured were defective.

One of the unpleasant aspects of the fight against drug abuse in the armed services has been the requirement that all personnel submit urine specimens for laboratory analysis. Personnel are tested before leaving Vietnam, or before transfer from duty stations elsewhere in the world. They are also tested in randomly selected groups at other times in order to catch those who are abusing drugs and are thus in danger of addiction, and, of course, to discourage drug experimentation.

Under this system it is obvious that laboratory accuracy is vital. A false positive; that is, a result indicating that a person has used drugs when in fact he has not, is bad enough, but it is at least subject to a second analysis. Perhaps worse is the false negative. This not only reinforces the drug user's belief that he can "beat the system," but it means that he will probably not get the treatment he needs, and in the meanwhile, he may induce others to experiment with drugs.

In spite of these dangers, the armed services have been slow to take the steps necessary to insure acceptable levels of accuracy in either the military or the commercial laboratories performing analytical work under contract. In addition to using proper equipment and trained laboratory technicians, the standard procedure for insuring accuracy is the insertion among the regular shipments to a lab of controlled samples, unidentifiable by the laboratory, containing measured quantities of drugs. On return of all the statistical results from the laboratory, the accuracy scores on the control samples are calculated. This method

is repeated at appropriate intervals and with a sufficient number of control samples to provide statistically valid results.

During our subcommittee hearings early this year I questioned the witnesses from the Defense Department in considerable detail on the problem of accuracy and the need for safeguards. They were shown the figures that had already been obtained by the subcommittee staff proving that the accuracy of the commercial labs then under contract was erratic and almost consistently substandard. I was given to understand that corrective action would be taken and that the military laboratories were superior. Indeed, I was assured that there was no need for the system of external control samples in Vietnam because the procedure used there insured almost 100-percent accuracy.

Soon afterward all of the military and commercial laboratories involved were included in the control sample system administered by the Armed Forces Institute of Pathology, except the laboratories in Vietnam. With considerable difficulty and delay the staff has been able to obtain the weekly accuracy figures on all the labs in the Armed Forces Institute's system. Most of the laboratories are still performing below standard and their scores from week to week are erratic. Only two—a Navy lab and one of the commercial labs—are showing a consistently high quality of performance.

Because of the reduction of the number of military personnel in Vietnam, three of the four Army laboratories in Vietnam have been phased out and only one remains. In June it was brought into the control system of the Armed Forces Institute of Pathology.

It was only recently that the Subcommittee on Drug Abuse in the Military managed to obtain from the Defense Department any data at all on accuracy of the four labs. This information was based not on external controls but on control samples processed by Army technicians in Vietnam.

These figures suggest that the four labs operated at accuracy levels of between 91 and 96 percent over a 7-month period from October 1971 through May 1972. These are highly satisfactory scores. Unfortunately they are based on only 182 samples—for a group of four labs which in a year's time have analyzed some 660,000 samples. Thus, there was little statistical validity in this report. Moreover, when the remaining lab was brought into the external control system in June of this year, its first reported accuracy score was only 72 percent, far below the 91 and 96 percent.

I remind my colleagues that these were the laboratories producing the statistics which have been publicized during the past year to prove a decline in heroin usage in Vietnam. We can assume a decline because of the reduction in the number of military personnel in Vietnam, but I submit that these figures have never given us a reasonable basis for assessing the severity of the heroin problem in Vietnam.

Members of the Senate may also be interested to know that only one of the nine other military laboratories in the Defense Department's system is consistently operating at an accuracy level of better than 90 percent. Of the two commercial laboratories having large military contracts, one has begun to do well, but the other has an average accuracy score of only 74 percent.

The contractual arrangements with the commercial laboratories have also aroused my concern. Until last spring three labs were operating under 6-month negotiated contracts. Bids were then invited on 1-year contracts effective July 1. Although none of the three labs had had consistently good accuracy scores, two of the three succeeded in being selected, even though the prices they offered were relatively high. Several of the other bidders have protested to the General Accounting Office, which is now investigating the situation. There are indications of ineptitude on the part of the Army in its selection process, and I can assure the Senate that the subcommittee staff will continue its investigation.

In addition to the problem of inaccuracy, the identification process is subject to other distortion and abuses.

In August during the Senate's recess I sent a subcommittee staff member to look into the situation at our bases in Germany, where we have far more men than are now in Vietnam, and we also have large numbers of military dependents. He found great skepticism regarding the utility of the urine-screening program in Germany. For example, the Air Force had figures showing that out of 49,000 tests performed on its personnel in Europe, only 205 produced positive laboratory results, and of these, only eight were confirmed as drug abusers. The Air Force laboratory has an overall accuracy rate of only 62 percent since last March.

Further problems in Germany were long delays in receiving lab reports, and indications that the random selection for testing rule was being used in some units either to harass individual men suspected of wrongdoing, or to select for tests only those men known not to be using drugs and thus to submit highly favorable unit reports.

At this point a word of explanation may be needed with regard to drug abuse among our forces in Germany. In the past heroin was not a serious problem there. However, it is agreed to be on the increase. Thus far, the primary drug of abuse is hashish, which is not detected through the laboratory analysis currently in use. Barbiturates, amphetamines, and some of the other psychotropic substances are abused. Therefore, statements that heroin usage among our forces in Germany is still relatively low do not necessarily indicate that the drug problem is minimal.

A tragedy of the drug abuse problem is that it has infested many of the communities of military dependents. In Bangkok, where heroin of high quality has been available on the streets at 50 cents a fix, a serious problem has developed among students at the American dependents' school. Dependents in the Philippines have also become involved with heroin, and in Germany American teenagers are affected by the example of the young military men as well as by young transient drug abusers from various countries.

I regret that one of the first proposals for dealing with this problem among dependents has been that they ought to be subjected to the same kind of mass screening program as are military personnel. This idea may seem superficially attractive, but it is studded with pitfalls which have been quickly recognized by all concerned—parents, children, school administrators, and military commanders.

In addition to its potentially damaging effect on family relationships, the identification of a military dependent as a user of illicit drugs presents very serious legal issues. These dependents are not subject to the Uniform Code of Military Justice, nor would they be protected by American law. In some countries a military command having knowledge that a dependent has broken the criminal law of the host country has a duty to transmit that information to local police and the dependent may be prosecuted according to the law of the host country. It can be seen that if this procedure of requiring urine tests of all military dependents in foreign lands were to be adopted, it would present numerous serious complications.

All of those contacted by our staff who are directly concerned with the problem of dependents urge that the proposal for mass screening be abandoned. They are pleading instead for more resources and interest in constructive youth activities programs, and above all for more professional psychiatric and counseling personnel in every area. We have found an urgent need for family counseling services, not simply to cope with the problem of drug abuse but to help with the stresses and strains on military family life in foreign countries.

In my opinion it would be far wiser of responsible officials in the Department of Defense to heed that kind of plea for help than to experiment with any proposal for the mass screening and identification of drug abusers among military dependents that could lead to abuses more harmful than any potential benefits.

Mr. President, the Department of Defense is continuing to insist on a permanent identification of drug abusers by means of its code number labels known as SPN numbers, which appear on the military discharge papers that must be furnished by veterans applying for jobs or seeking admission to schools or professional organizations. Our hearings earlier this year revealed that the SPN code, although it contains many innocuous numbers, also contains numbers indicating discharge for alcohol abuse, drug abuse, and for various other psychological or physiological conditions considered to make a man unsuited for military service. There are also numbers for such vague and ominous reasons as "for the national security" or for the "good of the service."

The Defense Department maintains that the numbers offer more confidentiality than would words, and perhaps this is adequate assurance for some. However, the SPN code has been easy to obtain. Newspaper reports quoted a per-

sonnel officer in a major corporation to the effect that the code was used regularly in considering the job applications of veterans.

Following our hearings the Defense Department conducted a study of the code system to determine whether it should be altered or eliminated. Finally, a few weeks ago the Department informed me that it had decided not only to retain the system but to use additional numbers indicating new and more refined categorical reasons for discharge. Confidentiality is to be safeguarded by changing all the old numbers and keeping the new code away from the public.

Mr. President, given the normal ties and the flow of information as personnel specialists move in and out of military service, I know of no way in which such a list could be kept from any civilian business or institution having an interest in it. During this past year I have heard from a number of men who were denied jobs or admission to college, or were otherwise hurt by the damaging SPN numbers. These incidents have occurred sometimes many years after the original condition has been corrected.

I cannot agree with the Department of Defense that use of these numbers has any real utility that justifies the permanent injury they may cause. If such information must be transmitted to the Veterans' Administration or to the Selective Service System, it can be furnished by other means. This Government has no right or duty to affix to any veteran a label revealing information which in most civilian settings a citizen is free to withhold or disclose as he chooses.

As a practical matter we know, from veterans' counselors and drug program administrators throughout the Nation, that the best hope for preventing drug abuse and for insuring the permanent recovery of those who have been treated is the opportunity for a decent job. They have pointed out again and again how the SPN number has become a barrier to this opportunity. I am convinced that the Department of Defense must end this punitive practice and face reality.

Mr. President, the record will show that I voiced my concern about seriousness of the drug abuse problem in our Armed Forces long before the military acknowledged the problem or the public was aroused about it.

When Mr. Nixon announced his drug counteroffensive, I praised him for this action and gave the effort my full support. I applauded the President's choice of the person to head the Special Office of the White House as a wise appointment, for Dr. Jaffe was known to me to be a man of high professional standards and competence.

As the military moved to set up their drug programs, I commended their zeal and efficiency. At the same time, I warned about the possibility that a program so admirably begun might regress or miscarry in some respects. This, in my judgment, has happened; hence I have taken the floor to share my concern with my colleagues.

I have thus far touched on only a few aspects of the drug abuse control program in the military. In the future, I hope to complete my appraisal of the status of the Drug Problem U.S.A. as it affects both civilian and military sectors of our society.

DESIGNATION OF THE OLD SENATE OFFICE BUILDING AS THE RICHARD BREVARD RUSSELL OFFICE BUILDING

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1106.

The PRESIDING OFFICER (Mr. ALLEN). The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 296) to designate the Old Senate Office Building as the "Richard Brevard Russell Office Building."

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

There being no objection, the Senate proceeded to consider the resolution, which had been reported from the Committee on Rules and Administration with an amendment to strike out all after the word "Resolved" and insert:

That insofar as concerns the Senate—

(1) the Senate Office Building referred to as the Old Senate Office Building and constructed under authority of the Act of April 28, 1904 (33 Stat. 452, 481), is designated, and shall be known as, the "Richard Brevard Russell Office Building"; and

(2) the additional office building for the Senate referred to as the New Senate Office Building and constructed under the provisions of the Second Deficiency Appropriation Act of 1948 (62 Stat. 1028), including any extension to such building, is designated, and shall be known as, the "Everett McKinley Dirksen Office Building".

SEC. 2. Any rule, regulation, document, or record of the Senate, in which reference is made to either building referred to in the first section of this resolution, shall be held and considered to be a reference to such building by the name designated for such building by the first section of this resolution.

SEC. 3. The Committee on Rules and Administration shall place appropriate markers or inscriptions at suitable locations within the buildings referred to in the first section of this resolution to commemorate and designate such buildings as provided in this resolution. Expenses incurred under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

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

The amendment was agreed to.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. For what purpose does the Senator from Michigan rise?

Mr. HART. To speak in opposition to the resolution.

The PRESIDING OFFICER. The Senator is recognized.

Mr. HART. Mr. President, this is not an easy comment to make, but I feel deeply that the Senate is making a mistake in undertaking, so quickly after the death of two very brilliant former Members of this body, to name those two permanent buildings in their honor.

This is not to suggest that I doubt that Richard Russell and Everett Dirksen were impressive and effective Senators. All of us know them to have been exactly that, and perhaps history's estimate will suggest that they were vastly more than that. But I thought we had learned that it is unwise to anticipate history's verdict. I thought we understood that no longer would we, very quickly after the tragic loss of friends, undertake to memorialize them as against scores and scores of others who perhaps have departed longer and with respect to all of whom history's verdict has yet to be received.

Is it not a little awesome or worse that we of the 1970's, the group here, should pick among our own? What about those who have preceded us? One of these two office buildings has been here for about 60 years, both will be here for many generations.

Recall the preliminary study that was made in the 1950's, the thoughtful review made before the Rules Committee recommended five Senators whose portraits were to be installed in the reception room of this Chamber.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that we may proceed for 2 minutes before the hour of controlled debate begins, and that morning business be extended similarly.

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

Mr. HART. Mr. President, the Senate created a special committee to make that study. Senator Russell honored that committee by being one of its five members, as did our majority leader. They canvassed some 150 historians and political scientists. The special committee evaluated their tabulation and the recommendations of the scholars. The committee reported that:

3. Although no member of our panel of scholars recommended the identical 5 names, a majority suggested 4 of the same 5 (always omitting a different one); and Clay, Webster, Calhoun, and La Follette were among the top 5 receiving the most endorsements from this panel. The same 4 names were also among the top 5 receiving the most endorsements from those Senators who responded to our inquiry; and the late Senator Taft, whose name completes the 5 recommended by our committee, was the first choice of the Senators who responded and among the first 10 in the poll of scholars.

4. The committee recognizes that objections can be raised against each of the 5 selected, just as they can be raised against all of the more than 65 names suggested.

Mr. President, study the record of that committee report—May 1, 1957, Mr. Kennedy as chairman—and you will understand why, with reluctance, I speak against and will vote against this resolution.

As I conclude, I affirm again, that Senator Russell and Senator Dirksen were giant figures.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 1 additional minute.

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

The Chair will explain to the Senator

from Michigan that the Chair was calling time under the unanimous-consent agreement that the unfinished business was to be laid before the Senate at 11 o'clock.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time for morning business be extended 2 additional minutes and that I be recognized.

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

Mr. ROBERT C. BYRD. Mr. President, I yield that time to the Senator from Michigan.

Mr. HART. Mr. President, I hope I have made plain that it is not a lack of respect for the two men whom we would honor by naming those two buildings. That is not so. But I do feel that we are acting unwisely.

I cannot presume to suggest how the two men whom we propose to honor would feel about this; but I think they would be perfectly comfortable in letting us first consult with students of history and then let history have a little time to make suggestions to us.

I thank the assistant majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Michigan. I have a brief statement which I shall not make now because of the hour but which I shall make later today. I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the resolution, as amended—putting the question.

Mr. HART. I vote "no."

The PRESIDING OFFICER. The resolution (S. Res. 296) is agreed to.

The title was amended, so as to read: "Resolution to designate the Old Senate Office Building and the New Senate Office Building as the 'Richard Brevard Russell Office Building' and the 'Everett McKinley Dirksen Office Building', respectively."

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.

The PRESIDING OFFICER. The hour of 11 o'clock having arrived and the time for which morning business was extended having expired, the Chair, under the previous order, lays before the Senate the unfinished business, H.R. 13915, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 13915) to further the achievement of equal educational opportunities.

The PRESIDING OFFICER. The period of 1 hour from now until the mandatory quorum call prior to the vote on cloture is to be equally divided between the Senator from New York (Mr. JAVITS) and the Senator from Michigan (Mr. GRIFFIN).

Who yields time?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time already used for the continuation of the morning hour be considered as within the hour for the discussion before the vote on the cloture proposal. The quorum call will occur at 12 o'clock.

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

Mr. JAVITS. Mr. President, if the other side does not wish to use time at the moment, I am prepared to yield 15 minutes of our time to the Senator from Connecticut (Mr. WEICKER).

The PRESIDING OFFICER. The Senator from Connecticut (Mr. WEICKER) is recognized for 15 minutes.

Mr. WEICKER. Mr. President, once again I wish to express my thoughts on the matter before the Chamber.

Let us look for 1 minute at the finger pointing occurring on the issue of busing. There are those who point the finger at the courts of the United States. They say the courts are the ones that are at fault that if it were not for the courts, we would not have a problem; we would not have the disruption, the emotion, the hysteria; it is all the fault of the courts.

Does anybody in the Chamber or outside of it think that it is the fault of a Justice of the Supreme Court, or the fault of a judge of the district court, or of a court of appeals, that thousands of children in this country do not have available to them excellent educational facilities?

There are those who like to point the finger at individual Representatives and Senators—such as the distinguished Senator from New York (Mr. JAVITS)—saying it is their fault that we are having this trouble with education.

Is there any Senator or anyone else who would say it is the fault of the Senator from New York that we have deficiencies in our educational system when, in fact, the distinguished senior Senator from New York and the distinguished senior Senator from Michigan (Mr. HART) have fought all their lives for excellence in public education?

Then there are those who say, "Well, it is the fault of the Constitution. The Constitution was not written right. Something is wrong with a Constitution that permits all this disruption." It is even said that the constitutional provision permits a difference of educational opportunity in the United States. Now I do not think I have ever read that the Constitution provides for separate but equal education.

Let us stop the finger-pointing for these kinds of reasons. They do not hold up.

We do know one fact: that is, equality of educational opportunity is not available to all children in the United States. We can all agree on that. It is not available. To say anything other than that is just to close one's eyes.

That being the fact, how did we arrive at the present state of confusion. The fact is that we had State laws in the United States that said that all men were not equal. And as that flew directly in the face of the Constitution of the United States, it was bound to come to a troubled end sooner or later. And then we had the doctrine of "separate but equal." Again, completely beyond what the Constitution of the United States said.

Then we decided by our inaction we would not make an adequate investment in educational facilities. Then we had no legislative program. Then we created housing programs and left out education. And we created education programs and left out housing.

These are valid reasons as to why we find ourselves in today's educational hysteria.

It is not some judge or some Federal court, and it is not Senator JAVITS or Senator WEICKER who created the busing problem. It is not the fault of some citizen who is out there working for equality of educational opportunity. It is not the Constitution of the United States that mandates busing.

Yesterday I suggested that we do have an alternative to this busing proposition. I know of no one here who advocates busing as a solution to the problem of equality of educational opportunity. Let us make that plain. This is not a probusing and antibusing proposition. The issue is that some people feel that there is a cheap way of bringing about a catch up of equality in the United States.

I estimate that if we really want to know what the figures are, it will cost us $12 billion to create the necessary educational facilities and an additional $12 billion to create the additional housing which I think necessary to a real solution of the problem. That involves a cost of $24 billion.

That comes to about $210 per taxpayer.

Now, to the proponents of the bill, I say they should not go around and give the impression to the people of the United States that there is no cost to what is being proposed. They say that tampering with the Constitution is free.

I think we ought to tell them what may seem to be painless to us will be deadly for the future of the United States.

Madam President, I would also like to say that if my colleagues do not want busing, they should be willing to ask every one of the voters in the country to spend $210 to obviate busing and create equality of educational opportunities.

I do not know of anyone doing that. All I hear is that we can have equality of educational opportunity and it is not going to cost anything.

There have been 200 years of either no action or going slow, and they say that we are going to bring everybody up to one level of equality of educational opportunity at no cost.

I think it is time for the proponents of this measure to explain in detail its costs to the American people. If they want to contest my figures, they are perfectly entitled to do so. I think it is up to them to say, "Yes. We believe in equality of educational opportunity for every American." Or maybe I am mistaken. Maybe some do not believe in that. Then they ought to say that also. But if they say that they believe in equality of educational opportunity, then I think it is necessary for them to lay out very carefully what the cost would be to achieve that status.

My figure is $24 billion. It is not $2.5 billion of reallocated funds. And that, in my book, comes to $210 per taxpayer.

I cannot think of a greater investment. Somebody will have to say, however, that there is no painless solution to the prob-

lem that confronts the United States today.

The impression is given that what we are talking about here falls in the category of welfare-type legislation, that we are handing something out. In fact we are not handing out anything.

I think each of us would agree that a decent education is something that every American should have, and that equality of educational opportunity is something that must be available to every American.

This is not social tinkering at all. It is a fact that every child in the United States of America should have an equal educational opportunity. And believe me, if we make that kind of investment, many of the problems such as welfare and unemployment among the unskilled would diminish appreciably.

Madam President, in conclusion, I would like to get to the essence of what confronts the Members of the Senate. It comes down to the whole question of leadership. If logic cannot prevail on the Senate floor, where? If the dignity of the human being cannot be championed here on the Senate floor, where? If the whole concept of equality in the United States of America cannot be upheld here on the Senate floor, where?

As I stated yesterday, for those of us who have gone into politics, 99 percent of the time spent being Senator is a great job. We have involved our lives with the lives of millions of others. It is exciting. Every Senator in this Chamber today has succeeded because the great majority of the people believed that he would fight and win for them. The glory and the publicity is all there. But 1 percent of the time it gets a little rough, and those are the times when the Senate is called upon to exert leadership; not to follow along with the misconceptions, ignorances and prejudices that are bound to occur in any group of human beings, but to give leadership to that group and remind them what this Nation stands for.

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

Mr. WEICKER. Madam President, will the Senator yield to me for 3 additional minutes?

Mr. JAVITS. I yield 3 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 3 additional minutes.

Mr. WEICKER. As I said yesterday, we are not only second, third, and fourth generation English, Polish, Italian, German, or Irish; these are nice things to be, but everyone of us in this Chamber is second, third, and fourth generation uneducated, untrained, and uncared for. That is not so nice to remember, but it is true. If we understand that, we understand what the United States of America is all about. It is not a finished book. There is as much need and there is as much to do today as there was 10, 15, 20, 30, 50 years ago. That is what this fight is all about. There are those who say, "We have made it in education." We have; many have not. Their opportunity should be just as bright as ours.

Fortunately, because of the greatness and goodness of our country, many people have made it. Now they look upon our Nation as a club rather than a concept. And apparently there are some new requirements to come in through the front door. I am against those requirements and I am saying that every Member of this body should be also. Those doors should be wide open, as wide open as they were on a national scale to the world around us. The doors of opportunity must also be open for Americans in America.

The job of seeing that those doors stay open is the job of the leadership of the country. Certainly, I would hope that leadership includes the U.S. Senate.

I yield back the remainder of my time to the Senator from New York.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Madam President, I would like to reserve the remainder of my time. How much time do we have remaining?

The PRESIDING OFFICER. The Senator from New York has 9 minutes remaining.

Mr. HART. Madam President, will the Senator yield to me for one-half minute?

Mr. JAVITS. I yield 1 minute to the Senator from Michigan.

Mr. HART. Madam President, I rise simply to thank the Senator from Connecticut for the comments he has made. He has an ability to bring into focus that which is basic and effectively remind us that our responsibility is not to determine that which is popular but rather to seek answers.

Mr. JAVITS. Madam President, I, too, join in thanking the Senator from Connecticut, who is a new, fresh voice in the Senate, and it is very salutary. It reminds me of what was said here this morning about Senator Russell, who probably would not have been on our side in this debate, but always spoke so highly of our duty, and that is what the Senator from Connecticut is calling us to in the Senate.

Mr. ALLEN. Madam President, I yield myself 10 minutes.

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

Mr. ALLEN. Madam President, during the last few days I have heard these arguments made against H.R. 13915: First, the argument is made that it only restates the present law; second, that it carries us back to 1954; and third, it is unconstitutional.

How inconsistent can you get? If it restates the present law, how could it be unconstitutional? If it is unconstitutional, what worries do the opponents of the bill have? Do they worry that the same remedies that are applied to school systems in the South will also be applied to other sections of the country? Is that what they are worried about? If the bill is unconstitutional, there will be nothing to worry about from the standpoint of the opponents of the bill because it could not then carry us back to 1954. It would be stricken down in a matter of weeks.

I call attention to the case of Drummond against Acree, decided by Mr. Justice Powell, not by the full Court, on application for stay of a busing order on September 1, 1972, which construed an act of Congress, Public Law 92–318, which became effective June 23, 1972. So on September 1 the Court, or Mr. Justice Powell, was construing that enactment of Congress.

This very decision makes imperative that something be done, that a new enactment be made, because Mr. Justice Powell has made a nullity of any limitation provided by that bill. I make specific reference to two specific provisions of that law. By the way, this language came out of the conference committee on which conferees from the Committee on Labor and Public Welfare represented the Senate. This language was intended to furnish some relief from massive forced busing orders, as in the case of Richmond, Chesterfield, and Henrico Counties, in Virginia, where they were moved from one political subdivision over to another. Two sections in this bill were construed. One said there should be no Federal funds for providing transportation to overcome racial imbalance, or two, to carry out a plan of desegregation.

So the inference is, they said there could be no funds for those purposes, even for carrying out a plan for desegregation. But when the wordsmiths who fashioned the language providing a stay worked out that phrase they said there should be a right to apply for a stay of a busing order in cases providing for transportation of students for the purpose of achieving a balance among students with respect to race.

Well, it was thought here in Congress that that was going to provide relief in such a case as the Richmond case; but, No, said Mr. Justice Powell in the Augusta, Ga., case, cited above.

Mr. Justice Powell says:

> No, that is not applicable in the Augusta case. That is not a case of providing for racial balance. It is breaking down unlawful segregation.

So there is no field of operation for a prohibition against busing to achieve racial balance because the Supreme Court has said:

> You cannot have strict racial balance. Yes, you can use racial balance as a starting point but you cannot have that as a formula.

So there is absolutely no field of operation, and that is what came out of the conference committee. Apparently if the stay had been provided for orders carrying out a "plan of desegregation" rather than an order "to achieve racial balance" it would have been upheld.

So let us legislate what is needed, and this bill provides necessary legislation. It provides that, on a desegregation order, there shall be a certain priority of remedies that the Court may apply before it gets down to busing, and these remedies must be applied in all Federal courts according to that priority. It is a guideline, not affecting substantial rights, but affecting remedies, and they must apply the remedies uniformly throughout the country.

I was interested in the remarks of the distinguished Senator from Connecticut (Mr. WEICKER) in which he traced the history of the equal protection laws and

separate but equal status for schools in the South, which was the law of the land from 1896 to 1954. He stopped off with separate but equal.

What the Supreme Court did in 1954 was to say that a State cannot make assignments of public school students on the basis of race. That is perfectly all right. We agree with that, and I stand 100 percent behind that proposition of law—that for there to be equal protection under the law, there can be no assignment by the State based on race.

What has the Supreme Court done? It has changed that ruling. It has changed its course 180 degrees, and now they say that there must be assignment on the basis of race. So if we just had the Brown case of 1954 there would be very little argument, but now the Supreme Court says that in the section of the country where I came from we must assign on the basis of race in order to break down so-called de jure segregation.

But there is nothing requiring any breakdown or desegregation of the type of segregation that exists in areas of the North, where the distinguished Senator from Connecticut comes from. I daresay there are no desegregation orders in Connecticut, and probably very little busing there. But all the legislation Congress has passed on this subject has protected and has fostered the continuation of segregation as it exists in the North, while at the same time providing for the forced, immediate desegregation of schools in the South.

The Senator from Connecticut went pretty far afield when he was discussing the fact that it would take $24 billion, I believe, to provide equal educational opportunity for all children, and he challenges the sponsors of this legislation to come up with such a proposal. We are not coming up with any such proposal as that, but I call the attention of the distinguished Senator to the fact that this bill does make an authorization of $500 million for the purpose of aiding educationally deprived children. So to that extent, something is being done.

What is the Senator offering in lieu of that? All he does is get up here and talk about the evil of the antibusing legislation, so-called—though I submit this is not an antibusing bill. He speaks of the dignity of human beings. We all stand for that.

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

Mr. ALLEN. I yield myself 1 additional minute.

But does it add to the dignity of any child or any group of children to tell him or them that he and others of such minority race must be transferred from one end of the town to the other, or from one section of the county to another, in order to guarantee that he or they will be mixed with children of a different race and that that is the only way they can get a quality education, by providing for the mixing of bodies? I submit that that attitude is a discredit to the member of a minority race, and certainly it does not promote the dignity of human beings.

Madam President, I concur in the judgment of many that H.R. 13915 is one of the most important bills to come before the Senate in many years. I am distressed and perplexed by the fact that some liberal members of the Senate continue to block a vote on its merits. It seems to be conceded that the bill would pass if it could be brought to a vote. Yet, there is a determined effort to thwart the will of the House and the overwhelming sentiment of the people against excessive busing.

Madam President, looking back we can recall that for 2 years the Senate has had before it bills which recognized a pressing need to curb excessive busing and which proposed solutions in one form or another.

We have heard the shocking evidence of chaos and monumental disruption in public schools resulting from a multitude of harsh and inconsistent court decrees issued by U.S. district court judges. At times busing orders have required massive forced busing and cross busing to such an extent as to shock the consciences of persons of compassion. We know that some busing orders have resulted in unbelievable overcrowding; that children have been compelled to attend classes held in school auditoriums, cafeterias, libraries, and even cloakrooms that they have been subjected to inadequate health and sanitary conditions; they have been bused and cross bused as though they were chattels without consideration for the health and safety of the children and without adequate regard for the will and wishes and best judgment of parents and local school officials. Yet, a determined band of Senators seem bent on preventing legislative redress. They urge that we continue to let Federal court judges continue to exercise their discretion in these matters.

Yet, there has been so much confusion from the standpoint of constitutional law in this area that the U.S. Supreme Court has felt constrained to step in on several occasions in an effort to restore a degree of order out of near hopeless chaos. And Congress, too, has acted but without avail.

As recently as June 8, 1972, the House and Senate agreed to a conference report on the Emergency School Aid Act in which Congress undertook to provide Federal court judges and the executive with statutory curbs on excessive busing by denying the use of Federal funds to compel busing.

It is interesting to note that many of the provisions of the bill before us not only implement provisions of the Emergency School Aid Act but also take the essential additional step of providing statutory remedies in lieu of equitable remedies heretofore imposed in the sole discretion of U.S. district court judges.

Too, this bill provides much needed assistance to Federal courts and the executive branch by providing a sequence of remedies and combinations of remedies which are uniform throughout the United States but which are sufficiently comprehensive as to be adaptable to differing situations in separate school systems.

More importantly, section 403(c) relieves local school boards of the responsibility to continually modify and resubmit desegregation and busing plans to compensate wholly or in part for racial shifts in school populations within a school system once a court of competent jurisdiction has found such system to be desegregated, or to be a unitary system, or one that has no vestiges of a dual system, or one which otherwise meets constitutional standards.

Furthermore, section 407 provides for termination of court orders which require transportation to remedy a denial of equal educational opportunity—to the extent of such transportation—when it is determined that such school system is not effectively excluding any person from any school because of his race, color or national origin. This language defines a unitary school system and a unitary school system is all that is required by the Constitution.

In section 408, court orders requiring desegregation of schools, and not merely transportation of students, shall be terminated after a defendant educational agency is found to be operating a unitary school system. Such termination shall apply whether or not such school system was in the past segregated de jure or de facto.

Madam President, these provisions are dictated by commonsense. Everyone must know that the Constitution does not vest in Federal courts in perpetuity a power to keep local public school systems in a state of suspended chaos and uncertainty resulting from permanent supervision and control of local public schools.

Furthermore, it is unquestioned that Congress has the power to substitute statutory remedies for equitable discretionary remedies as may be imposed by U.S. district court judges in their sole discretion in the enforcement of rights protected under the 14th amendment.

Madam President, I am convinced that the bill is constitutional—I am convinced that it provides adequate remedies at law—I am convinced that it will help prevent further abuses of judicial and executive powers and that it will establish a sound foundation for the operation of nondiscriminatory school systems throughout the United States and, thus, a foundation for a return of the right and power to local school officials to operate, manage, and control their separate systems in a manner consistent with constitutional requirements.

Madam President, the provisions of the bill before us are constructive, they are desperately needed, and they are not inconsistent with any binding ruling by the U.S. Supreme Court.

The PRESIDING OFFICER. The Senator's additional minute has expired.

Mr. ALLEN. I yield myself 1 additional minute.

There are so many pressing problems confronting our Nation, such as war and peace, the plight of our aged, inflation, national defense, crime in the streets, pornography, and the ongoing encroachments of socialism. It seems to me that the Senate could spend its time more profitably by seeking solutions to these problems than in killing time of the Senate in an attempt to prevent the enactment of constructive legislation of the type represented by this bill.

I urge Members of this body to set

aside their preconceived prejudices and to join hands with those of us who seek a final and just solution to the problems presented in the desegregation process.

Madam President, I ask unanimous consent to have printed in the RECORD the Supreme Court case of Drummond et al. against Acree et al. to which I previously referred.

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

[Supreme Court of the United States, No. A–250 (In re Case No. 72–167, Sept. 1, 1972]

DRUMMOND AGAINST ACREE

(Ann Gunter Drummond et al, v. Robert L. Acree et al., reapplication for stay)

Mr. JUSTICE POWELL, Circuit Justice.

This application, filed by parent-intervenors in this school desegregation case from Richmond County (Augusta), Georgia, seeks a stay of a judgment of the Court of Appeals for the Fifth Circuit. That court, on March 31, 1972, affirmed an order of the United States District Court for the Southern District of Georgia adopting a plan for the desegregation of 29 elementary schools in Augusta. *Acree* v. *County Board of Education of Richmond County,* 458 F. 2d 486 (1972). After the Fifth Circuit's affirmance, I denied a stay because that relief had not been requested from the appropriate Court of Appeals as required by Rule 27 of the Supreme Court Rules. Applicants immediately sought a stay from the Fifth Circuit, which was denied.[1] Applicants have now reapplied to me.

This reapplication is premised solely on the contention that a stay is required under § 803 of the Education Amendments of 1972. That section reads in pertinent part as follows: "in the case of any order on the part of any United States District Court which requires the transfer or transportation of any student . . . *for the purpose of achieving a balance among students with respect to race* . . . , the effectiveness of such order shall be postponed until all appeals . . . have been exhausted . . . ." Education Amendments of 1972, Pub. L. 92–318, § 803 (June 23, 1972) (emphasis added).

By its terms, the statute requires that the effectiveness of a district court order be postponed pending appeal only if the order requires the "transfer or transportation" of students "for purpose of achieving a balance among students with respect to race." It does not purport to block all desegregation orders which require the transportation of students. If Congress had desired to stay all such orders it could have used clear and explicit language apropriate to that result.

In § 802(a), which precedes § 803, Congress prohibited the use of federal funds to aid in any program for the transportation of students if the design of the program is to "overcome racial imbalance" or to *"carry out a plan of desegregation."* Education Amendments of 1972, Pub. L. 92–318, § 802(a) (June 23, 1972) (emphasis added). It is clear from the juxtaposition and the language of these two sections that Congress intended to proscribe the use of federal funds for the transportation of students under *any* desegregation plan but limited the stay provisions of § 803 to desegregation plans that seek to achieve racial balance.

In light of this Court's holding in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402, U.S. 1 (1971), it could hardly be contended that Congress was unaware of the legal significance of its "racial balance" language. In that case the school authorities argued that § 407(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000c–6 restricted the power of federal courts in prescribing a method for correcting state-imposed segregation. THE CHIEF JUSTICE'S interpretation of § 407(a), which applies only to orders "seeking to achieve a racial balance," is controlling here:

"The proviso in [§ 407(a)] is in terms designed to foreclose any interpretation of the Act as expanding the *existing* powers of federal courts to enforce the Equal Protection Clause. There is no suggestion of an intention to restrict those powers or withdraw from the courts their historic equitable remedial powers. The legislative history of Title IV indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called 'de-facto segregation,' where racial imbalance exists in the schools but with no showing that this was brought about by discriminatory action of state authorities." 402 U.S., at 17–18 (emphasis in original).

In short, as employed in § 407(a), the phase "achieve a racial balance" was used in the context of eliminating "de facto segregation." The Court went on to caution lower federal courts that, in the exercise of their broad remedial powers, their focus must be on dismantling dual school systems rather than on achieving perfect 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 school system as a whole." 402 U.S., at 24. This was said not in condemnation of existing techniques but in disapproval of the wooden resort to racial quotas or racial balance. Nothing in the instant statute or in the legislative history suggests that Congress used these words in a new and broader sense. At most, Congress may have intended to postpone the effectiveness of transportation orders in "de facto" cases and in cases in which district court judges have misused their remedial powers.

The question, therefore, must be whether the lower court order in this case was for the purpose of achieving a racial balance as that phrase was used in *Swann.* This question was resolved in the negative by the Court of Appeals. Applicants claimed on their appeal that the District Court order called for " 'forced busing' to achieve racial balance." 458 F. 2d, at 487. The court rejected that contention, citing the holding in *Swann* that bus transportation is one of the permissible techniques in effecting school desegregation.[2]

For the purpose of acting on this application, I accept the holdings of the courts below that the order was entered to accomplish desegregation of a school system in accordance with the mandate of *Swann* and not for the purpose of achieving a racial balance. The stay application must, therefore, be denied.

It is so ordered.

Mr. ALLEN. Madam Presdent, I reserve the remainder of my time.

Mr. JAVITS. Madam President, I yield 2 minutes to the Senator from Connecticut (Mr. WEICKER).

Mr. WEICKER. Madam President, I would like to respond to two points that were raised by the distinguished Senator from Alabama.

No. 1: Certainly he is not going to stand on this Senate floor and tell the American people that $500 million is going to achieve equality of educational opportunity in the United States. I know that Americans would like to believe it would be that cheap, but it just is not going to be. I think it is up to public officials to state accurately what the cost is going to be so people can knowledgeably choose. Say, "All right, if you do not want busing, it is going to cost $24 billion." And all of a sudden many Americans might pop up and say, "We would rather have busing, because we do not want to pay that cost." There is no way that $500 million is going to assure equality of education. There is no way either that continuation of inequality of educational opportunity is an acceptable alternative.

As far as the Senator's comments on the State of Connecticut are concerned, it is absolutely true that not one student in Connecticut is being bused under court order, but it is also true—and I referred to this yesterday—that because of the hysteria generated in March, everybody in Connecticut believed that every child was being bused. I was told that thousands were being bused under court order, when, in fact, not one student was being bused under court order. So much for my commentary on the hysteria generated by the distinguished Senator from Alabama and his teammates.

First things first: Connecticut has not had any laws on its books which stated that there is a difference between human beings.

Point No. 2: I have made very clear in the State of Connecticut that we would much better spend our time not being a cheering section for those States that had separate but equal philosophies, but, on the business of ending voluntarily de facto segregation, which exists. I said that, before the legislature or the courts impose mandatory requirements, let us be about the business of so arranging our education that we do not have to have a legislature- or a court-dictated solution. But certainly what is being advocated here is not the solution for the State of Connecticut or for the United States of America.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Madam President, will the Senator from Alabama yield me some time?

Mr. ALLEN. Madam President, I am delighted to yield such time as the distinguished Senator may use.

Mr. GRIFFIN. Madam President, I think it is important to focus attention and keep attention focused on what the issue is before the Senate today as we vote.

A good deal of discussion has centered on the merits or demerits of the anti-busing bill. But we are not voting today on the bill, we are only voting on whether or not the Senate will have an opportunity to vote on this legislation.

It should be clear that if the cloture motion were adopted, amendments to the bill would be in order. Those who have questions, or those who object to particular provisions in the bill, could of course offer their amendments, the amendments could be considered, and the Senate could vote. But when Senators vote against cloture and support the filibuster, they are saying, in effect, that the

[1] A stay was also denied by the United States District Court for the Southern District of Georgia on August 18, 1972.

[2] For a complete history of this litigation see the most recent opinion of the District Court. *Acree* v. *Drummond,* 336 F. Supp. 1275 (1972).

will of a majority in this body and, indeed, the will of an overwhelming majority in the country is not only going to be ignored, it is going to be thwarted.

This, I must say, is a very interesting development. I consider myself among those who have been for reform of the rules and practices of the Senate. I myself have voted to liberalize the cloture rules, so that it would not be so difficult to invoke cloture. But here, in this situation, we are finding in many instances those who claim to be for the reform of Congress are those filibustering to keep the Senate from working its will.

I realize that there are times when an extended debate serves a very good purpose in the Senate and in the country. If the people did not have any understanding of the problem, if the people had not formed a consensus about the problem, if the people did not realize what the President was recommending, or if the people were not otherwise aware of what is going on, it might well make sense to have a long and extended debate.

But this is the fifth or sixth time that this subject has come before the Senate in one way or another, and there has been a great deal of debate in this body. The people in the country have formed a consensus. They want Congress to act. But, nonetheless, the old method of filibustering is being used to block the Senate from even having a chance to vote on the merits of the bill.

I think that is unfortunate, and I rather suspect and suggest that it may lead to a result which those who are filibustering in this instance may regret in the future. There are many who say that the only way to deal with this problem is to adopt a constitutional amendment. Unfortunately, more and more Americans are losing faith in the judicial system. I regret this development, and I do not like to see it, because our form of Government requires that we have confidence and faith in our judicial system. But the fact is that as this threat and reality of forced busing spreads from one State to another, it does have a very eroding effect on the people's confidence and faith in the judiciary.

This problem could be dealt with through legislation—legislation that would require only a majority of votes in both houses of Congress and the signature of the President, legislation that would provide guidance and standards for the Supreme Court. If the courts were to abide by these standards, it would be a preferable way of dealing with the busing problem.

But if those who are going to ignore the will of the majority of the Senate and the will of the overwhelming majority of the American people persist in this course, then I predict that next year there will be the two-thirds vote in the Senate, not only to invoke cloture but possibly to adopt a constitutional amendment.

So I think that in terms of the interest which they are seeking to advance, they may push the Senate farther than they would like. It may be a few more months, but I predict that this is going to happen as this problem and this concern spreads from one State to another. Because it is not just in Michigan. It is Michigan today, but it will be other Northern States next year, or even next month or the month after that.

So I would urge my colleagues to give the Senate a chance to exercise its will. That is all we are asking today with this cloture motion. We are not asking Senators to take a position on the merits of the bill or on the merits of any amendment that might be offered, but merely to give the Senate a chance to work its will. That does not seem to be an unreasonable demand or expectation on the part of those who favor action on antibusing legislation and on the part of the American people who expect such action from this body.

I thank the Senator from Alabama for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Madam President, how much time do we have?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. JAVITS. I yield myself 3 minutes.

Madam President, I have listened with the Senator from Michigan with the greatest interest, and I say to the Senate, beware the voice of the turtle, and let us see just what has happened before we swallow that bait of giving the Senate a chance to vote on amendments.

Madam President, who stopped the bill from going to a committee and kept it on the calendar for several weeks when it could have been considered by the committee, notwithstanding the presence in the bill of at least four major difficult propositions? First, the reopening which threatens to turn over the whole applecart since 1954; second, no changes in district lines, which is exactly what the Supreme Court, Madam President, has to decide in both the Detroit and the Richmond cases; third, the freezing of the situation in many districts, notwithstanding population shifts; and fourth, the very important question raised by the Senator from Connecticut (Mr. WEICKER), the cost. What is the cost if we really want to get compensatory education and end the idea of desegregation of schools using transportation as a possibility?

Point 1: Nothing went to a committee.

Point 2: Madam President, we all know that in a cloture proceeding, only those amendments which are at the desk are to be called up, and every Member has an hour, so that if I had five amendments I would have 10 minutes for each, and Members in opposition would have the same length of time. That is hardly the way to consider a measure with such far-reaching implications as this.

Point 3: Why the pressure for this now? This school year has started. It will not be over until June. With the Detroit, Richmond, and other cases in which the issues are yet to be settled, why the pressure today?

Madam President, we know the reason for the pressure today. It is because it is on the eve of an election, and because this is a hysterical bill, patently unconstitutional on its face, and it is thought it can be rammed through here as it was rammed through the other body under that perfervid atmosphere of a national election.

We who oppose it are seeking to uphold the Constitution and traditions of this Government, and to legislate not in heat, but in light. The light has been denied and the heat is being applied. Therefore, we feel we have a right to ask Senators, in the highest interests of the dignity and security of our institutions, to vote down the effort to push us into enacting a highly improvident bill, if for no other reason than because of the sheer atmosphere in which the debate is being conducted.

I have said, and I repeat, that I will come back here the day after election and deal in a deliberate and calm way with this or any other bill on this subject. Then the Senate can really think freely and clearly. But why the push, the drive, the pressure cooker in respect of this particular election? That is what we are resisting, and I think that, in resisting it, we are serving the country the best.

Mr. ALLEN. Madam President, I yield 6 minutes to the distinguished Senator from Tennessee (Mr. BAKER).

Mr. BAKER. I thank the distinguished junior Senator from Alabama for yielding.

Madam President, the mood of the country is not calm and deliberate on this subject, and I do not mean to say that we ought to rush headlong into consideration of important, significant, and far-reaching legislation simply because the mood of the country is not patient. But it is a factor to be taken into account in this system of ours, in this closed system; that is, the system of the election, of the monitoring and feedback for midcourse corrections and, finally, the response at subsequent elections.

I am here to say, as I have said previously, that the mood of this country is not tolerant of procrastination on this point. This is a highly disruptive situation. Those who have not seen it firsthand possibly cannot appreciate what it really does to a community, but I can, because I have seen it.

I know that our best efforts to come to terms with this difficult problem are required by the people of my State and of this country. I think they do not want and will not tolerate long delay.

I believe I know of some Members of the Senate who voted for cloture who may not vote for this bill. By the same token, I believe I know some who voted against cloture who possibly have done so as a matter of principle, in opposition to the concept of cloture.

But the point is that, as the distinguished assistant Republican leader stated a few moments ago, we are dealing here not with the issue involved but whether or not the Senate of the United States has a chance to vote on the merits of this controversy, whether or not we get a chance to vote up or down on this bill, sent to us by the House of Representatives by an overwhelming vote, whether or not now we respond to the legitimate concern of the people of this Nation over busing, or whether we delay it by parliamentary tactics that will postpone this vote until some later date.

I hope that whether Members of the

Senate agree or disagree with the House bill, which we hope to bring before the Senate now, they will permit us to terminate this debate and come to a vote on the issues of this bill now, in this session of Congress. I believe the country expects no less. I am willing to take my chances on that. I believe that a substantial majority of the Senate supports the passage of this bill. The question is, Can we get it to a vote? It would be a shame if we could not.

Madam President, I do not feel that the people of this Nation are patient and tolerant of delay. I do not feel, for one instant, that the bill before the Senate is perfect. I am frank to say that, had I been drafting the bill or had I participated in its construction, there are certain provisions of it that I probably would have done differently. I am frank to say that it does not suit me in every respect. But it does suit me as the only practical vehicle available to us, in this session of Congress, to do something about busing now; and that is the ultimate test, I believe, of our response to the mandate of the people of this Nation to bring them relief from judicially ordered busing.

I hope very much that, regardless of their viewpoint on the merits of this controversy, two-thirds of the Members present and voting will give us an opportunity to come to grips with the issue itself and not with just a filibuster.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. I yield 3 minutes to the distinguished Senator from Georgia (Mr. GAMBRELL).

Mr. GAMBRELL. Madam President, it is interesting to me that, as the 92d Congress draws to a close, we should be engaged in a so-called filibuster and the question of cloture.

When I came to the Senate in February of 1971, a filibuster was in progress for the purpose of preventing a change in the cloture rule. Had that change been adopted, cloture would be invoked, I believe, either today or tomorrow, when the occasion arises.

I am not sorry that I voted against cloture on that occasion, because I believe that the cloture rule as it stands is a good rule. I am also happy to say that since I have been in the Senate, with the exception of opposing cloture on the rules change, I have not opposed cloture on any other bill in such a way as to destroy that bill. I voted against cloture on several occasions, but not with the idea of preventing a question from coming to a vote at all. If the filibuster rule, or the cloture rule, is used in that way, it is a sad day for the U.S. Senate.

I think that those who are preventing the U.S. Senate today and the balance of this week from voting on anything under this bill are doing a disservice to themselves, to their cause, to the Senate, and to Congress. I know there have been times in the past when possibly Members of this body from my State would not have so stated. I hope that time has passed. I am happy with the position I have taken.

I might say that it is an indication of the trend of things in this country that those who would have altered the cloture rule in February and March of 1971 are now hanging onto it by their fingernails and are asserting the very same arguments and contentions which for many years they deplored.

I am very pleased to have the opportunity to vote for cloture on this measure and on a number of other measures during the 92d Congress.

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

The Senator from New York has 2 minutes remaining.

Mr. JAVITS. I yield myself 2 minutes.

Madam President, I believe that the arguments which relate pro and con to today's vote have been very aptly made.

I should like to state, for the information of the Senate, that we shall endeavor in the course of the day, assuming that there is an opportunity for that debate, to lay before the Senate the facts and figures in the various cases, the impact of busing which has been court-ordered upon different communities and upon the totality of the busing situation, the elements of cost respecting so-called compensatory education as compared with the cost of busing, and other factual matters which should have been and could have been developed in testimony before a committee. But that opportunity was denied. We shall do our utmost to fill those in before the Senate in the course of the day.

Madam President, I am prepared to yield back the remainder of my time.

Mr. ALLEN. Madam President, will the Senator yield the balance of his time of about 1 minute, so that I may answer two points made by the Senator?

Mr. JAVITS. I yield.

Mr. ALLEN. The Senator said that the bill did not go to the committee and that the committee did not have the opportunity to consider it. The offer was made on the floor of the Senate to allow the bill to go to the committee, provided the bill would come back at a definite time and then became the unfinished business.

Also, the distinguished Senator from Connecticut commented that we did not provide the $20-odd billion needed for equal opportunity for all children. The bill is open to amendment. If he wants to raise the $500 million amount provided in and see what support he gets.

Madam President, I yield back the remainder of my time.

Mr. SPONG. Mr. President, I am again voting to invoke cloture in the debate on H.R. 13915, the bill to prohibit the cross-town busing of schoolchildren.

I believe, as I stated yesterday, that the American people both want and expect their representatives in Congress to confront this issue. I believe the Senate has an obligation to face this issue directly and to vote on this bill and those amendments which may be offered to it. We will be derelict in our responsibilities if we do not act on this legislation during this session of Congress.

The question of busing faces a huge number of school districts in all parts of our Nation. In city after city, the possibility of large percentages of the student body being transported at considerable burden, inconvenience, and cost exists. The time is now when we must decide whether these massive busing plans are reasonable or required.

I believe that they are neither. There is little research and literature to demonstrate actual educational benefits from massive busing. In fact, there are studies which suggest that busing has few educational advantages and often only promotes tensions among the races.

In view of this, the bill before the Senate appears justified. In fact, it would, in many instances, correct deficiencies which now exist.

First, the bill identifies the neighborhood school as the reasonable and appropriate basis for the assignment of pupils. This is a concept which I support and which is of particular importance to young children and their parents—both black and white—throughout this land.

Second, the bill specifies that failure to attain a racial balance shall not be considered a denial of equal educational opportunity or a denial of equal protection of the laws. I have never felt that the Constitution demanded any particular racial balance. The Constitution is and should be color blind.

Third, the bill provides for a stay in cases where busing is ordered until all appeals in the case have been exhausted. I have supported and worked for similar provisions in the past.

Fourth, the bill provides for majority-to-minority transfers, that is, any child in a school in which his race is in a majority may transfer to a school in which his race would be in a minority. This feature would allow those children in a school they considered below par or one they considered inadequate because of large numbers of one race to transfer. This is a means of providing additional opportunities—and an important one.

Fifth, the bill provides for concentration of Federal educational resources in those schools most in need of such resources. Such a provision should help upgrade those schools which have, for far too long, been below par.

Sixth, the bill would be applied uniformly throughout our land. The requirements for Richmond or Norfolk, for example, would be the same as those for New York, Chicago, Los Angeles, and other cities of the North and West.

Mr. President, I am not a newcomer to some of the concepts mentioned in this legislation—to the neighborhood school, majority to minority transfers, and provision of additional school resources. Many of these concepts were, in fact, embodied in a bill I introduced in 1970 and a letter I wrote to the President earlier this year.

I ask unanimous consent that a copy of my letter to the President be included at this point in the RECORD:

U.S. SENATE,
Washington, D.C., February 17, 1972.

Hon. RICHARD M. NIXON,
President of the United States,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I have concluded from actions taken prior to your departure today for the People's Republic of China that you and your advisors are involved in a re-evaluation of the public school deseg-

regation efforts throughout our country. As a representative of a State which has probably experienced as much litigation involving school desegregation as any other, I am compelled to share my own views with you.

The recent District Court decision in the Richmond, Virginia, school case, the similar cases pending in other parts of our nation, and the numerous pronouncements by our public officials have again brought confusion and misunderstanding to the issue of public school desegregation.

Our people are understandably perplexed and I have a deep sympathy for their feelings.

I appreciate, as I am certain you do, the fears of some of our citizens who have been subjected to discrimination in the past. I understand their apprehenisons that the gains they have made through the *Brown* and certain subsequent decisions and the improved educational opportunity which has been made available to their children will be lost in a retreat.

I appreciate, as I am certain you do, the fears of parents who are asked to put their children on buses for several hours a day, to send them miles from home, and often to send them to a school which is known to be no better than a school a few blocks from home in terms of facilities and services. It is quite understandable that these parents object to the sacrifices their children are being asked to make. I share their opposition to massive enforced busing to achieve racial balance, because I do not believe it will accomplish its purpose of providing equal educational opportunity.

Also, I appreciate the difficulties faced by local educational officials who find that they must make significant reassignments at the beginning of each school year, that they must constantly be reorganizing and that, in many cases, they must come up with additional sums of money for transportation costs, money which is in scarce supply at this time.

I am aware of the fact that in the past black children were bused past white schools to black ones and that white children were bused past black schools to white ones. That was wrong. But, I do not believe that we can rectify the mistakes of the past by experimenting with the school children of the present. I believe that we must seek to provide excellence in education for all our children. I believe that there are many situations which must be improved, where education needs vast renovations. But, I do not feel that we accomplish much, either for our children or for our nation's future, by pursuing a policy based solely on head counts and ratios.

We refuse to face reality when we refuse to acknowledge the fact that no parent wants a child to be bused far away from home to a school which is no better than a school close to home in terms of facilities, services and educational offerings. We also refuse to face reality if we fail to acknowledge that parents, no matter what their color or economic condition, want the best education possible for their children.

The question then becomes quite simply, "How do we reconcile the desire of a parent for his child to be educated in the neighborhood school with the desire of a parent for his child to receive an education in a school superior to the one closest to his home, a parent who is often economically disadvantaged and of a minority?"

As we have all come to realize, there is no easy answer. Furthermore, the knowledge which we have about busing, racial balance and educational achievement, both cognitive and affective, is at best inconclusive. We have studies on compensatory education, which demonstrate that this approach tends not to succeed. We have the recent reports on the Berkeley experience, where racial balance was undertaken voluntarily, and again find failures.

Professor James Coleman of Johns Hopkins University, in one of the most massive studies, has told us that parental background and the background of the peer group are generally the most influential factors on a child's development. Yet, this does not suggest that racial balancing is necessary. In fact, Dr. Coleman and Dr. Thomas Pettigrew of Harvard University suggested that there is a point at which balancing can produce a "tipping" effect which can be detrimental to educational offerings. Thus, it seems to me premature to determine the future of American education, especially when we are talking about busing, ratios and similar expensive and disruptive procedures, on the little information which we have regarding their effects on educational opportunity.

Consequently, I believe we must look beyond court-imposed solutions. There is no perfect answer, but there are certain principles which should underlie our search for a reasonable and practical solution to the problem of public school desegregation.

First, we must have a single, uniform, nationwide policy on school desegregation, which obliterates the superficial distinction, between *de jacto* and *de jure* segregation. The statistics developed in the Department of Health, Education and Welfare indicate that there is currently more desegregation in the South than in many parts of the North and West. Problems do remain, but they remain in every part of the nation. If it is educationally disadvantageous for a black child to attend an all-black school, then the black child in a Detroit or Boston inner city area is just as deprived educationally as a child in a black rural Southern school. And, it is meaningless to tell one child that his deprivation is wrong because it was *de jure* and another that his is right because it is *de facto*. Educationally—and I hope education is our prime consideration—the result is the same. Thus, our goal should be the provision of a better education for every child, no matter what section of the country he lives in.

Secondly, we must reevaluate the neighborhood school concept as the basic unit for school assignment purposes, especially as far as elementary school children are concerned. It is logical in terms of cost, safety and convenience for a parent to want a child in a school near his home. Many parents—black and white—feel that they have paid for that privilege in the purchase of their homes and the payment of taxes. There is every reason to believe that many parents in the future—again both black and white—will seek the same privilege. This too, is a factor which cannot be ignored. We are told that we cannot change policy because of the desires of people. Frankly, I do not believe the desires of most of our people are based on race and segregation. I believe the large majority of Americans are fair-minded, that they do not want to deprive their fellow citizens of opportunity. But, understandably, parents' first concerns are for their own children—their education, safety and well-being.

We must see that these latter concerns are met or we shall certainly imperil public education. But, we shall also imperil public education if we fail to provide for our educationally deprived. I believe there could be merit in an extensive utilization of a majority-to-minority transfer provision, with the transfers financed by the local or state educational agency. In other words, any child in a school, in which his race was in a majority could transfer to a school in which his race was in a minority, with his transportation costs paid by school authorities. The argument often made against this proposal is that the burden is placed upon the deprived child to rectify the inequities which exist. That is, to an extent, true. The child would, however, have the benefit of the transfer provision and an assured right to education in a desegregated environment. In recent years we have witnessed white flight to the suburbs and to private schools. Perhaps we ought now to ask ourselves how far we can follow white flight with the buses and to what extent we can discourage the enrollment in private schools. Is racial balancing and social engineering to the extent being contemplated in some area, racial balancing and social engineering whose redeeming benefits are questionable, worth the possibility that our public school system may be deprived of even more advantaged students and of the degree of support needed to sustain public education? On the other hand, can we stop in mid-stream or stray backward? In both cases I would hope not.

Thirdly, in addition to reviewing our policy on the neighborhood school and majority-to-minority transfers, it is important to make every effort to remove the inequities which currently exist both within school districts and among them. There are, for example, currently differences in facilities, services offered, libraries, the numbers of specially-trained teachers, to name only a few. We must move once and for all to eliminate these disparities. And in doing so, we should remember that the disparities between urban and suburban school districts are generally exceeded by those between rural and urban/suburban districts.

Finally, it is highly important for us to deal with a situation you discussed in the State of the Union Message: the control of our school systems. The frustrations of our people who find themselves ordered by courts which are not responsible to them is certainly understandable. The seeming inability of elected representatives to act is another. We must take steps and take them immediately to see that local officials, officials responsible to an electorate, control and administer our schools. We have heard this from both the black and white communities. The calls for decentralization and community control of schools have been widespread. Certainly, there are pitfalls in these procedures, pitfalls against which we must guard, but representative government and responsibility and accountability of public servants to those they serve are a significant part of the American heritage.

Thus, local involvement and local control of public schools must be a significant feature of public school policy.

The situation is, of course, complex. The proposals I have discussed are neither inclusive nor perfect. They have been attacked by those on the right and those on the left. This in itself, however, is probably evidence of their redeeming qualities.

In Senate floor speeches of July 20 and August 3, 1970, I tried to outline the conflicting court opinions and governmental actions which were resulting in confusion throughout our land. As a member of the Senate Select Committee on Equal Educational Opportunity, I have participated extensively in hearings on our school problems and have questioned several members of your Administration, including former Attorney General John Mitchell and former head of the Justice Department's Civil Rights Division, Jerris Leonard, regarding the issues which today confront us. Based on this, I introduced in the Senate on August 3, 1970, a bill which I felt sought a rational, moderate approach to our problems. This bill was drafted by Professor Alexander Bickel of the Yale University Law School and Congressman Richardson Preyer of North Carolina. Hearings on this legislation were held before the Senate Education Subcommittee and the Senate Select Committee on Equal Educational Opportunity. The bill was attacked by the NAACP as well as by those in basic disagreement with the *Brown* decision. De-

spite the fact that the bill remained in Committee, there was excellent testimony by school officials from both Norfolk and Richmond, Virginia. I commend this testimony to you.

In my judgment, the decision in the Charlotte-Mecklenburg case, when coupled with that in the Mobile case, negated much of the thrust of the Bickel-Preyer proposals. Consequently, I joined in cosponsoring a Constitutional amendment regarding this as the best available vehicle for provoking a public discussion of the need for a single, uniform, national school desegregation policy that all can understand—a policy that would end the present double standard of hypocrisy which prevails in our nation today.

The unanimity of the Charlotte-Mecklenburg decision suggests that the opinion in that case represents consensus. The uncertainty of that consensus was, however, illustrated by statements made by Chief Justice Burger soon after the decision that appeared at odds with the findings of his own court. Despite the fact that nearly 20 years have passed since *Brown*, the Supreme Court continues to give maximum discretion to district judges and minimum guidance.

In addition to the principles I discussed earlier, which I believe should underlie our search for a solution. I would like to make several specific suggestions. On August 13, 1970, when the Attorney General appeared before the Select Committee on Equal Educational Opportunity, he indicated a hope—a hope which I shared—that the Charlotte-Mecklenberg decision would answer many of the unanswered questions regarding public school desegregation. (Hearings before the Senate Select Committee on Equal Educational Opportunity, August 13, 1970, p. 1912.) Many of the questions were not answered and the Court has thus far avoided setting the *de facto/de jure* matter. Now, in the Richmond case, we have a new enforcement procedure, a procedure for which the Attorney General, also on August 13, 1970, in response to my questions, indicated there was no legal precedent. (Hearings referred to above, p. 1910.) Consequently, I would like to suggest and request that the Department of Justice enter, with amicus curiae briefs, those cases where it would be appropriate and where there is evidence that such action would contribute to the determination of a national school desegregation policy.

As you know, the Fourth Circuit Court of Appeals has granted a stay in the Richmond school case, pending appeal. In my judgment implementation of the order should be stayed until a *final* decision is rendered by the Supreme Court. It seems somewhat contradictory to find the federal government questioning the expansion of municipalities for racial reasons and at the same time ordering consolidation of political subdivisions for racial reasons.

The recommendations above are not intended to imply that Congress should be absolved of responsibility for this issue. In fact, I have stated on a number of occasions that Congress should act to clarify the existing situation, and I am pleased that both the Majority Leader and the Minority Leader of the Senate sought to contribute to the dialogue over possible courses of action during a Senate floor discussion on yesterday. Congress does have a responsibility to give consideration to all measures before it which are designed to bring clarification and rationality to efforts to resolve this pressing domestic problem. That responsibility should not be avoided because this is an election year.

Aside from the compulsory features of the recent decisions which threaten to undermine public education, there are equal rights involved which Americans will not long see abused. Parents black and white in Virginia's major cities might well ask why their private resources should go for bus fares and why their tax monies should go for the purchase of school buses when metropolitan areas throughout much of America are not burdened with this same cost and yet where black children are receiving less opportunity.

I have not always been proud of Virginia's past history with regard to education of minority pupils. I am, however, proud of the restraint most Virginians have displayed despite providing the proving ground for every new approach to a solution to the complex problem of meeting the Constitutional rights of all children to an equal educational opportunity. The traditional respect of Virginians for the law and the common sense of our people has thus far always prevailed over the appeals of demagogues, the militant and the racist. However, it is difficult for people to comply with an interpretation of the law that they neither understand nor believe will achieve its stated purpose.

In view of the fact that several members of your cabinet and staff are involved with the matters discussed in this letter, I am taking the liberty of forwarding copies of this letter to them. I expect to reiterate and elaborate on a number of the principles I have discussed here in the report of the Senate Select Committee on Equal Educational Opportunity, on which I serve. Since you and your advisors are currently contemplating action in the field of school desegregation, I did, however, want to write to you at this time.

Sincerely,

WILLIAM B. SPONG, Jr.

Mr. President, the busing issue cannot be ignored. Hiding behind the smokescreen of cloture will not do, for surely the issue cannot be put out. If Congress fails to deal with it, the matter will only smolder and eventually flare up again to remind us that the fire has not been doused—and those who believed it had, in ignoring this legislation, had only fooled themselves.

Mr. President, I support the cloture petition before the Senate.

Mr. BROCK. Mr. President, over 18 months ago I introduced legislation which would amend the Constitution of the United States to protect our children from being forced out of their neighborhood schools to ride buses, often long distances across town and even across county lines, because of race, creed, or color.

Since that time, thousands and thousands of parents have written me for help, describing sometimes tragic results of such forced busing. It has been established beyond reasonable doubt that the parents of this Nation, regardless of race, creed, or color, do not favor forced busing for racial balance or for any other reason.

Mr. President, earlier in this debate my colleague, the distinguished senior Senator from Massachusetts raised the question of whether our children are in danger when they ride the bus to school. There can be no doubt that the increased bus travel, traffic exposure, and odd transit hours created by busing orders raise the chance of injury to our school age children.

Beyond this, a new hazard has been raised by revelation of the kinds of schoolbuses which are carrying our children. I do not mean to criticize the manufacturers of schoolbuses, who must provide the best kind of protection available but must also be bound by a price factor in meeting the challenge of a low bid.

May I cite only one example of the hazards which have been found to exist. On one sunny October morning in 1967 in Waterloo, Iowa, a schoolbus was hit by a train and four children killed.

The bus appeared to have pulled apart at the seams. This triggered the first alert from the National Transportation Safety Board that the structure of schoolbuses needed to be strengthened. No official action has been taken to date to require stronger construction standards.

The Board has no regulatory powers but gets its power, if any, from publicizing its recommendations. Today, 5 years later—and numerous schoolbus accidents—the National Transportation Safety Board had issued its third and most urgent call for immediate corrective action to strengthen schoolbus bodies.

Meanwhile, children have been cut, maimed, and killed by the sharp edges of bus panels pulled down from inadequate mooring in crashes. Children have fallen through the floors of buses disintegrating in collisions, and trees have penetrated bus walls.

When NTSB first sounded its alarm on schoolbus structures in 1970 after investigating two fatal accidents in Alabama, it noted that in both cases the interior panels of the buses presented "exposed edges because of widely spaced and inadequate fastenings."

The Board reported that far more fasteners are used in commercial buses than in schoolbuses and joints are stronger. The failure of the structural parts to support each other in crashes, the Board warned in its 1970 report, "is an implied threat in future schoolbus crashes."

Recommended is adoption of a standard requiring schoolbus manufacturers to strengthen their vehicles, particularly at the joints.

The NTSB wrote Douglas W. Toms—

This critical weakness of schoolbus bodies must be eliminated as quickly as possible, particularly at the joints.

Agency spokesmen have argued that working on standards for schoolbus bodies had a low priority since so few children are killed on schoolbuses compared to the many thousands killed in other forms of transportation.

Now let's look at the serious financial situation faced by municipalities who have been ordered to bus their children. In Nashville, in October of 1971, it was estimated that there were 49,000 students eligible for transportation under the plan adopted by the court. Of this number 28,000 pupils were to be transferred from their original school zone to a new school zone in order to increase integration. During the prior school year the mileage of the schoolbuses in transporting the schoolchildren was about 3,000,000 miles. Under the new plan this mileage was increased to approximately 6,000,000 miles. There were at that time 211 buses available with an average capacity of 70 children per trip. If all buses were completely occupied, 14,770 children could be transported. In order to handle the children eligible for transportation, all buses must make three round trips daily and for some of the

buses on shorter routes, the daily run includes five trips daily.

In order to comply with the court's order and to meet pupil transportation needs, all reserve buses were put into service. Pupil eligibility for transportation was extended from 1¼ to 1½ miles which means that only children living more than 1½ miles from school are eligible to be transported. The high school day was shortened from 7 to 6 hours; 133 school openings were staggered to begin at 30-minute intervals from 7 a.m. to 10 a.m. The closing period of the schools to let out are at 4 and 4:30 p.m., in the afternoon. Transportation for field trips and special fine arts performances which had heretofore played an important role in the educational opportunities of the pupils was eliminated.

During the period of operation, there have been an average of 12 breakdowns per day. Since all buses are in use, the pupils on the buses having mechanical trouble must wait until another bus has delivered its children and returns for them. The maintenance shops have only 4 days to service and repair the 211 large buses and the 60 small special educational buses which have a capacity of some 12 to 18 students and are used exclusively for special education; that is, for the transportation of the handicapped and/or retarded. Prior to the adoption of the present court order, the maintenance department had 4½ hours in the middle of each day to service the buses. Only 2 hours are now available because buses are on the road from 6 a.m. to 10:30 a.m. transporting students to the staggered openings of the schools and from 12:30 p.m. to 6 p.m. returning students from the staggered closings of the schools to the various pickup points. It is anticipated that the frequency of breakdowns will increase as a result of the extensive use of the equipment, its age, and the lack of detailed maintenance.

Nashville reverts to central standard time the last of October. During the late fall and winter months, darkness comes earlier. The Weather Bureau has informed the school board that on December 1, 1971, a typical winter day, the sunrise came at 6:39 a.m., central standard time. This assumes good weather. In bad weather, darkness lasts longer in the morning and comes earlier in the evening.

Early and late starting times of schools create safety hazards for the students, many of whom during the winter will be leaving home or returning to their homes after dark. Buses serving schools opening at 7 a.m. begin their routes at 6:05 a.m., which is 34 minutes before sunrise on December 1. Children must walk as much as a mile to the designated pickup points. Consequently, the children picked up at the beginning of the route may be on the street as much as 1 hour before sunrise.

It should be remembered in this connection that children who live within a mile and a half of the school to which they are assigned are not furnished transportation and many of these children will begin their walk to their designated school in darkness and some of them will return home from school in darkness and some of them will return home from school walking in the dark. Sundown on December 1, 1971 is at 4:32 p.m., with darkness following immediately. Elementary schoolchildren on late shifts who live 1½ miles or less from their their schools which let out at 4:30 will be walking home in darkness and in many instances without street lights or sidewalks.

The schoolbuses that serve the 10 schools that open at 7 a.m. begin their routes at 6:05 a.m. or 34 minutes before sunrise. The children walk to designated pickup points. Of the 10 schools opening at 7 a.m., there are neither street lights nor sidewalks in the immediate vicinity of seven schools. There are street lights but no sidewalks in the immediate vicinity of one school. There are 28 elementary schools which open at 10 a.m. and close at 4:30 p.m., 2 minutes before sundown on December 1. There are 25 schools which open at 9:30 a.m. and close at 4:00 p.m.

Many elementary school children eligible for transportation who attend the schools closing at 4:30 will be returned to their pickup points about 1 hour and 15 minutes after sunset. Of these 53 schools, 16 have neither street lights nor sidewalks in the immediate vicinity. Five have no sidewalks. These children, both walkers and riders, are placed in a hazardous position when returning home from school or from the pickup point.

The average time of a student on a bus transported across town to school is 45 minutes one way. The longest period of time required for crosstown transportation is 1½ hours each way. Twenty-eight thousand pupils are transported from the suburbs to the inner city or vice versa each day. There are approximately 400 round trips across town by the 211 buses each day.

In many instances, the bus routes follow the interstate highway because of the saving of time involved by use of these highways. The hazards of transportation are increased, however, by use of the Interstate Highway System. This is because when there is a breakdown on the interstate, the dangers to the students being transported are much greater than if the breakdown had occurred off the Interstate Highway System. The use of the Interstate Highway System is not desirable and the Metropolitan School System of Nashville would prefer to route school buses another way. Because of the lack of buses and the necessity of compliance, the metropolitan school system has no choice but to use the Interstate Highway System and reduce the time required for transportation so that buses can make more trips and haul more students and thus comply with the court's decree. Of the 211 buses in service, 18 are new. Only 18 new buses could be acquired for financial reasons—this was in 1971.

The age of the buses used to transport the children is as follows:

September 1972

	Buses
1971 models	18
1970 models	15
1969 models	10
1968 models	10
1967 models	67
1966 models	25
1965 models	14
1964 models	12
1963 models	5
1962 models	13
1961 models	5
1959 models	2
1958 models	8
1957 models	3

Nashville has now been ordered to buy 30 new buses of 84-passenger capacity which would carry 2,500 additional children. They could not find buses meeting the specifications so they bought 20 buses of 66-passenger capacity new. They leased 15 buses having a capacity of 72 passengers and ordered 15 having 84-passenger capacity for delivery in 6 months. The lease on the used buses expires in 6 months. The cost—$625,000.

The school board income is based on estimated amount of sales tax and property tax receipts. The operating budget contained no funds for the purchase of schoolbuses. Therefore, unless the estimated receipts are wrong, then the school board finds itself $625,000 in the red.

We now see that not only are our children suffering abuse under forced busing, but this abuse has been extended to the taxpayers, their parents, and officials of government as well.

As stated before under the plan for Nashville, it is necessary for the buses to travel approximately 6,000,000 miles per year. Of this mileage, the 211 large buses travel a little more than 5,000,000 miles per year or an average of 140 miles per day. The remaining mileage is accounted for by the small special buses transporting the handicapped and/or retarded children.

This transportation plan was approved by the board in anticipiation of the availability of Federal funds to purchase additional equipment and defray additional operating costs. The anticipated funds have not been forthcoming, and it is not anticipated that any additional funds can be made available for transportation of students from Federal sources since this is expressly forbidden as far back as the 1964 Civil Rights Act. The estimated cost of maintaining the busing schedule in Nashville for the 1970–71 year were as follows:

Eighty-seven 84-passenger buses at $16,300	$1,418,100
Maintenance equipment	177,000
Operation costs for 1 year	700,000
Maintenance facilities and land	1,350,000
Installation of safety loading zones at 42 schools	56,000
Total	3,701,100

(NOTE.—Figures on Nashville current school bus order from D. L. Lansden, Nashville attorney at law.)

The school board is fiscally dependent in that its budgets must be approved by the metropolitan city council. In approving the budget of the school board on June 30, 1971, council members demanded assurance that no funds included in the budget would be used to transport pupils to establish a racial balance. The 1971–72 budget did provide for the purchase of 18 large buses to replace obsolete equipment to provide transportation for students to the new, comprehensive Mc-

Gavock High School. Regardless of whether additional funds are or are not obtained or whether new buses can or cannot be acquired, inadequate transportation facilities and equipment will continue to require extended scheduling of school openings and closings and extended distances nonbused children must walk to and from school. In addition, the school board will continue to operate without a reserve fleet of buses to care for emergency situations. The result is that there will be serious interruptions of transportation service during the cold winter months and these interruptions will constitute a hazard to the health of the students as well as a safety hazard.

Let me quote from a letter I have received from a mother in Nashville who has had personal experience with this situation:

You know I just learned a terrible lesson today . . . people don't really care about the sufferings and affairs of others . . . not until they are a part of their lives. Coming from a little town in Pennsylvania and having gone to integrated schools all my life . . . never knowing there were any other kind; I remember I used to condemn the mothers lying down in front of school busses and Governor Wallace standing in the front doors of the schools, etc. But this morning it was different and you know why? Because my son, Scott, who I had protected from the pornographic literature at age twelve is now fourteen and bussing has just come to our home!

We recently moved here from Chattanooga where we lived in Tiftonia, a portion of the city where there is no busing—yet. Anyway, when we arrived I called the Zoning Commission and spoke at that time with a Mr. Detchon, a very nice gentleman who recommended that I allow Scott to attend the public schools and not register him in any of the newly formed Christian schools. He advised me that Cameron School, a ninth grade school, was one of the finest schools and that it could give Scott high scholastic advantages, fine sports programs, etc. Following his advice we went to register as a new student on August 29, 1972. At that time I was advised that all the biology classes and all the Industrial Arts (woodship) classes were full and he would not be able to attend either. They did offer General Science and plain art. But what I really want to tell you is that at 5:00 this morning I had both my children up. At 6:15 sharp they were at the bus stop. At 8:30 Scott and two other children were at my door—you guessed it—no bus!

After I took the children to school I called the Zoning Commission to speak with Mr. Detchon who just happened to be on vacation (that is exactly where I would be this morning if I were in his shoes). I then called the Transportation Department who were nice to explain that with 90,000 kids starting school the first day there were bound to be a few mixups. Now I want to tell you I have just joined the forces of irate parents and intend to vote for the man that will some day straighten out this bussing issue.

As this body meets, the Memphis school system, the 10th largest in the United States, has been ordered to bus an additional 13,000 children in January of this year at an estimated cost of $499,000 a year. In terms of disruption of children's education, their personal lives and even their physical well-being, the cost of this program is incalculable. Let us move now to stop this sadistic program of totalitarian regimentation of our school age children, dividing them by race, and producing more bitterness, bigotry and disillusionment daily.

Mr. McCLELLAN. Mr. President, I should like to make a very brief statement. Although the pending antibusing bill is not as good, nor will it be as effective if enacted, as it should be, I do strongly favor its enactment.

Heretofore I have never voted for cloture for the simple reason that I believe a democracy functions best when there is free and unlimited debate. And this is especially true in the U.S. Senate, which has long been regarded as the greatest deliberative body in the entire world. However, this legislative cloture "tool" has become a fact of life—a reality—that we in the Senate must live with. Many times during the 30 years I have served in this body it has been used to force a vote on bills that I opposed. I have, therefore, concluded that in some instances where I strongly favor legislation that is being blocked by a filibuster, I should use this same "tool" to bring about a vote on measures that I favor. This is particularly true now, since we are in the closing days of the session. Accordingly, I am today voting for cloture.

CLOTURE MOTION

The PRESIDING OFFICER (Mrs. EDWARDS). The hour of 12 noon 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 assistant 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 education opportunities.

1. Robert Griffin.
2. Clifford P. Hansen.
3. Paul J. Fannin.
4. Edward J. Gurney.
5. Bill Brock.
6. Norris Cotton.
7. Marlow W. Cook.
8. William Proxmire.
9. David H. Gambrell.
10. Jennings Randolph.
11. Strom Thurmond.
12. James Buckley.
13. Lawton Chiles.
14. Herman E. Talmadge.
15. B. Everett Jordan.
16. John Tower.
17. Howard Baker.
18. Robert Dole.
19. Wallace F. Bennett.
20. G. D. Aiken.

CALL OF THE ROLL

The PRESIDING OFFICER (Mrs. EDWARDS). Under rule XXII, the Chair directs the clerk to call the roll to ascertain the presence of a quorum.

The second assistant legislative clerk called the roll and the following Senators answered to their names:

[No. 540 Leg.]

Aiken	Boggs	Byrd, Robert C.
Allen	Buckley	Cooper
Baker	Byrd, Harry F., Jr.	Cotton
Beall		Cranston
Dole	Harris	Pastore
Dominick	Hart	Ribicoff
Eagleton	Hruska	Schweiker
Eastland	Hughes	Sparkman
Edwards	Javits	Spong
Ervin	Jordan, N.C.	Stafford
Fulbright	Jordan, Idaho	Stennis
Gambrell	Kennedy	Talmadge
Goldwater	Mansfield	Tunney
Griffin	Mathias	Weicker
Gurney	Mondale	Young
Hansen	Montoya	

The PRESIDING OFFICER (Mr. TUNNEY). A quorum is not present.

Mr. ROBERT C. BYRD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER (Mr. TUNNEY). The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Anderson	Gravel	Percy
Bayh	Hartke	Proxmire
Bellmon	Hatfield	Randolph
Bennett	Hollings	Roth
Bentsen	Humphrey	Saxbe
Bible	Inouye	Scott
Brock	Jackson	Smith
Brooke	Long	Stevens
Burdick	Magnuson	Symington
Cannon	McClellan	Taft
Case	Moss	Thurmond
Chiles	Muskie	Tower
Church	Nelson	Williams
Fannin	Packwood	
Fong	Pearson	

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. McGOVERN), the Senator from New Hampshire, (Mr. McINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Rhode Island (Mr. PELL), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

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

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr. CURTIS), and the Senator from Iowa (Mr. MILLER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The PRESIDING OFFICER. A quorum is present.

VOTE

The PRESIDING OFFICER. 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 assistant legislative clerk called the roll.

Mr. JORDAN of Idaho (when his name was called). On this vote I have a pair with the Senator from Colorado (Mr. ALLOTT) and the Senator from Nebraska (Mr. CURTIS). If they were present and

voting, they would vote "yea." If I were permitted to vote, I would vote "nay." I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Illinois (Mr. STEVENSON), the Senator from Rhode Island (Mr. PELL), the Senator from Montana (Mr. METCALF), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

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

I further announce that, if present and voting, the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Illinois (Mr. STEVENSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr. CURTIS), and the Senator from Iowa (Mr. MILLER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Iowa (Mr. MILLER) would vote "nay."

The pair of the Senator from Colorado (Mr. ALLOTT) and that of the Senator from Nebraska (Mr. CURTIS) has been previously announced.

The yeas and nays resulted—yeas 49, nays 39, as follows:

[No. 541 Leg.]

YEAS—49

Aiken	Dole	Mathias
Allen	Dominick	McClellan
Anderson	Eastland	Packwood
Baker	Edwards	Proxmire
Beall	Ervin	Randolph
Bellmon	Fannin	Roth
Bennett	Fong	Saxbe
Bentsen	Gambrell	Schweiker
Bible	Goldwater	Smith
Brock	Griffin	Sparkman
Buckley	Gurney	Spong
Byrd, Harry F., Jr.	Hansen	Stennis
	Hollings	Talmadge
Byrd, Robert C.	Hruska	Thurmond
Cannon	Jackson	Tower
Chiles	Jordan, N.C.	Young
Cotton	Long	

NAYS—39

Bayh	Hartke	Nelson
Boggs	Hatfield	Pastore
Brooke	Hughes	Pearson
Burdick	Humphrey	Percy
Case	Inouye	Ribicoff
Church	Javits	Scott
Cooper	Kennedy	Stafford
Cranston	Magnuson	Stevens
Eagleton	Mansfield	Symington
Fulbright	Mondale	Taft
Gravel	Montoya	Tunney
Harris	Moss	Weicker
Hart	Muskie	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mr. Jordan of Idaho, against.

NOT VOTING—11

Allott	McGovern	Mundt
Cook	McIntyre	Pell
Curtis	Metcalf	Stevenson
McGee	Miller	

The PRESIDING OFFICER. On this vote there are 49 yeas and 39 nays. Two-thirds of the Senators present and voting not having voted in the affirmative, the cloture motion is not agreed to.

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 on October 9, 1972, the President had approved and signed the following acts:

S. 166. An act to designate the Stratified Primitive Area as a part of the Washakie Wilderness, heretofore known as the South Absaroka Wilderness, Shoshone National Forest, in the State of Wyoming, and for other purposes;

S. 345. An act to authorize the sale and exchange of certain lands on the Coeur d'Alene Indian Reservation, and for other purposes;

S. 722. An act to declare that certain federally owned lands shall be held by the United States in trust for the Stockbridge Munsee Indian Community, Wisconsin;

S. 2441. An act to authorize the Secretary of the Interior to conduct a study to determine the feasibility and desirability of protecting and preserving the Great Dismal Swamp and the Dismal Swamp Canal; and

S. 3129. An act to authorize the establishment of the Longfellow National Historic Site in Cambridge, Massachusetts, and for other purposes.

REPORT ON THE INTERNATIONAL EDUCATIONAL AND CULTURAL EXCHANGE PROGRAM

The PRESIDING OFFICER (Mr. TUNNEY) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Foreign Relations:

To the Congress of the United States:

I transmit herewith the Annual Report on the International Educational and Cultural Exchange Program conducted during Fiscal Year 1971 by the Department of State under the Mutual Educational and Cultural Exchange Act of 1961 (Public Law 87-256, the Fulbright-Hays Act).

Mutual understanding between our own people and the people of other countries is an essential ingredient of the peace we seek. The exchange program is directed at increasing world understanding at the most basic, people-to-people level. It likewise aims to develop and strengthen enduring unofficial relationships between institutions, organizations, private businesses and professional societies here and abroad.

One measure of this program's impact is that, in 25 years, more than 142,000 people have taken part in exchanges, including over 36,000 Americans. During 1971 more than 5,000 scholars and leaders in various fields took part in exchange visits.

In this manner, the exchange program has created in the United States and abroad reservoirs of mutual understanding and empathy among a cross-section of leaders in many professions. These vital reservoirs are drawn upon more and more frequently as the number of people who influence foreign policy decisions increases both in this country and abroad.

This report presents a brief summary of the exchange program over its first 25 years. Limited at first to scholarly exchanges, the program now includes observation-study visits by outstanding foreign leaders and professionals. This aspect of the program has progressed to the point that the chief of state or prime minister of one out of every 10 countries of the world has visited the United States before assuming office. The present-day program also encompasses presentation abroad of some of the country's top performing artists, with special emphasis on reaching important areas ordinarily missed by regular commercial performing arts tours, such as the Soviet Union and Eastern Europe.

The program also includes exchanges of outstanding young people with leadership potential, as well as special projects designed to enrich the experience of foreign students coming to the United States under private sponsorship, many of whom return home to rise to positions of leadership.

In particular, this report pays tribute to the hundreds of private agencies, business corporations, and other organizations as well as to the thousands of individuals who, from the very beginning, have voluntarily contributed funds, time and effort to make this exchange program not only truly representative of the people of the United States, but a unique example of citizens' diplomacy in action.

I commend this report to the thoughtful attention of the Congress.

RICHARD NIXON.

THE WHITE HOUSE, *October 11, 1972.*

(The routine morning business transacted during the day is printed at this point, as follows:)

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED ADJUSTMENT OF A REPROGRAMING ACTION IN NATIONAL AND SPECIAL RESEARCH PROGRAMS

A letter from the Acting Director, National Science Foundation, proposing, pursuant to law, an adjustment of up to $32,900,000 into "Natonal and Special Research Programs" (with accompanying papers); to the Committee on Appropriations.

REPORT ON REDUCING THE NEEDS FOR MILITARY MEDICAL PERSONNEL IN THE ARMED FORCES

A letter from the Secretary of Defense and the Secretary of Health, Education and Welfare, transmitting, pursuant to law, a report on reducing the needs for military medical personnel in the Armed Forces, dated October, 1972 (with an accompanying report); to the Committee on Armed Services.

REPORT UNDER FLAMMABLE FABRICS ACT

A letter from the Secretary of Commerce, transmitting, pursuant to law, a report under the Flammable Fabrics Act, for the calendar year 1971 (with an accompanying report); to the Committee on Commerce.

PUBLICATION OF FEDERAL POWER COMMISSION

A letter from the Chairman, Federal Power Commission, transmitting, for the informa-

tion of the Senate, a publication entitled "All Electric Homes in the United States, 1971" (with an accompanying document); to the Committee on Commerce.

LIST OF REPORTS OF THE GENERAL ACCOUNTING OFFICE

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports of the General Accounting Office, for the month of September, 1972 (with an accompanying list); to the Committee on Government Operations.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Examination of Financial Statements of the National Flood Insurance Program, Fiscal Year 1971", Federal Insurance Administration, Department of Housing and Urban Development, dated October 11, 1972 (with an accompanying report); to the Committee on Government Operations.

PROSPECTUSES PROPOSING ALTERATION OF CERTAIN PUBLIC BUILDINGS

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, prospectuses proposing alteration of public buildings at Denver, Colorado, and Chicago, Illinois (with accompanying papers); to the Committee on Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HART, from the Committee on the Judiciary, without amendment:

H.R. 14128. An act for the relief of Jorge Ortuzar-Varas and Maria Pabla de Ortuzar (Rept. No. 92-1288).

By Mr. ROBERT C. BYRD, from the Committee on the Judiciary, without amendment:

S. 3326. A bill for the relief of the Appalachian Regional Hospitals, Incorporated (Rept. 92-1289).

OLDER AMERICANS ACT—REPORT OF A COMMITTEE (S. REPT. NO. 92-1287)

Mr. EAGLETON, from the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15657) to strengthen and improve the Older Americans Act of 1965, and for other purposes, submitted a report thereon, which was ordered to be printed.

CHANGE OF REFERENCE

S. 4075

Mr. EAGLETON. Mr. President, I ask unanimous consent that the Committee on the District of Columbia be discharged from the further consideration of S. 4075, a bill to incorporate in the District of Columbia the American Ex-Prisoners of War, and that the bill be referred to the Committee on the Judiciary.

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

ORDER FOR STAR PRINT OF SENATE REPORT NO. 92-1169

Mr. EASTLAND. Mr. President, I ask unanimous consent that a star print be made of Senate Report No. 92-1169.

The original print, composed of two pages, was hopelessly garbled requiring a star print to correct the errors, dropped sentences and transpositions.

Report No. 92-1169 was on a simple Senate resolution referring a claim to the Chief Commissioner of the Court of Claims for a report back to the Senate under existing statutes. The Chief Commissioner has requested this star print as the Senate report is frequently cited in the proceedings before the court. No more than 100 copies are needed.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. MATHIAS:

S. 4080. A bill to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce. Referred to the Committee on Finance.

By Mr. MATHIAS (for himself, Mr. BEALL, Mr. HATFIELD, and Mr. STENNIS):

S. 4081. A bill to provide for the expansion of the Antietam National Battlefield in the State of Maryland, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. MATHIAS (for himself, Mr. BAYH, and Mr. HUMPHREY):

S. 4082. A bill to amend the Voting Rights Act Amendments of 1970 with respect to citizens residing outside the United States. Referred to the Committee on Rules and Administration.

By Mr. BEALL:

S. 4083. A bill for the relief of Prosy M. Florento. Referred to the Committee on the Judiciary.

By Mr. HUMPHREY:

S. 4084. A bill to provide for project grants for the development and demonstration of programs for rehabilitative and habilitative care of the aged, blind and disabled patients of long-term health care facilities. Referred to the Committee on Labor and Public Welfare.

By Mr. MATHIAS:

S. 4085. A bill for the relief of Maria Amelia Beatriz Caner Puyo. Referred to the Committtee on the Judiciary.

By Mr. HOLLINGS:

S. 4086. A bill to amend the Ports and Waterways Safety Act of 1972 to provide for a study of the need for regulation of the construction and operation of artificial structures for offshore port, terminal, or powerplant facilities. Referred to the Committee on Commerce.

By Mr. BURDICK:

S. 4087. A bill to establish a program for the indemnification of crop losses sustained by farmers as the result of damage caused by migratory waterfowl.

By Mr. GRAVEL:

S. 4088. A bill for the relief of Mrs. Elsie Eduque Tabora. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MATHIAS:

S. 4080. A bill to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce. Referred to the Committee on Finance.

THE INTERSTATE TAXATION ACT

Mr. MATHIAS. Mr. President, on September 21, 1972, I informed the Senate that I intended to introduce before adjournment a new bill designed to eliminate the most troublesome problems affecting the area of State and local taxation of interstate commerce.

This subject has been one of my prime concerns since I began my service in the House of Representatives in 1961.

In both the 90th and 91st Congresses, the House passed by overwhelming majorities State taxation legislation, which I supported and have introduced in the Senate in 1969 and again in 1971. This legislation has also been cosponsored by a number of Senators, but to date there has been no action whatsoever by the Committee on Finance, not even a single day of hearings, despite repeated assurances by the distinguished chairman of the committee that such hearings would be held in both the 91st and 92d Congresses.

Mr. President, one of the alleged major obstacles to Senate committee action on interstate taxation legislation is what has been described as lack of agreement or a division of opinion in the business community.

The bill I am introducing today commands the support of a very major portion of the business and commercial community.

It has been drafted over a period of months with the help of expert tax technicians drawn from the National Association of Manufacturers, Council of State Chambers of Commerce, the National Association of Wholesalers-Distributors, and other organizations. Further, it has been reviewed by dozens of single product or service business associations and also has their endorsement.

Mr. President, neither I nor those who helped to draft the bill claim that it is absolutely perfect, but one thing of which I am convinced is that it represents very major concessions to the States and localilities which have opposed other business-supported versions of this legislation, such as my earlier bill, S. 317. I am hopeful that a significant number of State tax administrators will give serious consideration to my new bill and be equally willing to make concessions to the business viewpoint so that we can enact this vitally needed legislation as early as possible in the 93d Congress.

I realize that at this late stage of the 92d Congress, public hearings before the Committee on Finance will not be held, but I urge the distinguished chairman of the committee to schedule such hearings as early as possible in 1973 before the committee sets up its schedule which would like result in the issue of State taxation of interstate commerce again bringing up the rear.

I urge all those who would be affected by this legislation to give it serious study between now and the time the 93d Congress convenes. I will be happy to have their views looking toward reintroduction of such legislation next year.

Mr. President, I ask unanimous consent that a copy and an explanation of my bill and a comparison of it and the major bills on the subject of State taxa-

tion of interstate commerce introduced in the 92d Congress be printed in the RECORD as part of my remarks.

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

S. 4080

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

TITLE I—JURISDICTION TO TAX

SEC. 101. UNIFORM JURISDICTIONAL STANDARD.

No State or political subdivision thereof shall have power to—

(1) to impose a net income tax or a capital stock tax on a corporation other than an excluded corporation unless the corporation has a business location in the State or political subdivision during the taxable year;

(2) to impose a gross receipts tax with respect to a sale of tangible personal property unless the seller has a business location in the State or political subdivision; or

(3) to require a person to collect and remit a sales or use tax with respect to an interstate sale of tangible personal property unless the person (A) has a business location in the State or political subdivision; or (B) regularly makes household deliveries in the State or political subdivision other than by common carrier or United States Postal Service; or (C) regularly engages in the State or political subdivision in solicitation of orders for the sale of tangible personal property by means of salesmen, solicitors, or representatives (unless such solicitation of orders is carried on solely by direct mail or advertising by means of printed periodicals, radio, or television); provided that no State or political subdivision shall have power to require a seller without a business location in the State to collect or pay a sales or use tax when such seller has obtained in writing the buyer's registration number in accordance with Section 304.

A State or political subdivision shall have power to impose a corporate net income tax or capital stock tax, or a gross receipts tax with respect to a sale or tangible personal property or, to require seller collection of a sales or use tax with respect to an interstate sale of tangible personal property, subject to the limitations of Section 306, if it is not denied the power to do so under this or other Federal Statute.

TITLE II—MAXIMUM INCOME OR CAPITAL ATTRIBUTABLE TO TAXING JURISDICTION

SEC. 201. OPTIONAL THREE-FACTOR FORMULA.

A State or a political subdivision thereof may not impose on a corporation with a business location in more than one State, other than an excluded corporation, a net income tax (or capital stock tax) measured by an amount of net income (or capital) in excess of the amount determined by multiplying the corporation's base by an apportionment fraction which is the average of the corporation's property, payroll and sales factors for the State for the taxable year plus, in the case of a tax measured by income, the amount of income allocable to the state for the taxable year. For this purpose the base to which the apportionment fraction is applied shall be the corporation's apportionable income as defined in this Act for that taxable year (or its entire capital, reduced by investments in and advancements to affiliated corporations, as determined under State law for the valuation date at or after the close of that taxable year). No State shall, by reason of not including dividends or foreign source income in apportionable income, make any offsetting adjustment of an otherwise allowable deduction.

SEC. 202. PROPERTY FACTOR.

(a) IN GENERAL.—A corporation's property factor for any State is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned and used or rented and used in that State and the denominator of which is the average value of all the corporation's real and tangible personal property owned and used or rented and used during the taxable year and located within the United States.

(b) STANDARDS FOR VALUING PROPERTY IN PROPERTY FACTOR.—

(1) OWNED PROPERTY.—Property owned by the corporation shall be valued at its original cost.

(2) RENTED PROPERTY.—Property rented to the corporation shall be valued at eight times the net rents payable by the corporation during the taxable year. Net rent is the gross rent payable by the corporation less rent received by the corporation from subrentals.

(c) AVERAGING OF PROPERTY VALUES.—The average value of the corporation's property shall be determined by averaging values at the beginning and ending of the taxable year; except that values shall be averaged on a semiannual, quarterly, or monthly basis if reasonably required to reflect properly the location of the corporation's property during the taxable year.

SEC. 203. PAYROLL FACTOR.

(a) IN GENERAL.—A corporation's payroll factor for any State is a fraction, the numerator of which is the amount of wages paid by the corporation to employees located in that State and the denominator of which is the total amount of wages paid by the corporation to all employees located in the United States during the tax period.

(b) PAYROLL INCLUDED.—The corporation's payroll factor shall include all wages paid by the corporation during the taxable year to its employees, except that there shall be excluded from the factor any amount of wages paid to a retired employee.

(c) DEFINITION OF WAGES.—The term "wages" means wages as defined for purposes of Federal income tax withholding in section 3401(a) of the Internal Revenue Code of 1954, but without regard to paragraph (2) thereof.

SEC. 204. SALES FACTOR.

(a) IN GENERAL.—A corporation's sales factor for any State is a fraction, the numerator of which is the total sales of the taxpayer in the State during the taxable year and the denominator of which is the total sales of the taxpayer within the United States during the tax period.

(b) SALES INCLUDED.—

(1) Sales of tangible personal property are in the State or political subdivision if such property is received in the State or political subdivision by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in the State, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in the State and direct delivery outside the State to a person or firm designated by a purchaser does not constitute delivery to the purchaser in the State, regardless of where title passes or other conditions of sale.

(2) Sales, other than sales of tangible personal property, are in the State if—

(A) the income-producing activity is performed in that State, or

(B) the income-producing activity is performed both in and outside that State and a greater proportion of the income-producing activity is performed in that State than in any other State, based on costs of performance.

SEC. 205. ZERO DENOMINATORS.

If the denominator of any factor is zero, then the other factors shall be used as the apportionment fraction for each State and political subdivision. If the denominators of all factors are zero, then the apportionment fraction for the State where the corporation has its business location shall be 100 percent.

SEC. 206. CAPITAL ACCOUNT TAXES ON DOMESTIC CORPORATIONS.

The State in which a corporation is incorporated may impose a capital account tax on that corporation without division of capital, notwithstanding the jurisdictional standard and limitation on attribution otherwise imposed by this Act.

SEC. 207. LOCAL TAXES.

The maximum percentage of net income (or capital) of a corporation attributable to a political subdivision for tax purposes shall be determined under this title in the same manner as though the political subdivision were a State; except that the denominators of the corporation's property, payroll and sales factors shall be the denominators applicable to all States and political subdivisions. For this purpose the numerators of the corporation's property, payroll and sales factors shall be determined by treating every reference to location in a State as a reference to location in the political subdivision.

SEC. 208. APPORTIONABLE INCOME.

(a) APPORTIONABLE INCOME.—Apportionable income means taxable income as determined under State law, except (1) dividends, and (2) income from sources without the United States as defined by the Internal Revenue Code of 1954, as amended.

(b) ALTERNATIVE APPORTIONMENT ELECTION.—A taxpayer may elect to include in apportionable income gains, profits, and income derived from the sale of personal property without the United States.

(c) ADJUSTMENT OF APPORTIONMENT FACTORS.—

(1) If a taxpayer makes the election provided in subsection (b) of this section, the denominators of the factors described in Sections 202 through 204 of this Act must be adjusted to include the worldwide property, payroll and sales of the Corporation attributable to the sale of personal property.

(2) To the extent apportionable income as defined in this section includes income derived from the sales of tangible personal property, the ultimate destination of which is outside the United States, the denominators of the factors described in Sections 202 through 204 of this Act must be adjusted to include payrolls, sales, and property attributable to such sales.

SEC. 209. ALLOCABLE INCOME—DIVIDENDS.

Dividends received from Corporations in which the taxpayer owns less than 50 percent of the voting stock other than dividends which constitute income from sources outside the United States, are allocable to the State of commercial domicile of such taxpayer. Dividends which constitute income from sources without the United States as defined by the Internal Revenue Code of 1954, as amended, and dividends received from Corporations in which the taxpayer owns 50 percent or more of the voting stock shall not be allocable to any State.

SEC. 210. COMBINED REPORTING AND CONSOLIDATED RETURNS.

(a) COMBINED REPORTING.—Upon establishing that a taxpayer is engaged in non-arm's-length transactions, as defined in Sec. 507, which cause a material distortion of income apportioned to the State the State may re-

quire the apportioned income of such taxpayer to be determined by reference to the combined apportionable income of all parties to the non-arm's-length transactions except as provided in subsection (c) hereof. A taxpayer that is a member of an affiliated group shall be permitted to determine its income to be apportioned to any State by reference to the combined apportionable income if necessary to clearly reflect the taxpayer's income properly apportionable to the State. In no event shall this section be construed to alter the effect of the provisions of this Act relating to allocable income. For purposes of this Act, combined apportionable income is the sum the apportionable income of all corporations combined with all intercorporate transactions eliminated.

(b) CONSOLIDATED RETURNS.—In the case of two or more affiliated corporations, each of which is subject to a State's taxing jurisdiction as provided herein, such corporations may elect, for purposes of determining net income tax liability to such State, the filing of a return of one entity with all intercorporate transaction eliminated.

(c) ADJUSTMENT OF INCOME.—A State or political subdivision thereof may not require a corporation with a business location in the State or political subdivision to combine or consolidate, for the purpose of determining or measuring any tax, its gross receipts, income, capital or net worth with the gross receipts, income, capital or net worth of the following:

(1) A corporation which is incorporated outside the United States, or

(2) any corporation, 50% or more of the taxable income of which is excludable under Section 208(a) of this Act.

However, a State or political subdivision may, upon a specific finding, adjust the income of a corporation to correct any transaction with any other party consummated in the manner of a non-arm's-length transaction.

TITLE III—SALES AND USE TAXES

SEC. 301. REDUCTION OF MULTIPLE TAXATION.

(a) LOCATION OF SALES.—A State or political subdivision thereof may impose a sales or use tax or require a seller to collect a sales or use tax with respect to an interstate sale of tangible personal property only if the destination of the sale is—

(1) in that State, or

(2) in a contiguous State or political subdivision of a contiguous State for which the tax is required to be collected under reciprocal collection agreements as authorized under section 307.

(b) CREDIT FOR PRIOR TAXES.—The amount of any use tax imposed with respect to tangible personal property shall be reduced by the amount of any sales or use tax previously incurred and paid by a person with respect to the property on account of liability to another State or political subdivision thereof.

(c) REFUND.—A person who pays a use tax imposed with respect to tangible personal property shall be entitled to a refund from the State or political subdivision thereof imposing the tax, up to the amount of the tax so paid, for any sales or use tax subsequently paid with respect to the same property on account of prior liability to another State or political subdivision thereof. For purposes of this subsection, the person seeking the refund from a State or political subdivision imposing the tax shall apply for the refund within one year from the date of payment of the sales or use tax to such other State or political subdivision.

(d) LIMITATION ON CREDIT FOR PRIOR TAXES.—A credit or refund otherwise permitted under subsections (b) and (c) shall not be allowed with respect to taxes which are measured by periodic payments made under a lease to the extent that the taxes imposed by the other State or political subdivision thereof were also measured by periodic payments made under a lease for a period prior to the possession, storage, use, or other consumption of the property in the State or political subdivision thereof imposing the tax.

(e) VEHICLES AND MOTOR FUELS.—

(1) VEHICLES.—Nothing in subsection (a) shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to vehicles that are registered in the State.

(2) FUELS.—Nothing in this section shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to motor fuels consumed in the State.

SEC. 302. EXEMPTIONS FOR HOUSEHOLD GOODS, INCLUDING VEHICLES, IN THE CASE OF PERSONS WHO ESTABLISH RESIDENCE.

No State or political subdivision thereof may impose a sales tax, use tax, or other nonrecurring tax measured by cost or value with respect to household goods, including motor vehicles, brought into the State by a person who establishes residence in that State if the goods were acquired and used by that person ninety days or more before use of the property in the State in which he establishes such residence.

SEC. 303. TREATMENT OF TRANSPORTATION CHARGES WITH RESPECT TO INTERSTATE SALES.

Where the freight charges or other charges for transporting tangible personal property from the seller or supplier directly to the purchaser incidental to an interstate sale are separately stated in writing by the seller to the purchaser, to the extent that such charges do not exceed a reasonable charge for transportation by facilities of the seller or the charge for the transportation by the carrier when the transportation is by other than the seller's facilities, no State or political subdivision may include such charges in the measure of a sales or use tax imposed with respect to the sale or use of the property.

SEC. 304. REGISTRATION PROCEDURE.

A person with a business location in a State and purchasing goods in interstate commerce must obtain a registration number from that State. Persons without a business location in the State may rely upon such registration, as evidenced by receiving the registration number from the buyer, in writing, as conclusive authority for not charging and collecting a sales or use tax.

SEC. 305. LIABILITY OF SELLERS ON EXEMPT SALES.

No seller shall be liable for the collection or payment of a sales or use tax with respect to an interstate sale of tangible personal property if the purchaser of such property furnishes or has furnished to the seller a certificate or other written form of evidence indicating the basis for exemption, or the reason the seller is not required to pay or collect the tax. Any such certificate or writing shall give the name and address of the purchaser, his registration number when required to be registered in accordance with Section 101, and shall be signed by the purchaser or his representative.

SEC. 306. LOCAL SALES AND USE TAXES.

(a) LIMITATION OF SELLER COLLECTION.—Notwithstanding the provisions of Section 101(3)(C), no seller shall be required by a State or political subdivision thereof—

(1) to collect a sales or use tax of a political subdivision with respect to interstate sales, or

(2) to classify interstate sales for sales or use tax purposes according to geographic areas of the State in any manner

except with respect to those interstate sales with destinations in political subdivisions in which the seller has a business location, or regularly makes deliveries other than by common carrier or United States Postal Service.

(b) LOCAL TAXES TREATED AS STATE TAXES.—Notwithstanding the limitations in subsection (a), to the extent that State and any local sales and use taxes are imposed in all geographic areas of a State upon like transactions at the same combined State and local rate, are administered by the State, and are otherwise applied uniformly so that the seller is not required to classify interstate sales according to geographic areas of the State in any manner whatsoever, such sales or use taxes, whether imposed by the State or by political subdivisions, shall be treated as State taxes for the purposes of this Act.

TITLE IV—JURISDICTION OF FEDERAL COURTS

SEC. 401. JUDICIAL REVIEW.

Notwithstanding section 1251(a) of title 28, United States Code, the United States Court of Claims shall have jurisdiction to review de novo any issues relating to a dispute arising under this Act or under Public Law 86-272, as amended. Within 90 days of the decision of a State administrative body from which the only appeal is to a court, any party to the determination may petition the Court of Claims for a review de novo of any such issues. The Court of Claims may issue all necessary orders and process to bring before it the claims of all States to a share of a corporation's net income for the taxable year or years in issue, whether or not such States have previously been parties. The findings of fact by the State administrative body shall be considered with other evidence of the facts. The judgment of the Court of Claims shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code, as amended.

SEC. 402. EFFECT OF FEDERAL DETERMINATION.

The determination of a dispute arising hereunder by the Court of Claims shall be binding for the taxable years involved on any State given notice or appearing as a party, notwithstanding any prior determinations of the courts or administrative bodies of that State completed after notice to that State. No statute of limiations shall bar the right of a State or a corporation to an amount of tax increased or decreased in accordance with the determination, provided action is begun within one year after the determination has become final.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

PART A—DEFINITIONS

SEC. 501. NET INCOME TAX.

A "net income tax" is a tax which is imposed on or measured by net income, including any tax which is imposed on or measured by an amount arrived at by deducting from gross income expenses one or more forms of which are not specifically and directly related to particular transactions.

SEC. 502. GROSS RECEIPTS TAX.

A "gross receipts tax" is any tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax a net income tax.

SEC. 503. CAPITAL STOCK TAX; CAPITAL ACCOUNT TAX.

(a) CAPITAL STOCK TAX.—A "capital stock tax" is any tax measured in any way by the capital of a corporation considered in its entirety.

(b) CAPITAL ACCOUNT TAX.—A "capital account tax" is any capital stock tax measured by number of shares, par or nominal

value of shares, paid-in capital, or the like, not including any tax the measure of which includes any element of earned surplus.

SEC. 504. SALES TAX.

A "sales tax" is any tax imposed with respect to sales, and measured by the sales price of tangible personal property or services with respect thereto, which is required by State law to be stated separately from the sales price by the seller, or which is customarily stated separately from the sales price.

SEC. 505. USE TAX.

A "use tax" is any nonrecurring tax, other than a sales tax, which is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership of that property or the leasing of that property from another, including any consumption, keeping, retention, or other use of tangible personal property.

SEC. 506. EXCLUDED CORPORATION.

A financial organization or a public utility is an excluded corporation. "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, small loan association, credit union, cooperative bank, small loan company, sales finance company, any corporation which derives 90% or more of its gross income from interest including discount, investment company, or any type of insurance company. "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a Federal, State, or local government or governmental agency.

SEC. 507. ARM'S-LENGTH AND NON-ARM'S-LENGTH TRANSACTIONS.

An arm's-length transaction is a transaction between two or more affiliated corporations consummated at a consideration in an amount which would have been charged in an independent transaction between two or more unrelated corporations under similar circumstances considering all relevant facts. A non-arm's-length transaction is a transaction between two or more affiliated corporations consummated at a consideration in an amount which is more or less than the amount that would have been charged in an independent transaction between two or more unrelated corporations under similar circumstances considering all relevant facts.

SEC. 508. AFFILIATED CORPORATIONS.

Two or more corporations are "affiliated" if they are not excluded corporations as defined in Section 506 and are members of the same group comprised of one or more corporate members connected through stock ownership with a common owner, which may be either corporate or noncorporate, in the following manner:

(1) 50 percent or more of the voting stock of each member other than the common owner is owned directly by one or more of the other members; and

(2) 50 percent or more of the voting stock of at least one of the members other than the common owner is owned directly by the common owner.

SEC. 509. COMBINED REPORTS AND CONSOLIDATED RETURNS.

A combined report is a report in which the net income of a corporation within the taxing jurisdiction of a State is combined with the net income of an affiliated corporation not within the taxing jurisdiction of a State. A consolidated return is a return permitted or required of two or more affiliated corporations each of which is subject to the taxing jurisdiction of a State.

SEC. 510. SALE.

For the purpose of Title III only, the term "sale" shall be deemed to include leases and rental payments under leases.

SEC. 511. INTERSTATE SALE.

An "interstate sale" is a sale in which the tangible personal property sold is shipped or delivered to the purchaser in the State from a point outside that State.

SEC. 512. DESTINATION.

The destination of a sale is in the State or political subdivision in which possession of the property is physically transferred to the purchaser, or to which the property is shipped by the seller to the purchaser, regardless of the free on board point or other conditions of the sale.

SEC. 513. BUSINESS LOCATION.

(a) GENERAL RULE.—A person shall be considered to have a business location within a State only if that person—

(1) owns or leases real property within the State,

(2) has one or more employees located in the State,

(3) regularly maintains a stock of tangible personal property in the State for sale in the ordinary course of his business, or

(4) regularly leases to others tangible personal property for use in the State.

For the purpose of paragraph (3), property which is on consignment in the hands of a consignee, and which is offered for sale by the consignee on his own account, shall not be considered as stock maintained by the consignor. If a person has a business location in a State solely by reason of paragraph (4), he shall be considered to have a business location in the State only with respect to such leased property.

SEC. 514. LOCATION OF PROPERTY.

(a) GENERAL RULE.—Except as otherwise provided in this section, property shall be considered to be located in a State if it is physically present in that State.

(b) MOVING PROPERTY.—Personal property which is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, shall be considered to be located in a State if—

(1) the operation of the property is localized in that State, or

(2) the operation of the property is not localized in any State but the principal base of operations from which the property is regularly sent out is in that State.

If the operation of the property is not localized in any State and there is no principal base of operations in any State from which the property is regularly sent out, the property shall not be considered to be located in any State for purposes of inclusion in either the numerator or the denominator of the property factor.

(c) MEANING OF TERMS.—

(1) LOCALIZATION OF OPERATIONS.—The operation of property shall be considered to be localized in a State if during the taxable year it is operated entirely within that State, or it is operated both within and without the State but the operation without the State is—

(A) occasional, or

(B) incidental to its use in the transportation of property or passengers from points within the State, or

(C) incidental to its use in the production, construction, or maintenance of other property located within the State.

(2) BASE OF OPERATONS.—the term "base of operations," with respect to a corporation's moving property means the premises at which any such property is regularly maintained by the corporation or by some other person; except that if the premises are maintained by an employee of the corporation primarily as a dwelling place they shall not be considered to constitute a base of operations.

SEC. 515. LOCATION OF EMPLOYEE.

An employee shall be considered to be located in a State if—

(a) the employee's service is performed entirely within the State;

(b) the employee's service is performed both within and without the State, but the service performed without the State is incidental to the employee's service within the State; or

(c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State; or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the employee's residence is in the State. The term "employee" has the same meaning as it has for purposes of Federal income tax withholding under chapter 24 of the Internal Revenue Code of 1954, as amended.

(d) CONTINUATION OF MINIMUM JURISDICTIONAL STANDARD.—An employee shall not be considered to be located in a State if his only business activities within such State on behalf of his employer are any of the following:

(1) The solicitation of orders, for sales of tangible personal property, which are sent outside the State for approval or rejection and (if approved) are filled by shipment or delivery from a point outside the State.

(2) The solicitation of orders in the name of or for the benefit of a prospective customer of his employer, if orders by such customer to such employer to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(3) The installing or repairing of tangible personal property which is the subject of interstate sale by the employer, if such installing or repairing is incidental to the sale.

This subsection shall not apply with respect to business activities carried on by one or more employees within a State if the employer (without regard to those employees) has a business location in such State.

SEC. 516. STATE.

The term "State" means the several States of the United States and the District of Columbia.

SEC. 517. STATE LAW.

References in this Act to "State Law," "the laws of the State," and the like shall be deemed to include a State constitution, and to include the statutes and other legislative acts, judicial decisions, and administrative regulations and rulings of a State and of any political subdivision.

SEC. 518. TAXABLE YEAR.

A corporation's "taxable year" is the calendar year, fiscal year, or other period upon the basis of which its taxable income is computed for purposes of the Federal income tax.

SEC. 519. COMMERCIAL DOMICILE.

"Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

SEC. 520. DIVIDENDS.

"Dividends" means distributions made in cash or property from the earnings and profits of a corporation as earnings and profits are defined for Federal tax purposes, but not of any "deemed foreign tax paid" which may be required to be added for Federal income tax purposes under section 902 of the Internal Revenue Code of 1954, as amended.

PART B—MISCELLANEOUS PROVISIONS

SEC. 521. PERMISSIBLE FRANCHISE TAXES.

The fact that a tax to which this Act applies is imposed by a State or political subdivision thereof in the form of a franchise, privilege, or license tax shall not prevent the imposition of the tax on a person engaged exclusively in interstate commerce within the State; but such a tax may be enforced against a person engaged exclusively in interstate commerce within the State solely as a revenue measure and not by ouster from the State or by criminal or other penalty for engaging in commerce within the State without permission from the State.

SEC. 522. PROHIBITION AGAINST GEOGRAPHICAL DISCRIMINATION.

(a) IN GENERAL.—No provision of State law shall make any person liable for a greater amount of sales or use tax with respect to tangible personal property, by virtue of the location of any occurrence in a State outside the taxing State, than the amount of the tax for which such person would otherwise be liable if such occurrence were within the State. For purposes of this subsection, the term "occurrence" includes incorporation, qualification to do business, and the making of a tax payment, and includes an activity of the taxpayer or of a person (including an agency of a State or local government) receiving payments from or making payments to the taxpayer.

(b) COMPUTATION OF TAX LIABILITY UNDER DISCRIMINATORY LAWS.—When any State law is in conflict with subsection (a), tax liability may be discharged in the manner which would be provided under State law if the occurrence in question were within the taxing State.

SEC. 523. APPLICABILITY OF ACT.

Nothing in this Act shall be considered—

(a) to repeal Public Law 86–272, as amended, with respect to any person;

(b) to increase, decrease, or otherwise affect the power of any State or political subdivision to impose or assess a net income tax with respect to an excluded corporation; or

(c) to give any State or political subdivision the power to impose a gross receipts tax with respect to a sale of tangible personal property if the seller would not be subject to the imposition of such a gross receipts tax without regard to the provisions of this Act.

SEC. 524. PROHIBITION AGAINST OUT-OF-STATE AUDIT CHARGES.

No charge may be imposed by a State or political subdivision thereof to cover any part of the cost of conducting outside that State an audit for a tax to which this Act applies including a net income tax imposed on an excluded corporation.

SEC. 525. LIABILITY WITH RESPECT TO UNASSESSED TAXES.

(a) Periods Ending Prior to Enactment Date—No State or political subdivision thereof shall have the power, after the date of the enactment of this Act, to assess against any person any tax for any period ending on or before such date in or for which that person became liable for such tax if during such period the State or political subdivision would not have had the power to assess such tax had the provisions of Title I of this Act been in effect during such period.

(b) CERTAIN PRIOR ASSESSMENTS AND COLLECTIONS.—The provisions of subsection (a) shall not be construed—

(1) to invalidate the collection of a tax prior to the time assessment became barred under subsection (a), or

(2) to prohibit the collection of a tax at or after the time assessment became barred under subsection (a), if the tax was assessed prior to such time.

SEC. 526. EFFECTIVE DATES.

(a) Except as provided in section 525, Titles I and II of this Act shall apply only with respect to taxable years ending after the date of the enactment of this Act.

(b) Section 306 of this Act shall be effective with respect to taxable periods beginning on or after July 1, 1976.

(c) The remaining provisions of this Act shall take effect on the date of the enactment of this Act, unless a specific date is provided for in any such provision.

EXPLANATION OF S. 4080, INTERSTATE TAXATION ACT OF 1972

S. 4080, as the latest in a series of bills on interstate taxation, attempts to incorporate features of a number of different interstate taxation proposals that should best protect the legitimate interests of the taxpayer, the tax collector, and the public.

TITLE I—JURISDICTION TO TAX

Section 101. Uniform jurisdictional standards

This section aims to provide protection for the business that is selling in interstate commerce from being liable for payment or collection of taxes in States where that business has no business location while at the same time preserving the legitimate interest of the States in collecting all taxes to which they are entitled.

The present sales and use tax jurisdictions would be preserved for the States by, in effect, codifying the present law as enunciated in the Supreme Court cases of *Scripto, Inc.* v. *Carson*, 362 U.S. 107 (1960) and *National Bellas Hess, Inc.* v. *Department of Revenue of the State of Illinois*, 386 U.S. 753 (1967). This constitutes a major concession by the business community to the States.

The bill, however, would afford relief from sales tax liability for businesses without a business location in the State—that is, generally medium and small businesses, wholesalers and small manufacturers—through a registration number procedure. The seller, without a business location in a State, would be able to rely on the sales and use tax registration number procedure, prescribed in Section 304, as assurance that the *business* buying the product would assume liability for payment of any sales or use tax that may be due. "Business location," which is defined in Section 513, generally means owning or leasing real property within the State, or having one or more employees located in the State, or regularly maintaining a stock of tangible personal property in the State for sale in the ordinary course of business. Since most of the larger corporations would tend to have "business locations" in States in which they are making interstate sales, their tax liability would not be greatly affected by this registration number procedure. Rather the registration number procedure would tend to benefit primarily the smaller businesses—the type of business that the House Judiciary Subcommittee on State Taxation of Interstate Commerce found to be in widespread noncompliance, through lack of knowledge, inability to comply, etc., with sales and use tax payments on interstate sales. In that the procedure clarifies liability for payment of sales and use taxes, it should be helpful to States in actually collecting the taxes that are not being collected now, as well as relieving small businesses from potential liability that hangs over their heads.

Section 101 also provides for a "business location" jurisdictional test for imposing a corporate net income tax, a gross receipts tax or capital stock tax on a corporation. The New York Bar Association Tax Section December 1971 Report of Committee on Interstate Taxation states the reasons for such a business location test as follows:

"In our Committee's judgment, the policy of requiring a corporation to contribute to the support of the government of each State providing a market for its goods or services is outweighed by the policy of freeing multistate business firms from the onerous administrative burdens of keeping records and filing tax reports for a multiplicity of States and localities with which their economic contacts are relatively small. In our view, the governmental services furnished by a State to an enterprise having no permanent establishment within that State's borders are not likely to be sufficiently substantial to justify the imposition of income tax compliance burdens on such an enterprise. This judgment leads us to support the "business location" test set forth in Clause (1) in Section 101 of the Rodino Bill (H.R. 1538) as affording an appropriate means of alleviating the compliance problem."

TITLE II—MAXIMUM INCOME OR CAPITAL ATTRIBUTABLE TO TAX JURISDICTION

Sections 201–207. Optional three-factor formula

The bill provides an optional Three-Factor Formula (property, payroll, and sales) for apportionment of income or capital of interstate corporations. This is the most widely used formula and has been recommended by the Commissioners on Uniform State Laws in the Uniform Division of Income Tax Purposes Act (UDITPA). A taxpayer would still have the right to use a different apportionment formula that may be provided for by State law, but the Three-Factor Formula would serve as a maximum.

The bill adopts the approach of the Magnuson "Ad Hoc" bill, S. 3333, to apportion all income in the tax base except portfolio dividends which would be allocated to commercial domicile. Foreign source income generally and intercorporate dividends would be excluded both from allocable and apportionable income. This will clear up the confusion that has developed in the application of UDITPA between "business" income that is apportionable among the States by the use of the Three-Factor Formula and "non-business" income which is allocable to a specific State.

The shift in this bill to placing greater emphasis on apportioning income among the States by formula, as opposed to allocating that income to specific States by situs, also constitutes a major concession by the business community to those States that have been advocating this approach. There has been a developing trend among the States to support apportioning income among the States by the 3-factor formula rather than allocating by situs. Business generally in the past has proposed clarifying the confusion in UDITPA between apportionable "business" income and allocable "'non-business" income by specifying what types of income should be apportioned and what types should be allocated.

Section 204. Sales factor—"Throwback rule"

The bill assigns sales by destination in a State as the simplest, most equitable attribution procedure. It gives due weight to the role of the market in the overall production of income or capital and is one that many businesses and States have learned to live with and prefer. The so-called "throwback" provision, found in the Uniform Act (UDITPA), is not included in the sales factor. The "throwback rule" provides that in the case of sales to the United States Government and when the taxpayer is not taxable in the State of the purchaser, the sale will be recaptured or "thrown back" to the State of the origin of the sale.

It would appear more equitable and appropriate that the receipts factor include sales on a straight destination basis since the purpose and intent of the apportionment formula is to arrive at a reasonable basis for as-

signing some part of the corporation's total income to a particular State based on the activity performed in that State. Therefore, in attempting to measure this activity, the guidelines should be focused on what is being done in that State—and not what the taxpayer is *not* doing in some other State. In utilizing the receipts factor, it is recognized that part of the income or capital is attributable to the selling activity in the market State and, therefore, any change from a straight destination test results in attributing a smaller part of the total income or capital to the selling activity than would be the case by utilizing a straight destination test. The market-oriented States must rely largely on the sales factor to have a share of major interstate business income assigned to them. Other States that are relatively less market-oriented have property and payroll factors, as well as sales, to increase their share of the taxable income or capital. The justice of this concept has been recognized by a number of major States, including some that are not market-oriented States, which have deleted the "throwback" provision in enacting the Uniform Act. These States have recognized that recapture involves an administrative complexity that may cost more than the tax difference. The House Judiciary Subcommittee on State Taxation of Interstate Commerce on page 244, Volume 1 of their report, stated that:

"It should also be observed that the existing throwback rules add to the complexity of the system even if their applicability is clear. When a throwback rule applies, it will normally require the taxpayer to develop data in addition to that needed to comply with the primary division-of-income rules of the taxing State. When a destination State requires that certain sales be thrown back to the State of origin, for example, the taxpayer is required to determine the point of origin of each transaction subject to the throwback. The development of such information may materially increase the burden of compliance."

Section 208. Apportionable income

Corporations necessarily have, in addition to their regular business income, income which is not earned in the course of their regular trade or business. To the extent that such income is not earned in the United States, it should not be apportionable by formula to the various States. Section 208(a) insures that only income earned in the United States will be apportioned among the States by formula. Section 208(b) permits a taxpayer to enlarge the income subject to apportionment by including income from gains, profits, and income derived from the sale of personal property without the United States. For some taxpayers this procedure is suitable because of the nature of their accounting system. In the case of the taxpayer electing this alternative, Section 208(c) provides for the adjustment of the denominators to reflect the components giving rise to the income included in the enlarged apportionable base. Section 208 has been developed in the belief that the most important criteria for properly apportioning income among the States is that the factors reflect values directly related to specific income to be apportioned.

Section 209. Allocable income—dividends

Dividends, except dividends from affiliates, are allocable to the State of commercial domicile. Dividends received from an affiliated corporation in which the taxpayer owns 50% or more of the voting stock and income from sources outside the United States generally are excluded both from apportionable and allocable income and so would not be in the tax base unless the taxpayer uses the alternative apportionment procedure prescribed in Section 208(b) on foreign sales of personal property and includes income from which dividends are paid. These exclusions from apportionable income are provided for in the Section 208 definition of "apportionable income."

Since a State should be attempting to tax only income derived from sources in that State, it would seem obvious that the States should not be taxing income earned overseas, but this is precisely what some States are attempting to do. In fact, some States are attempting to go beyond commonly accepted worldwide concepts of taxing international income.

Section 208 provides that corporate dividends are to be excluded from income apportioned among the States by formula. Section 209 then provides for allocation of dividends, except dividends from affiliates, to the State of commercial domicile. This type of allocation is in accordance with intent of the Uniform Act (UDITPA) but Congressional action is made necessary by a September 10, 1971 recommendation by the Multistate Tax Commission (MTC) to the States for regulations that would apportion dividend income. The regulations which the MTC proposes to change basically were worked out after much effort by the Committee on Uniform Income Tax Regulations of the National Association of Tax Administrators (NATA). The regulations as recommended by NATA have been adopted by California, Oregon, and Kentucky. The regulations as proposed by NATA would generally allocate intercorporate dividends to the State of commercial domicile which is a clear-cut way of handling the problem in accordance with the intent of the Uniform Law (UDITPA). Only a minority of the States have enacted the Multistate Tax Compact. Therefore, even if all the member States adopted this proposed regulation, which seems unlikely, many States are likely to continue to follow their present practices. This means that States that tax dividends of companies with a commercial domicile in the State will continue to do so. Other States that adopt the Multistate Tax Commission (MTC) regulation will be apportioning the *same* dividend income by formula among the States. The result will be increased *double* taxation.

Most States and the Federal government have long recognized that intercorporate dividends should not be treated as income subject to full taxation. Some States allow a 100% exclusion for intercorporate dividends, while others follow the Federal practice of an 85% exclusion (a 100% exclusion is permitted by the Internal Revenue Code under certain circumstances). It is likely, however, that if the MTC regulation referred to above is adopted by Compact member States, there will be a great temptation for these States to subject such income to taxation even though they have no legitimate claim on it. The result will be increased multiple taxation.

Business generally takes the position that no dividends should be taxed since the income from which the dividends are paid has already been taxed. Very few States include all dividends in the tax base.

Many States include dividends only to the extent that they are included in Federal taxable income. To the extent dividends are taxable, they are generally allocated to the State of commercial domicile, as provided for in Section 209.

Section 210. Combined reporting and consolidation returns

This bill also represents a very considerable concession from the general business position that States should be prohibited from requiring the filing of combined returns of affiliated companies such as is proposed in S. 317. The provisions in this bill aim to provide sufficient flexibility so that both the States and the taxpayers can be assured reasonable equity under them. It should be emphasized, however, that Title IV giving jurisdiction to the Federal Court of Claims to hear appeals on the application of the Act is considered by the business community as an *essential* companion provision to make the combined reporting and consolidated return provisions accepting to business.

The bill would authorize a State to require combined reporting upon establishing that a taxpayer is engaged in non-arm's-length transactions with affiliates which cause a material distortion of income apportioned to the State. A taxpayer would be permitted to file a combined report with intercorporate transactions eliminated if it is demonstrated that a combined report is necessary to clearly reflect the taxpayer's income properly apportionable to the State. Non-arm's-length transactions are defined in Section 507. A State could require the combining of apportionable income only for corporations that were parties to the non-arm's-length transactions. Section 508 defines "affiliated corporations" and provides that "excluded corporations" as defined in Section 506 will not be considered as "affiliated" for the purposes of this Act.

The report of the House Subcommittee on State Taxation of Interstate Commerce (Vol. 1, pp. 244–245) distinguishes between: (1) a "consolidated return" as the "type permitted or required of two or more affiliated corporations each of which is subject to the taxing State's jurisdiction" and (2) a "combined report" in which "the taxable corporation's net income is combined with the net income of a non-taxable out-of-State corporation." Section 509 of this bill defines "combined reports" and "consolidated returns" in accordance with this distinction.

In addition to the provision on "combined reporting" described above, this section would permit consolidated returns of affiliated companies subject to the State's jurisdiction at the election of the taxpayer for the purpose of determining net income tax liability, with all intercorporate transacions being eliminated.

Under the bill if "non-arm's-length" transactions have occurred between a corporation with a business location in the State and a corporation engaged in business principally outside the U.S., the income of the domestic corporation may be adjusted to eliminate the effect of the non-arm's-length transactions upon its income.

These provisions on combined reporting and consolidated returns should help avoid situations where companies are "whipsawed" between conflicting approaches of different States and subjected to double or multiple taxation on the same income. This sometimes results in more than 100% of a company's income being subjected to State taxation.

The need for these provisions is illustrated by two cases involving the Kennecott Copper Corporation. The States of California and Utah have both held that Kennecott and its affiliates are unitary.

California ruled that Kennecott must file a combined report. (*Chase Brass and Copper Company* v. *Franchise Tax Board*, 7 Cal. App. 3d 99, 86 Cal. Rptr. 350, *appeal dismissed and cert. denied*, 400 U.S. 961 (1970)). Utah, on the other hand, refused to permit Kennecott to file a consolidated return, even though its law authorizes such a return, but instead imposed a separate accounting approach on the parent organization and required separate taxation of its affiliates (*Kennecott Copper Corporation, et al.* v. *State Tax Commission of Utah*, unreported decision of the Utah Supreme Court, Case No. 12498, filed January 24, 1972, Jurisdictional Statement on appeal to the Supreme Court of the United States, filed August 24, 1972). Both California and Utah acted in a manner so as to maximize the tax owed to each State. The result is that Kennecott is being subjected to taxation on considerably more than 100% of its

income. The California case also illustrates how that State uses its combined reporting requirement to subject foreign source income from overseas investment to taxation even though the foreign affiliates involved have no situs or business activity in the State.

TITLE III—SALES AND USE TAXES

This Title generally follows S. 3333, introduced by Senator Magnuson, with the addition of the registration requirement referred to above in connection with Section 101. This includes the provisions (Section 306) prohibiting political subdivisions from imposing the obligation on the seller to collect tax on an interstate sale unless (1) the seller has a business location or makes a regular deliveries into the subdivision, or (2) the local tax is imposed in all geographic areas of the State on like transactions at the same combined State and local rate, administered by the State, and uniformly applied so that a seller would not be required to classify interstate sales according to geographic areas of the State. (This section would not be effective until July 1, 1976.) The other provisions in this Title primarily codify existing law and are generally considered acceptable to the States.

TITLE IV—JURISDICTION OF FEDERAL COURTS

This Title would give jurisdiction to the Federal Court of Claims to hear appeals upon the application of provisions of the Act, after State administrative decisions are final and the only appeal is to court. The Court of Claims uses Commissioners to hear cases throughout the country. The Court of Claims also has authority to sit as a panel of judges in different parts of the country. The objective of this Title is to have a single Federal court that could develop expertise in the area of interstate taxation and provide for uniform application of the Federal law in a manner that would not be possible through use of State or Federal District Courts. This would help eliminate conflicting application of the Federal law in different jurisdictions and avoid double or multiple taxation of the same income. The Kennecott cases referred to above in the section on combined reporting illustrate the need for this type of provision.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

This title contains definitions necessary to support the major provisions outlined above and is generally in agreement with other interstate tax bills that have been introduced.

INTERSTATE TAXATION ACTS—COMPARISON OF PRINCIPAL DIFFERENCES IN PROVISIONS

Features	Ribicoff-Mathias (S. 317) and Rodino (H.R. 1538)	Cranston (S. 1210) Talcott (H.R. 4267) Sales and Use Taxes	Magnuson (S. 1883) Consent to Compact	Magnuson (S. 3333) Ad Hoc bill	S. ——
I. Jurisdictional standards:					
Income taxes	Business location [1]			Public Law 86-272	Same as S. 317.
Capital stock taxes	Business location				Same as S. 317.
Gross receipts taxes (measured by gross volume of business).	Business location				Same as S. 317.
Sales and use taxes	Business Location, or regular household deliveries.	Codifies the U.S. Supreme Dourt decisions in the Scripto and National Bellas Hess cases.		Same as H.R. 4267	Same as H.R. 4267, except a seller without a business location in State would be able to rely on a registration procedure as assurance that the business purchaser assumes liability for payment of tax.
II. Maximum income or capital attributable to taxing jurisdiction:					
Apportionment formula	Property Payroll		Property Payroll Sales	Property Payroll Sales	Property. Payroll. Sales (straight destination, no throwback).
Business versus nonbusiness income.			Adopts UDITPA which allocates nonbusiness income, but by regs. MTC considers all income as apportionable business income (dividends, interest, rents, royalties, and capital gains).	Eliminates business vs. nonbusiness distinction, allocates dividends from nonaffiliated corporations to the taxpayer's commercial domicile.	Same as S. 3333 except a 50 percent ownership test is applied to determine affiliation and all nondividend U.S. income apportionable.
Dividends from affiliated corporations.				Dividends from 80 percent owned affiliated corporations not taxed, dividends from nonaffiliates allocated to commercial domicile.	
Foreign source income				Any income from foreign sources described in sec. 951(a)(1) I.R.C. is not taxed (i.e. subpart F income).	Same as S. 3333 except "foreign source" is as defined by I.R.C., 1954.
Capital stock taxes					Eliminates investments in and advances to subsidiaries.
Consolidated or combined returns.	S. 317 limits it to those affiliated corporations subject to the taxing State's jurisdiction, with sec. 482 I.R.C. provision.			Includes more than 80 percent owned affiliates which derive at least 10 percent of their income from the taxing State through application of the apportionment formula test (excludes public utilities, financial institutions, WHTC, possession companies, and companies deriving more than 90 percent of their income from foreign sources).	State may require a combined report if it establishes nonarm's length dealings. Taxpayer permitted to combine if necessary to clearly reflect income applicable to State. Taxpayer can elect to consolidate affiliates over which State has jurisdiction.
III. Sales and use taxes:					
Interstate seller required to collect sales and use taxes.	Collection prescribed by definition of destination sales and taxpayer must have a business location or regularly makes household deliveries in destination State.	Collection prescribed by definition of location of sale at destination State under the jurisdictional rules above.	Collection prescribed if interstate seller makes regular household deliveries to a consumer.	Location of a sale at destination State and permits a contiguous State or political subdivision to enter into reciprocal collection agreements requiring seller to collect taxes.	Same as S. 317.
Freight charges on interstate sales.	Not included in base when separately stated.	Same as S. 317		Same as S. 317	Same as S. 317.
Liability of interstate seller on exempt sales.	Relieves seller if purchaser furnishes registration number or other written evidence of exempt purpose.	Relieves seller if purchaser furnishes certificate or other written evidence of exempt purpose.	Relieves seller if accepts an exemption certificate in good faith.	Relieves seller if purchaser furnishes certificate or other written evidence or exempt purpose (same as H.R. 4267).	Same as S. 3333 but see description of registration procedure above.
Local sales and use taxes	Requires uniform State collection and administration on interstate sales by destination State in which seller has a business location or regularly makes household deliveries.	Same as S. 317 but adds, or regularly solicits orders by salesmen or other representatives.		Similar to S. 317—requires uniform State collection and administration on interstate sales by destination State in which seller has a business location or makes regular deliveries other than by common carrier or U.S. mail.	Same as S. 3333.

Features	Ribicoff-Mathias (S. 317) and Rodino (H.R. 1538)	Cranston (S. 1210) Talcott (H.R. 4267) Sales and Use Taxes	Magnuson (S. 1883) Consent to Compact	Magnuson (S. 3333) Ad Hoc bill	S. ——
IV. Taxation of individual	Income of nonresident individual cannot be taxed but wages are taxable in nonresident State where earned.	----------	Congressional salaries subject to tax only in the Congressional district he represents.	----------	
V. Consent to compact	----------	----------	Congressional authority for States to enter into compact and conferral of powers upon the compact commission to issue regulations.	Similar to S. 1883 except all States have right to vote on regulations and regs. would become effective if not rejected by individual State.	

[1] Rodino bill applies jurisdictional rules to corporations with less than $1,000,000 annual income and Ribicoff makes no distinction but provides relief to such companies through the optional formula

By Mr. MATHIAS (for himself, Mr. BEALL, Mr. HATFIELD, and Mr. STENNIS):

S. 4081. A bill to provide for the expansion of the Antietam National Battlefield in the State of Maryland, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. MATHIAS. Mr. President, I am today introducing revised Antietam National Battlefield expansion legislation based on S. 1525 which Senator BEALL and I introduced in the Senate on April 14, 1971. This measure will authorize the expansion of the national battlefield, now about 1,100 acres, to a total of 3,260 acres. This would include the 1,800 acre site of the actual battle, plus an environmental protection zone of 1,440 acres, intended to preserve the present, largely rural scenery around the battlefield and along lower Antietam Creek to its junction with the Chesapeake and Ohio Canal National Historical Park.

Following the introduction of this legislation in the first session of the 92d Congress, an Antietam Battlefield Advisory Committee of Washington was formed at my request to discuss the legislation for the purpose of offering recommendations for refinement of the original proposal. The committee was appointed by the Washington County Commissioners and chaired by Commissioner Rome Schwagel. The committee met several times throughout 1971, talked with local citizens and landowners interested in and affected by the Antietam Battlefield expansion, and reported their findings and recommendations in May of 1972. I inserted these findings and recommendations in the CONGRESSIONAL RECORD on May 22, 1972. The thrust of these suggestions are incorporated in the present legislation.

Under the original bill, owners of residential or agricultural properties within the expanded area would, in most cases, have the option of retaining rights of use and occupancy of their properties for purposes compatible with the project. If a scenic easement is recommended on a parcel of property by the Advisory Committee in its report, however, and the property owner wishes to sell his land to the Park Service with no residual rights, the new bill will grant any such landowner the option of a fee simple acquisition or scenic easement.

Another recommendation of the Advisory Committee which we have made part of the present legislation involves the appointment of two nonvoting members to the permanent Advisory Commission which the bill establishes in addition to the seven voting members. These two nonvoting appointees will serve in 1-year terms and will be appointed by the Board of Commissioners of Washington County for the specific purpose of advising the National Park Service on the administration of scenic easements.

Mr. President, the Antietam National Battlefield Advisory Committee, which should serve as a model for the permanent Commission, was most industrious and helpful in serving as a forum from which the citizens and landowners of the Antietam area could express their own thoughts on the legislation and influence the future of the battlefield and its surrounding areas.

Because this legislation incorporates the recommendations of many public officials, historical societies and concerned citizens in western Maryland, we believe that this legislation merits wide support and we will work for its enactment in the early part of the 93d Congress. I think that it is widely recognized that the survival of the Antietam Battlefield can no longer be entrusted to chance or private action.

The beautiful Antietam area attracted over half a million visitors in 1970. Many of the historical sites they come to see such as the Dunkard Church, the Sunken Road and the fields southeast of Sharpsburg where A. P. Hill's men rebuffed the advance of Union troops to end the battle, are outside of the current Federal property. The need to encompass these historical portraits in an enhancing and protective frame is apparent to all who visit Antietam and I hope that we will be able to obtain approval of this important bill the coming year. I am introducing this bill at this time in order that it may be studied further by the National Park Service, by citizens of Maryland, and by other interested parties, with the hope that I will receive their suggestions and comments during the next 4 months, so that when the bill is reintroduced in January it will be the best bill possible and deserving of very swift enactment by the next Congress.

By Mr. MATHIAS (for himself, Mr. BAYH, and Mr. HUMPHREY):

S. 4082. A bill to amend the Voting Rights Act Amendments of 1970 with respect to citizens residing outside the United States. Referred to the Committee on Rules and Administration.

GIVING THE VOTE TO 750,000 MORE AMERICANS

Mr. MATHIAS. Mr. President, in this election year, I have been concerned to learn that there are by one count some 750,000 American civilians residing abroad who are barred by the laws of the States of which they are citizens from participating in presidential or congressional elections. These civilians include thousands of businessmen, as well as teachers, lawyers, accountants, engineers, and other professional persons, serving the interests of their country abroad and subject to U.S. tax laws and the other obligations of American citizenship. It seems remarkable that in a day when so many Americans pursue commercial, educational, and cultural interests overseas, these numerous citizens are disenfranchised by archaic voting laws in a large majority of the States which in terms or in effect require physical presence in the State for exercise of the ballot.

To help correct this inequity, I am introducing legislation today, cosponsored by my distinguished colleagues, Senators BAYH and HUMPHREY, to reaffirm the principle that no citizen who is otherwise qualified to register and vote in his domiciliary State with respect to any presidential or congressional election shall be denied the right to vote in such State with respect to such election merely because such citizen is residing outside the United States and has relinquished his place of abode or other address in the State, provided that he has not qualified as a voter in any other State. The legislation would also provide that the exercise of the right to register and vote by such a citizen shall not constitute an act which would affect the determination of his actual residence—as distinguished from voting domicile—for Federal, State, or local income tax purposes.

At present, the typical American citizen residing abroad in a nongovernmental capacity often finds it impossible to vote in presidential or congressional elections in his domiciliary State—that is, the State to which he intends to return—because the majority of States impose rules which require a voter's actual presence or maintenance of a home in the State; or which raise a doubt of voting eligibility of nonresident domiciliaries whose date of return is uncertain; or which have confusing absentee registration or voting forms that appear to require the maintenance of a home or other abode in the State. I have recently been given the following illustration of this typical American residing abroad:

A qualified voting resident left the state a number of years ago to work abroad in a business or professional capacity. His former home in the state has been sold and he now only has a physical residence in a foreign country. However, he looks upon this as temporary and intends eventually to return

to his state. He considers that his last residence before departure from the state remains his domicile or legal residence for voting in Federal elections, even though he has no present place of abode within the state.

What are the chances of this typical American residing abroad for voting in elections back home?

It appears that nearly two-thirds of the States effectively disenfranchise or impair the ability of a nonresident domiciliary to vote in congressional elections.

In elections for President, I understand that barely half of the States—26—and the District of Columbia would clearly allow him to register and vote absentee. A number of these States have adopted the form 76 Federal post card application form—FPCA—for absentee registration and voting by Americans abroad.

Certain other States, such as Illinois, would clearly allow the citizen abroad to vote in presidential elections as a result of legislative history developed by my distinguished colleague, Senator GOLDWATER of Arizona for title II of the Federal Voting Rights Act Amendments of 1970. The remaining States taking a position have either given a qualified response, or have otherwise indicated some reluctance to go along with the Senate interpretation of the 1970 amendments set forth so eloquently in the legislative history by my friend from Arizona. In short, the opportunity to vote even for President in nearly half the States still seems to be shrouded in confusion and ambiguity.

These figures on voting in presidential and congressional elections are based on State-by-State surveys conducted by the Bipartisan Committee on Absentee Voting. The bipartisan committee is an organization of distinguished business and professional people in Europe of both political parties who have been seeking for some time the enfranchisement of American citizens residing abroad. At this time, I ask unanimous consent to have printed in the RECORD following my remarks a statement submitted by the bipartisan committee to the House Post Office and Civil Service Committee on June 27, 1972, and the surveys appended to that statement. The survey on voting in presidential elections has been revised as of September 8, 1972.

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

(See exhibit 1.)

Mr. MATHIAS. Mr. President, the findings in these materials have been confirmed by firsthand reports the past few days from frustrated American citizens as close as Canada or Mexico, and as far away as France or Brazil. As an illustration of this, I also ask unanimous consent to insert in the RECORD a recent New York Times article indicating the frustration Americans in Mexico City have faced in seeking to vote in the 1972 election.

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

(See exhibit 2.)

Mr. MATHIAS. Mr. President, if it were only a case of presidential elections, we might be satisfied with the legislative history developed by Senator GOLDWATER for title II of the Federal Voting Rights Act Amendments of 1970. This legislative history sets forth the basic principle that a U.S. citizen residing abroad should be eligible to register and vote absentee in his domiciliary State in presidential elections. There has never been any doubt, to my knowledge, that this was the intent of Congress, and I have been rather surprised that the majority of States has not yet adopted this interpretation of the 1970 legislative history.

There is a case pending in Federal court in New York City, involving New York State and Westchester County, testing the validity of this interpretation of congressional intent. I am hopeful that the court will recognize, from the legislative history submitted to it, the clear congressional intent to enfranchise Americans residing abroad by means of title II of the 1970 amendments.

As the distinguished Senator from Arizona has pointed out, however, it is not just a matter of voting in presidential elections. There is the additional problem of voting in congressional elections, and the uncertainty of Americans overseas as to whether, by voting in U.S. elections, they might lose Federal, State, and local income tax exemptions otherwise available to nonresidents.

What can be done?

First, we want to establish as Federal law, in clear and unequivocal statutory language, the principle that no U.S. citizen who is otherwise qualified to register and vote in his domiciliary State shall be denied the right to vote for President, or for Senator or Representative, in that State merely because he has relinquished his physical place of abode in the domiciliary State, provided that he has not qualified as a voter in any other State. This is the heart of the matter and of the legislation we are introducing today. The present checkerboard pattern of domicile rules among the States should no longer be permitted to deny Americans overseas the franchise in Federal elections.

Second, it is also important to establish as Federal law, in clear and unequivocal statutory language, the principle that the exercise of the right to register and vote by a U.S. citizen abroad should not constitute an act which would affect the determination of his actual residence—as distinguished from voting domicile—for Federal, State, or local income tax purposes. The Internal Revenue Code and the laws of all but a handful of States offer Americans currently residing abroad an income tax exemption, in whole or in part, for income earned abroad. The legislation I am introducing today would help assure that the exercise of the right to register and vote absentee by such a citizen would not jeopardize any such income tax exemption.

The Internal Revenue Service has already indicated, most recently in an August 28, 1972 ruling letter to Senator GOLDWATER, that the exercise of absentee registration and voting rights will not jeopardize the nonresident Federal income tax exclusion available to a U.S. citizen residing abroad. The legislation being introduced today would enact this administrative interpretation into law for Federal income tax purposes and would assure that the States would not make an inconsistent interpretation of their own income tax laws. I ask unanimous consent at this time to have printed in the RECORD the Internal Revenue Service ruling letter sent to Senator GOLDWATER by subject.

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

(See exhibit 3.)

Mr. MATHIAS. Mr. President, even though it is not referred to in the bill introduced today, I would think that any universal enrollment voting legislation considered by Congress, such as some of the proposals which have come before the Senate this year, should specifically extend the simplified procedures provided by such legislation to U.S. citizens residing abroad.

The Justice Department last March sent an opinion to the Bipartisan Committee on Absentee Voting suggesting that ultimately there may be a need for specific new legislation such as that we have introduced today. In brief, the Department concludes that a State may still require maintenance of an abode or other address as a requirement for voting in presidential elections "in the absence of clear and unequivocal language" in the statute. It is the purpose of our legislation to provide this clear and unequivocal statutory language for congressional as well as presidential elections. At this point, I ask unanimous consent to insert this opinion letter from the Justice Department in the RECORD following my remarks.

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

(See exhibit 4.)

Mr. MATHIAS, Mr. President, I might add that I was gratified to see, upon examination of the previously mentioned surveys by the bipartisan committee, that my own State of Maryland is one of the States that has adopted the simplified registration and voting procedures recommended by the Federal Voting Assistance Act of 1955, as amended in 1968, allowing U.S. citizens temporarily residing abroad to use the simplified Federal post card application form for both absentee registration and absentee voting in Federal, State, and local elections.

I am pleased at the progress made in the use of the Federal post card application form in Maryland and other States, and the good work of the Federal Voting Assistance Task Force in encouraging State adoption of the FPCA. And I know that all Americans residing abroad are enormously grateful to Senator GOLDWATER for his efforts in connection with the Federal Voting Rights Act Amendments of 1970. It is apparent, however, that much more yet needs to be done until we reach the time when every American citizen residing abroad may actively participate in the election process in his domiciliary State, at the congressional as well as at the presidential level. We hope that the legislation being introduced today will be a helpful step in that direction.

EXHIBIT 1

SURVEY OF STATE LAWS AND PROCEDURES FOR ABSENTEE REGISTRATION AND VOTING IN PRESIDENTIAL ELECTIONS BY AMERICAN CITIZENS RESIDING ABROAD

The Bipartisan Committee on Absentee Voting has recently undertaken a survey of the laws and procedures in the various states to determine the eligibility of U.S. citizens residing abroad for absentee registration and absentee voting in Presidential elections. The survey involved (i) the sending of letters dated February 4, 1972 to the Attorneys General (or equivalent officials) of all of the states and the District of Columbia; (ii) consultation with the staff of the Federal Voting Assistance Task Force; and (iii) independent research by counsel for the Bipartisan Committee. In this survey the Bipartisan Committee asked whether the person described in the following example would be eligible for absentee registration and voting in the 1972 Presidential election:

A qualified voting resident left the state a number of years ago to work abroad in a business or professional capacity. His former home in the state has been sold and he now only has a physical residence in a foreign country. However, he looks upon this as temporary and intends eventually to return to his state. He considers that his last residence before departure from the state remains his domicile or legal residence for voting in national elections, even though he has no present place of abode within the state.

The survey took into account two recent federal laws which were expected to expand absentee registration and voting rights of Americans temporarily residing abroad. First, the Federal Voting Assistance Act of 1955, as amended in 1968, recommended that the states adopt simplified registration and voting procedures for military personnel and other U.S. citizens temporarily residing abroad. One of the principal recommendations in the Federal Voting Assistance Act is the adoption of the simplified Federal Post Card Application (FPCA), which can serve as an application both for absentee registration and for an absentee ballot. As of now, 24 states and the District of Columbia have adopted the FPCA for U.S. citizens temporarily residing abroad, and the form may be used in those states for all elections—federal, state and local.

Second, Title II of the Federal Voting Rights Act Amendments of 1970 (the "1970 Amendments") endeavored (1) to abolish completely the durational residency requirement as a precondition to voting in Presidential elections; and (2) to establish uniform national standards for absentee registration and voting in Presidential elections. The language of Title II does not appear to deal specifically with absentee registration and voting rights of Americans residing abroad. During Senate debate on the 1970 Amendments, however, Senator Barry M. Goldwater interpreted Title II to provide that the retention of state domicile (*i.e.*, intent to return) is sufficient to assure these rights for all "civilian citizens who are temporarily living away from their regular homes," even if they are working or studying overseas, 116 Cong. Rec. 3539 (daily ed. March 11, 1970). Only two states (Connecticut and Illinois) appear to have clearly adopted the Goldwater interpretation of Title II. As noted above, 24 states and the District of Columbia accept the FPCA; and Michigan has a statute modeled on the Federal Voting Assistance Act of 1955, as amended, but has not formally adopted the FPCA. The remaining states taking a position have either given a qualified response, or have refused to go along with the Goldwater interpretation entirely.

Below is a state-by-state breakdown of the Bipartisan Committee survey of the eligibility of Americans temporarily residing abroad for absentee registration and voting in Presidential elections, with the totals for each category (the District of Columbia being listed as a state):

ABSENTEE REGISTRATION

States (including the 25 FPCA states)—"Yes"	27
States—Qualified "Yes"	8
States—"No"	6
States—Unclear	10

ABSENTEE VOTING

States (including the 25 FPCA states)—"Yes"	27
States—Qualified "Yes"	11
States—"No"	5
States—Unclear	8

[Letters from state authorities were addressed to the Bipartisan Committee unless otherwise noted. The states for which the Bipartisan Committee has not yet received a reply from the Attorney General or other official are shown in the survey by an (*).]

State	Absentee registration	Absentee voting	FPCA for citizens temporarily abroad	Comments
Alabama	No	No	No	Letter from Attorney General, Feb. 9, 1972: Unable to give opinion to private party. [See Title 17, § 26 (Supp. 1969 (absentee registration problem); Title 17, § 64(16), (23), (24a) (Supp. 1969) (absentee ballot problem).]
Alaska	Yes	Yes	Yes	
Arizona	Unclear	Unclear	No	Statute raises doubt of voting eligibility of nonresident domiciliary whose date of return uncertain. A.R.S. § 16–925 (Supp. 1971). Confusing registration form appears to require presence in State. A.R.S. § 16–143(A), (B) (Supp. 1971).
Arkansas	Yes	Yes	Yes	
California	Yes	Yes	Yes	Statute raises doubt of voting eligibility of nonresident domiciliary whose date of return uncertain. West's Ann. Elec. Code § 14287 (1961).
Colorado	Yes	Yes	Yes	
Connecticut	Yes	Yes	No	Letter from Secretary of State, Feb. 24, 1972: Agrees that under the 1970 amendments a former Connecticut resident "who temporarily resides in Europe" may register in absentia for presidential (elector) elections, and may maintain his voting residence in Connecticut for such elections.
Delaware	Yes	Yes	Yes	
District of Columbia	Yes	Yes	Yes	
Florida	Yes	Yes	Yes	
Georgia	Yes	Yes	Yes	
Hawaii	Yes	Yes	Yes	
Idaho	Yes	Yes	Yes	
Illinois	Yes	Yes	No	Letter from Attorney General to the county attorney of Peoria, Mar. 13, 1972: Under the provisions of the 1970 amendments, a U.S. citizen and resident of Illinois may vote in the presidential (electors) election in his precinct by absentee ballot "even though he is living in a foreign country." The county clerk is required to allow absentee registration of such citizens.
Indiana	Unclear	Unclear	No	Statute raises doubt of voting eligibility of nonresident domiciliary whose date of return uncertain. Ann. Ind. Stat. § 29–4803 (1969).
Iowa	Yes	Yes	Yes	
Kansas	Yes	Yes	Yes	
Kentucky	Qualified yes	Qualified yes	No. Indicated to Federal Voting Assistance Task Force intention to adopt FPCA by administrative rule in the future.	Letter from Attorney General, Feb. 11, 1972: Under the 1970 amendments, "American citizens living abroad who have established residence in Kentucky will be permitted to register in absentee. . . . Certainly a person does not have to be physically present in the State in order to vote, but on the other hand he must have some specific residential address in order to register. Thus, concerning the example you present, if the voter cannot cite or declare a particular place within a precinct as being his legal residence in Kentucky, we cannot see how he can legally qualify to register and vote." [See K. R. S. Ann. § 117.610 (1969).]
Louisiana	No	No	Legislation pending	Letter from Attorney General, July 29, 1966, verified by telephone, Oct. 27, 1971: "The place where one regards as his home is unimportant; where he actually resides is the determining factor." [See LSA–R, S. § 18:40 (1969) (absentee registration problem).]
Maine	Qualified yes	Qualified yes	No	Letter from Deputy Attorney General, Feb. 7, 1972: "This office has no quarrel with [your] example," but cannot speak for the several hundred registrars or boards of registration of voters in the State. [See 21 M.R.S.A. § 71 (Supp. 1970) (absentee registration problem).]
Maryland	Yes	Yes	Yes	
Massachusetts	Yes	Yes	Yes	Letter from Assistant Attorney General, Feb. 9, 1972: If a voter's name has been stricken from the list of registered voters as a result of the annual voting census and the voter seeks to reregister and can give no street and number which he maintains as a physical place of residence, "I think the voter would encounter grave difficulties."
Michigan	Yes	Yes	No	Letter from Attorney General, Mar. 10, 1972: Statute now provides for absentee voting for U.S. citizen temporarily residing abroad. Mich. Stat. Ann. § 6.1759(1). [Election clerks might accept FPCA as application for absentee ballot (and affidavit).]
Minnesota	Yes	Yes	Yes	Statute raises doubt of voting eligibility of nonresident domiciliary whose date of return is uncertain. M.S.A. § 201.26 (1962).
Mississippi	Yes	Yes	Yes	
Missouri	No	No	No	Letter from Attorney General, Feb. 16, 1972: Legislation pending to incorporate requirements of the 1970 Amendments in Missouri statutes. [See U.A.M.S. § 113–240 (Supp. 1971); cf. U.A.M.S. § 112.310 (Supp. 1971) (absentee registration problem).]
Montana	Yes	Yes	Yes	Statute raises doubt of voting eligibility of nonresident domiciliary whose date of return is uncertain. Rev. Code of Mont. 1947, § 23–3022 (Supp. 1971).
Nebraska	Yes	Yes	Yes	Statute raises doubt of voting eligibility of nonresident domiciliary whose date of return is uncertain. R.R.S. 1943, § 32–457 (1968).

State	Absentee registration	Absentee voting	FPCA for citizens temporarily abroad	Comments
Nevada	No	No	No	Letter from Attorney General, Feb. 18, 1972: "In light of the presumptions created by the Nevada Statute as well as the fact that the individual in question has broken up his home and moved to a foreign location it would appear that under the presently existing Nevada law the individual fitting your hypothetical situation would not qualify for an absentee ballot in this State." [See NRS § 293.500 (1969). See also NRS 293.517, 293.553 (1969) (absentee registration problem).]
New Hampshire	Qualified yes	Qualified yes	No	Letter from Attorney General, Feb. 15, 1972: "[W]here the right to vote involves a temporary absence [from the State] it is a question of fact whether the voter has the requisite intention of returning thereto as his home." [Case raises doubt of voting eligibility of nonresident domiciliary whose date of return uncertain. Felker v. Henderson, 78 N.H. 509, 102 Atl. 623, 624 (1917).]
New Jersey	Qualified yes	Qualified yes	No	Letter from Attorney General, Apr. 5, 1972: "It is the position of this office that New Jersey domiciliaries temporarily residing abroad must be afforded an opportunity for both absentee registration and voting in presidential elections. Enabling legislation to this effect is being introduced in the New Jersey Legislature in order that New Jersey domiciliaries can exercise their legitimate right of franchise in the presidential election while residing temporarily abroad." [But see N.J.S.A. § 19:31–6 (1964) (absentee registration problem).]
New Mexico	Yes	Yes	Yes	
New York	No	No	No	Letter from Attorney General to Department of Defense, May 27, 1969, verified by telephone, Oct. 27, 1971: "[F]or a civilian to vote by absentee ballot he must retain a permanent residence within the State of New York [unless voter is employed by the United States]". Letter from Attorney General, Mar. 30, 1972: Unable to give opinion to private party. "I recommend that you direct your efforts to the legislative bodies which have the power to make changes in New York Law."
North Carolina	Qualified yes	Qualified yes	No	Letter from Attorney General, Feb. 11, 1972: "[I]f a person goes into another State or country for temporary purpose without the intent of making that country his permanent residence and with the intent of returning to this State and particularly where he continues to vote absentee ballots in this State, then he would not generally be considered as having lost his residence in North Carolina." [The North Carolina statute, Gen. Stat. § 163–57, makes clear that a person shall not be considered as having lost his residence if he goes into "another State or county of this State." However, the Attorney General appears to have liberally construed this language to include "another country." Note also that the statute raises some doubt as to the voting eligibility of a non-resident domiciliary whose date of return is uncertain. Gen. Stat. § 163–57 (Supp. 1969). See also Gen. Stat. §§ 163–67, 163–68, 163–245 (Supp. 1969) (absentee registration problem).]
North Dakota	Yes	Yes	Yes	
Ohio	Qualified yes	Qualified yes	No	Letter from Secretary of State, Feb. 15, 1972: "From the facts given in your hypothetical situation, it would appear that the citizen would be eligible to vote by absentee ballot if he otherwise qualifies, i.e., 6 months residence in the State, 30 days residence in the county and precinct, and registered if required." [Ohio appears to impose a 3-year cutoff on absence from the State in determining eligibility to vote. Ohio Rev. Code Ann. § 5303.02 (1960). See also Ohio Rev. Code Ann. §§ 3503.11, 3503.27 (Supp. 1970) (absentee registration problem).]
Oklahoma	Yes	Yes	Yes	
Oregon	Yes	Yes	Yes	
Pennsylvania	Qualified yes	Qualified yes	No	Letter from Deputy Attorney General, Feb. 22, 1972: As a result of the 1970 amendments. "The Pennsylvania Elections Bureau has made provisions for registering electors as absentee electors who consider Pennsylvania their domicile. Requests for absentee registration will be handled by the Elections Bureau in the Department of State. From there they will be forwarded to the elector's home county where he will be enrolled. It is important that the elector designate the county in which he wishes to be enrolled. Requests for absentee ballots will, as usual, be handled at the county level." Legislation is pending to incorporate requirements of the 1970 amendments in Pennsylvania statute. [Note that the present statute raises some doubt as to the voting eligibility of a nonresident domiciliary whose date of return is uncertain, 25 P.S. § 2815 (1963). See also 25 P.S. §§ 951–18, 951–18.1, 951–18.2 (Supp. 1970) (absentee registration problem).]
Rhode Island	Unclear	Unclear	No	See General Laws of Rhode Island § 17–9–7 (1969); cf. §§17–9–10, 17–9–11, 17–9–25 (1969) (absentee registration problem).
South Carolina	Unclear	Qualified yes	No	Letter from Assistant Attorney General, Feb. 9, 1972: As a result of the 1970 amendments, a citizen domiciled in South Carolina who is temporarily absent from the State during the 1972 presidential election will be able to vote by absentee ballot. Legislation is pending to incorporate the requirements of the 1970 amendments in the South Carolina statute. In the event that legislation is not enacted, the Attorney General and State Election Commission "shall, by necessity, devise some emergency procedure to ensure compliance with the mandate of the Congress and the United States Supreme Court." [See South Carolina Code Law § 23–63 (absentee registration problem).]
South Dakota	Qualified yes	Qualified yes	No	Letter from Assistant Attorney General, Feb. 29, 1972: "[N]o citizen of South Dqkota loses his right to vote here unless he has established legal residence elsewhere." [However, confusing registration form appears to require presence in State. S.D.C.L. § 12–4–7 (Supp. 1971). See also S.D.C.L. §§ 12–19–16, 12–19–22 (1967) (absentee registration problem).]
Tennessee	Unclear	Qualified yes	No	Letter from Assistant Attorney General, Feb. 9, 1972: "The question whether [a person temporarily out of this country is] a bona fide resident, entitled to register and vote in this State, is a factor to be determined by each local county election commission." [However, there may be a problem with absentee registration. Tenn. Code Ann. 2–306 (1971), and confusing form of absentee ballot appears to require presence in State, Tenn. Code Ann. § 2–1604(1971).]
Texas	Yes	Yes	Yes	
Utah	Unclear	Unclear	No	Statute raises doubt of voting eligibility of nonresident domiciliary whose date of return is uncertain Utah Code Ann. § 20–2–14 (1969). Confusing registration form appears to require presence in State. Utah Code Ann. § 20–2–11 (Supp. 1971).]
Vermont	Unclear	Unclear	No	Confusing registration form of absentee ballot appears to require presence in State. 17 V.S.A. § 126 (1957).
Virginia	No	Qualified yes	Qualified yes	
Washington	Yes	Yes	Yes	
West Virginia	Unclear	Unclear	No	Confusing form of absentee ballot appears to require presence in State. W.Va. Code Ann. § 3–3–5 (1971).
Wisconsin	Unclear	Unclear	No	Letter from Attorney General to the Secretary of State of Wisconsin, Jan. 20. 1972: "[It does not appear that Wisconsin Statutes provide authority for allowing former residents of the State who now reside permanently in a foreign country to vote by absentee ballot in a presidential election in the election district of the former residence in the state of Wisconsin, simply because the person has retained their U.S. citizenship." Letter from Attorney General to the Secretary of State of Wisconsin, June 7, 1971: "[I]t can be generally stated that a vague general determination to return to Wisconsin in the distant future, may very well be insufficient to support a contention that residency elsewhere is only for temporary purposes." Moreover, confusing form of absentee ballot appears to require presence in State. W.S.A. § 6.87 (Supp. 1971).
Wyoming	Unclear	Unclear	No	Confusing registration form appears to require presence in State. Wyo. Stat. § 22–158 (Supp. 1971).

APPENDIX A

COMPENDIUM OF STATE LAWS LEADING TO THE DISENFRANCHISEMENT OF AMERICAN CITIZENS RESIDING ABROAD IN NON-PRESIDENTIAL ELECTIONS

Thirty-three states effectively disenfranchise or impair the ability of nonresident domiciliaries to vote in elections other than for President and Vice President. Illinois, Louisiana, and New York require a voter's actual presence or maintenance of a home in the state, thereby rendering overseas domiciliaries ineligible. Ohio allows temporary absentees to vote for three years but no longer. Thirteen states appear to recognize the voting eligibility of nonresident domiciliaries but have statutes, decisions or an Attorney General's Opinion which raise doubts regarding that eligibility. Ten states require the execution of absentee registration or voting forms which confuse voters by requiring a state "residence", thereby inducing nonresident domiciliaries to forego the franchise for fear of perjuring themselves. Finally, eighteen states disenfranchise these voters by failing to provide absentee registration or absentee ballots.*

1. The laws of the following three states appear to require physical presence or the maintenance of a home within the state in order to vote in non-Presidential elections:

State and authority:

Illinois, *Stein* v. *County Board of School Trustees*, 85 Ill. App. 2d 251, 229 N.E. 2d 165 (1967); *Clark* v. *Quick*, 337 Ill. 424, 36 N.E. 2d 563 (1941).

Louisiana, *Estopinal* v. *Michel*, 121 La. 879, 46 So. 907, 908 (1908); Opin. Att'y Gen. to Bipartisan Committee (July 29, 1966) (verified by telephone Oct. 27, 1971): "The place where one *regards* as his home is unimportant; where he actually resides is the determining factor."

New York, Letter from Secretary of State to Office of Information, Department of Defense (May 27, 1969) (verified by telephone Oct. 27, 1971): ". . . for a civilian to vote by absentee ballot he must retain a permanent residence within the State of New York (unless voter is employed by the United States)"

2. Ohio permits a voter to retain his eligibility to vote while absent from his home "for temporary purposes." However, "temporary purposes" is defined as "a period of absence not in excess of 3 years." (Ohio Rev. Code Ann. Sect. 3503.02 (1960).)

3. Thirteen states appear to recognize the voting eligibility of nonresident domicili-

*The sub-total add up to more than 33 states because several states fit into more than one category.

aries but have statutes, decisions, or the opinion of an Attorney General which raise doubts regarding that eligibility. Twelve of those states have a statute or decision approximately as follows: "If a person removes to another state as a place of permanent residence, with the intention of remaining for an indefinite time, he loses his residence in this state, notwithstanding that he entertains an intention of returning at some future period."

State and authority:

Arizona, A.R.S. Sect. 16–925 (Suppl. 1971).

California, West's Ann. Elec. Code Sect. 14287 (1961).

Indiana, Ann. Ind. Stat. Sect. 29–4803 (1969).

Kentucky, K.R.S. Ann. 117.610 (1969).

Minnesota, M.S.A. Sect. 201.26 (1962).

Montana, Rev. Code of Mont. 1947 Sect. 23–3022 (Supp. 1971).

Nebraska, R.R.S. 1943 Sect. 32–475 (1968).

Nevada, NRS 293.500 (1969).

New Hampshire, *Felker* v. *Henderson*, 78 N.H. 509, 102 A. 623, 624 (1917).

North Carolina, Gen'l Stat. N. Car. Sect. 163–57 (Suppl. 1969).

Pennsylvania, 25 P.S. Sect. 2815 (1963).

Utah, Utah Code Ann. 20–2–14 (1969).

Although New Jersey's decisional law indicates that residence equals domicile for voting purposes, the Attorney General of the State of New Jersey wrote to the Bipartisan Committee on May 11, 1966 (verified by telephone Oct. 28, 1971), as follows: ". . . in order to have a voting residence in this State it is necessary that a person possess an intention to make this State his home for an indefinite period and, in addition, he must have a residence to which he is entited to return at will. For instance, if a person rents an apartment and subsequently leaves the State, and that person no longer has a fixed address in New Jersey, he is not a domiciliary who is entited to vote irrespective of his intentions."

4. Ten states require the execution of absentee registration or voting forms which confuse voters by requiring a state "residence," thereby inducing nonresident domiciliaries to forego the franchise for fear of perjuring themseves:

State and form:

Arizona, A.R.S. Sect. 16–143(B) (Supp. 1971) (Adsentee Registration): "My place of residence is _____ precinct, _____ street, city of _____, _____, county of _____ state of Arizona." Sect. 16–143(A) (Supp. 1971) describes the required residence as "actual place of residence."

Idaho, Idaho Code Sect. 34–411 (Supp. 1970) (Application for Registration—Contents): "The period of time . . . during which [I] have resided in the state . . ." See also Idaho Code Sect. 34–410 (Supp. 1970).

Minnesota, M.S.A. 207.19 (Supp. 1971) (Absentee Ballot): "His home and place of residence is and on said election days will be at _____ in the _____ (town, city, or village) of _____ County of _____ State of Minnesota."

South Dakota, S.D.C.L. (Supp. 1971) Sect. 12–4–7 (Absentee Registration): ". . . I reside in the ___ precinct in the city of _____, _____, at _____ (street number), _____ street (or town, or _____ township), and in the _____ independent school district, in _____ county; . . ."

Tennessee, Tenn. Code Ann. Sect. 2–1604 (1971) (Absentee Ballot): "I, _____, _____, hereby declare that my fixed residence is _____ (street address), _____ (city or town), _____ (county), _____ Tennessee;"

Utah, Utah Code Ann. Sect. 20–2–11 (Supp. 1971) (Absentee Registration): "4. Residency qualifications:

A. Will you have resided in Utah six months continuously prior to the next election? _____ yes _____ no.

B. Will you have resided in _____ County sixty days continuously prior to the next election? _____ yes _____ no.

"I do solemnly swear . . . that I will not vote a ballot from any other state or election district under penalty of law."

Vermont, 17 V.S.A. Sect. 126 (1957) (Absentee Ballot): "State of Vermont, County of _____.

". . . I am a resident, a citizen and a legal voter of the town (city) of _____, county of _____.

West Virginia, W. Va. Code Ann. Sect. 3–3–5 (1971) (Absentee Ballot): "I, _____ hereby declare that I am now, or will have been, a resident of the State of West Virginia for twelve months, and of the county of _____ for sixty days next preceding the date of the ensuing election to be held on the _____ day of _____, 19__; that I now reside at _____ (give full address) in the magisterial district of _____ in said county." (Form ambiguous on whether voting right of a citizen temporarily residing abroad requires maintenance of a state "residence".)

Wisconsin, W.S.A. 6.87 (Supp. 1971) (Absentee Ballot) ". . . I am a resident of the _____ precinct of the town) (village) of _____, or of the _____ ward in the city of _____, residing at _____ in said city, the county of _____, state of Wisconsin, . . ."

Wyoming, Wyo. Stat. Sect. 22–158 (Supp. 1971) (Absentee Registration): "I do solemnly swear . . . that I will have actually and not constructively been a bona fide resident of [Wyoming] one year and of said county sixty days, and of election district No. _____ in said county ten days preceding the next election; that I am an actual resident of ward No. _____ . . . that my address is _____ (within) (not within) the limits of an incorporated city or town . . ."

5. Eighteen states do not appear to provide the U.S. citizen overseas (in a nongovernmental capacity) with absentee registration or an absentee ballot in non-Presidential elections:

(a) Absentee ballot:

Alabama, Title 17 Sect. 64(16)(23) (Supp. 1969); Title 17 Sect. 64(24a) (Supp. 1969).

Mississippi, Miss. Code Sect. 3196–01 (1957); Sect. 3203–11 (Supp. 1971).

South Carolina, Cf.S.Car. Code Law Sect. 23–441 *et seq.*, 23–449.31 *et seq.* (Supp. 1970).

(b) Absentee registration:

Alabama, Title 17 Sect. 26 (Supp. 1969).

Connecticut, Conn. Gen'l Stat. Ann. Sect. 9–20 (Supp. 1971).

Delaware, Del. Code Ann. 15 Sect. 1722 (Supp. 1970); cf. 15 Sect. 1901 *et seq.*

Idaho, Idaho Code Sect. 34–410 (Supp. 1970).

Louisiana, LSA–R.S. 18:40 (1969).

Maine, 21 M.R.S.A. Sect. 71 (Supp. 1970).

Mississippi, Miss. Code Sect. 3196–06 (1957).

Missouri, V.A.M.S. Sect. 113.240 (Supp. 1971); cf. 112.310 (Supp. 1971).

Nevada, NRS 293.517; cf. 293.553 (1969).

New Jersey, N.J.S.A. 19:31–6 (1964).

North Carolina, Gen'l Stat. N. Car. Sects. 163–67, 163–68, (Supp. 1969); cf. Sect. 163–245 (Supp. 1969).

Ohio, Ohio Rev. Code Ann. Sect. 3503.11 (Supp. 1970); Sect. 3503.27 (1960).

Oklahoma 26 Okl. St. Ann. Sect. 93.4 (Supp. 1970); cf. 26 Okl. St. Ann. Sect. 345.1 (Supp. 1970).

Pennsylvania, 25 P.S. Sect. 951–18 (1963); cf. 25 P.S. Sects. 951–18.1, 951–18.2 (Supp. 1970).

Rhode Island, Gen'l Laws of R.I. Sects. 17–9–7 (1969); cf. Sect. 17–9–10, 17–9–11, 17–9–25 (1969).

South Carolina, S. Car. Code Law Sect. 23–63 (Supp.)

South Dakota, S.D.C.L. Sect. 12–19–16 (1967); cf. Sect. 12–19–22.

Tennessee, Tenn. Code Ann. Sect. 2–306 (1971).

Virginia, Code of Va. Ann. Sect. 24.1–47 (Supp. 1971).

EXHIBIT 2

[From the New York Times, Sept. 10, 1972]

AMERICANS OVERSEAS FACE DENIAL OF VOTE UNDER LAW

(By Richard Severo)

MEXICO CITY, September 9—Thousands of Americans living abroad are apparently being denied the right to vote in the 1972 Presidential election, despite a new Federal law intended to provide for the first time absentee ballots for all citizens living or traveling overseas.

Although both political parties are actively organizing campaigns in foreign countries for the first time on any scale, their efforts are being frustrated at home by a combination of ignorance, complex legal questions and a bureaucratic vacuum.

In Mexico, where some 100,000 Americans are living on a permanent or semipermanent basis, dozens of people have already been notified by local voting officials in the United States that they are not "qualified" to vote under the laws of their states.

Still others, making similar applications to different states and different election officials, have been welcomed as voters and told that their ballots would be approved.

The inconsistencies and confusion have so upset Senator Barry Goldwater, who was largely responsible for the Voting Rights Act Amendments of 1970, that he has sent one of his legislative aides, Terry Emerson, on a swing through France, Germany, Switzerland and Holland to catalogue voter problems. Mr. Emerson is scheduled to visit Mexico next Monday.

There are estimated to be 1.5 million Americans living outside the United States, and for years they have been unable to vote because they had no legal residence in the states.

It was Mr. Goldwater's intention to permit every holder of an American passport to vote, no matter where he was abroad. The law is by no means being completely ignored. Mr. Emerson, who was reached by telephone in Phoenix, Ariz., estimates that there is little or no trouble for voters who apply to about three-fifths of the states.

But among the problem states—New York, California and Ohio, to name three—are the most populous.

The new voting law requires, for the first time, that states must register "duly qualified residents" up to 30 days before the Presidential election. It also prohibits states from denying the right to vote for President to residents who are outside the state on Election Day but who comply with absentee voting requirements.

Problems arise, according to Justice Department officials in Washington because the states have 50 different definitions of what constitutes a "resident." These are based on statutes, court decisions and sometimes on the off-hand administrative judgment of a state or local official.

UNRESOLVED QUESTIONS

Although the new Federal statute apparently guarantees all American citizens abroad the right to vote, no one who has been denied that right has yet brought a court action that might define more clearly the responsibilities of the state and local election boards—how far they have to go.

Completely unresolved, for example, is whether the new law is intended to cover American citizens who have lived abroad for years and who have no visible intention of returning to the United States.

And what about the Americans in Canada who are either servicemen absent without leave or draft evaders? In many states, felons are not permitted to vote, and it is up to election officials now to determine whether a man charged with desertion but never brought to trial should be classed as a felon.

In any event, Washington officials assume that many local boards of election, who must approve applications for absentee ballots, remain unaware of the 1970 law altogether or, at the least, uncertain as to how to interpret its broad mandate.

"ACT IS MEANINGLESS"

For example, Mrs. Helen Whittlesey, wife of a businessman here, received a form letter this week from George Mann, registrar of voters in Santa Clara County, Calif., who told her that unless she resided in Santa Clara County he could not permit her to vote there.

Mrs. Whittlesey was born in Santa Clara County, but left before she was 21 years old and has lived in Mexico for years. She has never been permitted to vote in a national election.

"I've never been interested in voting for sheriff or dog catcher," she snapped. "But I do think we ought to be allowed to vote in national elections."

Mrs. Whittlesey complained to the office of the United States Attorney General. In a response received from David L. Norman of the Civil Rights Division, she was informed that "the question of whether an individual presently residing abroad is a bona fide resident of a state for voting purposes is . . . to be determined by state officials according to state election laws and procedures."

"All of which means," said Mrs. Whittlesey, "that this voting rights act is meaningless."

But Mrs. Whittlesey's husband, Horace, had an entirely different experience when he applied to register in the town of his birth, Emporia, Kan.

One of Mr. Whittlesey's ancestors, Nelson Whittlesey, was the first Mayor of Emporia. It is impossible to determine what effect this may have had on officials in Emporia, but they responded to Mr. Whittlesey's application with a warm, personal note, welcoming him as an Emporia voter.

"Well, you know the bureaucratic mind," said Harry Wright 2d, secretary of the Mexico City Republican Club and one of the city's most prominent Republican boosters.

"A lot of them don't know about the law where they don't like the work involved in registering a foreign resident," he said of the local election officials.

M'GOVERNITES CONCERNED

For James Trowbridge and Alex Smith, cochairmen of the local Democrats for George McGovern, the apparently capricious criteria for voter acceptance or rejection is quite serious.

"I think this may very well be a close election." Mr. Trowbridge said, "and I see no reason why George McGovern should lose even a single vote because some clerk is ignorant of Federal law."

New York is emerging as a particularly troublesome place for Americans living abroad.

Mr. and Mrs. Robert Lockwood and Miss Dorothy Gast have received letters from Albert T. Haydick, commissioner of the Board of Elections of Westchester County, denying their applications for absentee ballots.

"From the information you present, the indication is that you are not a duly qualified resident of New York State," Mr. Haydick wrote to Miss Gast, a guidance counselor in the schools here who was a teacher in Hawthorne about seven years ago.

Miss Gast is a native of Chicago and decided to claim an address in Hawthorne because that was her last address in the United States.

What angers the New Yorkers living in Mexico is that some upstate counties—such as Putnam—have honored requests and are apparently going to permit people to vote, but Westchester and some New York City election boards appear to be inflexible on the issue.

Mrs. Diana Anhalt, who was born in the Bronx but has lived in Mexico for many years, was told in a letter from Beatrice Berger, clerk of the Bronx Borough Office, that her application would be honored if an "appeal is upheld by the Supreme Court."

The letter did not specify the appeal. Mrs. Anhalt does not know what it is and not even in the office of Senator Goldwater did anyone know about a pending Supreme Court decision on the 1970 law.

In Mexico City, applications for absentee ballots were prepared by the United States Chamber of Commerce and thousands have been printed up at no cost to voters by the United States Embassy.

The embassy has also offered to notarize the applications for voters at no charge, although one embassy worker admitted there was a great deal of confusion over what each state would and would not accept.

Thus far, the embassy has processed more than 2,000 applications and they are coming in at a rate of about 40 a day.

George Munro, executive director of the American Society of Mexico, is receiving mounting complaints about the rejections, which he feels are coming from "clerks who haven't heard about the law."

Among the most troublesome in this respect are Alabama, Arkansas, Kansas, Louisiana, Massachusetts, Mississippi, Missouri, North Carolina, Oregon and South Carolina. Some voters here have sent in applications only to receive state tax forms in the return mail.

At present, an American with a permanent address abroad working with private industry can be exempt from as much as $25,000 a year in Federal taxes. Many Americans earn much more modest salaries than that, working in foreign countries as school teachers and interpreters. Frequently, they justify their lower income on the ground that it is tax-free and that the cost of living may be less than in most areas of the United States.

One American living here was warned by his accountant in New York City not to vote.

"Mark my words," the accountant said, "the state will come after you for taxes, and if that happens, can the Feds be far behind?"

Traditionally, Congress has regarded voting as entirely within the states' legal jurisdiction, only approaching the question to set minimum age limits and prohibit discrimination based on race or sex. In 1955, Congress approved a law urging but not requiring states to provide absentee ballots for servicemen overseas.

Subsequently, some states extended the same privilege to civilian government employees stationed abroad and other specified groups. But it was not until 1970 that all citizens abroad were given the right to vote for President—if their state regarded them as residents.

A complication in the inconsistency among election clerks is that some states and the District of Columbia are threatening to collect taxes from Americans who attempt to establish a voting address in them.

In some countries, partisan blocks of American citizens are already organizing to combat resistance to their voting by hometown election officials. In Toronto, where some 40,000 Americans live, a group supporting Mr. McGovern met last week for some strategic instructions.

TOLD TO WRITE THEIR SENATORS

These expatriates were advised to write to their Senator if an application for an absentee ballot should be denied. In at least one instance, they were told, a citizen living in Canada had written to Mr. Goldwater, who referred the problem to the home-state Senator, who then got the election board to reverse its position.

Estimates of the potential impact of the overseas vote vary widely. Richard McAdoo, special ballot director of the Committee to Re-elect the President, who is now on a European campaign tour, has estimated that there are 2.5 million Americans living abroad, which he contrasts with the 500,000-vote Nixon majority in 1968.

EXHIBIT 3

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., August 28, 1972.

Hon. BARRY GOLDWATER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GOLDWATER: This is in reply to your letter August 16, 1972, regarding the possible effect that voting by absentee ballot by United States citizens residing abroad may have on their claiming the exclusion from gross income provided by section 911 (a) (1) of the Internal Revenue Code of 1954.

Section 911(a) (1) of the Code provides, in relevant part, that the following items shall not be included in gross income and shall be exempt from Federal income taxation. In the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such uninterrupted period.

You forwarded with your letter a copy of a report prepared by the American Chamber of Commerce of Venezuela. That report and your letter indicate concern that if a United States citizen residing abroad signs an application for registration to vote in one of the States and represents in such application no more than that he intends to return to that State as his domicile, he may thereby jeopardize or forfeit his entitlement to the section 911 exclusion from gross income based on his claim of bona fide residence in a foreign country. You are referring in particular to Internal Revenue Service Publication 54 (10–71) *Tax Guide for U.S. Citizens Abroad,* 1972 Edition, which provides on page 4:

"A U.S. citizen living abroad may vote by absentee ballot in elections held in the United States (national, State, and local) without jeopardizing his eligibility for tax exemption as a bona fide resident of a foreign country. Such voting will not, of itself, nullify the taxpayer's status.

However, where a U.S. citizen makes a representation to the local election official regarding the nature and length of his stay abroad that is inconsistent with his representation for purposes of the tax exclusion, the fact that he made the representation in connection with absentee voting will be considered in determining his status for the exclusion, but will not necessarily be conclusive.

You are concerned that the "inconsistent representation" language of the above-quoted material might be interpreted to mean that a representation by a taxpayer of domicile in a State and of an intent to ultimately return there is not compatible with the taxpayer's claim of bona fide residence in a foreign country for purposes of section 911 of the Code.

The Service has held in a recently published ruling, Revenue Ruling 71–101, C.B. 1971–1, 214:

"[G]enerally the exercise by a citizen of the United States of his right to vote in National, state, or local elections in the United States by absentee ballot is not an action that would affect the length or nature of his stay outside the United States and consequently would not jeopardize the exemption under section 911(a)(1) of the Code. However, where absentee voting in the United States involves a representation to the local election official regarding the nature and length of the taxpayer's stay abroad that is inconsistent with the taxpayer's representation of intention for purposes of section 911 of the Code, the fact that he made the representation in connection with absentee voting will be taken into account in determining his status under section 911 of the Code, *but will not necessarily be conclusive.*" [Emphasis added.]

It is our conclusion that "inconsistent representation" as referred to in the above cited publications does not refer to a mere statement by a taxpayer that he considers himself a voting resident of a State and ultimately intends to return to that State as his domicile. Such a statement is not incompatible with a taxpayer's claim of bona fide residence in a foreign country. Instead, "inconsistent representations" refer to other representations which the taxpayer may have made to the Service regarding the *specific* nature and length of his stay in a foreign country. If a taxpayer in support of his claim to the section 911 exclusion from gross income makes certain *specific* representations as to the purpose, nature, and intended length of his stay in the foreign country, and in an application for absentee voting makes other statements which appear inconsistent with those specific representations, the Service must take such inconsistent statements into account *in determining the true facts* upon which the taxpayer bases his claim to bona fide residence in a foreign country. Further, as stated in Revenue Ruling 71–101, even such inconsistent statements will not necessarily be conclusive.

However, the mere representation by a taxpayer made in support of an application for absentee voting that he considers himself a voting resident of a particular State and that he intends to ultimately return to that State, will not by itself in any way affect his claim to the section 911 exclusion from gross income based on bona fide residence in a foreign country.

We hope that this letter will clarify any ambiguities that may have existed with respect to this situation. We hope that no United States citizen living abroad will hesitate to exercise his voting right out of concern that this action may jeopardize his claim to the section 911 exclusion from gross income.

Sincerely yours,

A. FEIBEL,
Acting Chief, Corporation Tax Branch.

EXHIBIT 4

DEPARTMENT OF JUSTICE,
Washington, March 13, 1972.

J. EUGENE MARANS, Esquire,
Cleary, Gottlieb, Steen & Hamilton,
Washington, D.C.

DEAR MR. MARANS: This is in response to your discussion with members of my staff on February 1, 1972, and your letter of February 3, 1972, concerning the Voting Rights Act Amendments of 1970, 42 U.S.C. 1973aa–1, particularly the provisions of Sections 202(d) and (f) pertaining to absentee registration and absentee balloting in presidential elections. As counsel for the Bipartisan Committee on Absentee Voting, you have asked whether, in our judgment, the 1970 Amendments require a state to provide absentee registration procedures and absentee ballots to former residents of that state new temporarily residing abroad.

In brief, our conclusions are (1) that the 1970 Amendments do not *per se* preclude a state from applying a requirement of residency to those seeking to register within that state and (2) that the question of whether a person outside a state is a resident of that state for voting purposes is, at least in the first instance, a question of that state's law.

The United States Constitution reserves to the federal government the power to regulate the time and manner of federal elections (Article I, section 2; Article I, section 4; Article II, section 1) while reserving to the states the power to determine voter qualification. (*Beachman* v. *Braterman,* 300 F. Supp. 182 (S.D., Fla), affirmed 396 U.S. 12 (1969); *Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45, 50–51 (1959)). Traditionally, this right has included the power to determine bona fide residency. (*Hall* v. *Beals,* 396 U.S. 45, 53 (1969) (Marall, J., dissenting); *Carrington* v. *Rash,* 380 U.S. 89 (1965)). The Congress and the states acting together have, through the amendment process, placed additional restrictions on the powers of the states so that they may not now establish procedures violative of the equal protection clause nor deny or abridge the right to vote on account of race, color, or sex or age if the age is eighteen or more. Legislation passed by Congress to implement the equal protection clause and the voting amendments, such as the suspension of literacy tests, has placed additional limitations on the powers of the states. It is with this constitutional scheme in mind that we must look to the 1970 Amendments to determine what, if any, limitations Congress placed upon the traditional right of the states to determine voter qualifications.

At the beginning, it is necessary to distinguish between two general types of voter qualifications, durational residency requirements and bona fide residency. The former require an individual to have resided in a certain state or political subdivision for a specified length of time before he can be qualified to vote, while the latter is a determination of whether an individual is a bona fide resident of the state or political subdivision regardless of the length of his residency.

Congress expressly dealt with durational residency requirements in Section 202(c) of the 1970 Amendments (hereafter cited by section only) by prohibiting a state from imposing such a requirement to deny or abridge the right of a citizen otherwise qualified to vote in a presidential election. The Amendments provide that applications for registration or other means of qualification must be accepted up to the 30th day before the presidential election. (Section (d)). The limitation of this section, however, does not supersede the power of the states to require a citizen to be a bona fide resident of that particular state as a qualification for registration and voting in that particular state.

Section (e) is, to a limited extent, a restriction on the power of the states to require bona fide residency as a condition to obtaining a ballot. Under that Section, when a citizen moves from one state or political subdivision to a new state or political subdivision within 30 days of a presidential election and is unable to register at his new residence because the registration deadline has passed, he must be allowed to vote, either in person or absentee, in the place of his former residence. Section (e) did not expand or qualify the concept of bona fide residency in any other manner.

With regard to the absentee provisions, Section (c) provides that if a citizen of the United States has complied with the requirements of state law providing for the casting of absentee ballots, no state may deny such citizen the right to vote in a presidential election because of his failure to be physically present in such state or political subdivision at the time of such election. A state is, accordingly, prohibited from restricting the availability of absentee ballots to persons or classes absent for particular purposes, but this language does not appear to preclude a state from establishing bona fide residency as a requirement for obtaining an absentee ballot in that state.

Sections (d) and (f) establish standards for absentee registration and the casting of absentee ballots. Under Section (f), each citizen "who is otherwise qualified to vote by absentee ballot in any State or political subdivision" in an election for electors for President or Vice-President must be given the opportunity, if registration or other qualification is necessary, to register or qualify absentee. The provision applicable to absentee balloting. Section (d), requires each state to provide procedures for the casting of absentee ballots by "all duly qualified residents of such state" who will be absent from the state on election day and who have applied for an absentee ballot not later than seven days prior to a presidential election and return the ballot up to the time of the closing of the polls.[1]

Since anyone who is qualified to vote absentee may also register absentee, we must look to Section (d) to determine which citizens are covered by the absentee provisions of the Amendments. This section requires the state to provide absentee ballots to each "duly qualified resident of such state." While Sections (c) and (e), by prohibiting durational residency requirements, as discussed above, expressly limit the power of the states in certain situations, there is no language in Section (d) placing additional limitations on the right of the states to ascertain the residency of an individual. Since there is no language in Section (d) restricting the states' right to determine bona fide residency, we must, under this Section, follow the constitutional scheme of reserving to the states the power to determine which citizens are "duly qualified residents" according to state law.

From our reading of the legislative history of the 1970 Amendments, it appears that Senator Goldwater was, among other things, concerned with instances in which states did not accord civilians the same absentee registration and voting privileges they gave military personnel. However, in light of the general reservation of power to the states to determine voting qualifications, we do not consider it appropriate to assume Congressional intent to preclude the states from having a requirement of bona fide residency, or to enact a federal standard for measuring bona fide residency, in the absence of clear and unequivocal language. While a state may not conclusively presume that a certain class of citizens may never be considered bona fide residents, each state must determine, on a case-by-case basis, the true intent and residency of the individual requesting to register absentee or obtain an absentee ballot. (See *Carrington* v. *Rash, supra.*) Under Sections (c), (d) and (f) a State may not deny absentee registration procedures and absentee ballots to individuals outside the country if such person has been determined by the state or local officials to be a "duly qualified resident of such state."

Sincerely,

DAVID L. NORMAN,
Assistant Attorney General,
Civil Rights Division.

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[1] Section (g) provides generally that any state or political subdivision may adopt voting procedures which are less restrictive than those contained in Section 202.

By Mr. HUMPHREY:

S. 4084. A bill to provide for project grants for the development and demonstration of programs for rehabilitative and habilitative care of the aged, blind, and disabled patients of long-term health care facilities. Referred to the Committee on Labor and Public Welfare.

NATIONAL CHRONICARE DEMONSTRATION CENTER ACT OF 1972

Mr. HUMPHREY. Mr. President, I send to the desk for appropriate reference a bill to provide for project grants by which to test the economic feasibility of community health centers offering comprehensive diagnostic and medical treatment, day care, rehabilitation, supportive, and community outreach services to the aged, the blind, and the disabled.

The serious need to establish a comprehensive, efficient, and humane system to fulfill the health needs of the chronically ill and disabled, and to promote the maximum use of residential, outpatient, and nursing home care as an alternative to hospitalization, ought to be abundantly clear by now. It is also essential that this area of health care be fully integrated into a national health insurance program.

It has been estimated that over 700,000 Americans are long-term hospital patients, and over 1 million more persons are patients in nursing homes. But there are almost 20 million additional people in our Nation who are not in an institution but have disabilities severe enough to restrict or prohibit their major activities. Four out of every five of these persons are over 65 years old, and the elderly constitute 90 percent of the patients in nursing home facilities.

The harsh reality posing a demand for reform of our health care delivery system is that over half of the skyrocketing costs of hospital care are accounted for in the treatment of chronic conditions. Mental, circulatory, sensory system, and bone diseases absorb well over half the current expenditures, amounting to some $28 billion, for the treatment of chronic conditions.

In the further effort to promote intensive study by Congress of alternative solutions to these critical problems, I am today introducing legislation to provide for the establishment of a demonstration program on the rehabilitation of chronically ill patients in long-term health care facilities. This legislation, based upon a constructive proposal by the American Nursing Home Association, would provide project grants by which to test the economic feasibility of community chronicare health centers offering comprehensive diagnostic, medical treatment, day care, rehabilitation, supportive, and community outreach services to enable the chronically ill to achieve optimum social and physical functioning within their communities. A key component of these centers would be the therapeutic service team of professional personnel in the fields of medicine, psychiatry, social work, and physical therapy, which would establish and constantly monitor a total care plan for each patient.

I believe this recommendation should be given careful consideration in the course of legislative action by the next Congress to launch major improvements in long-term health care for millions of Americans.

I ask unanimous consent that the text of my bill, the National Chronicare Demonstration Center Act, be printed in the RECORD.

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

S. 4084

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 "National Chronicare Demonstration Center Act of 1972".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds and declares that—

(1) long-term care has always been neglected;

(2) present programs such as Medicare and Medicaid have proved to be ineffective and inefficient, with regard to long-term care;

(3) all national health insurance proposals now under consideration ignore long-term care;

(4) most Americans lack direct access to non-hospital health care;

(5) society has been largely unwilling to deal with the problems of persons who are permanently unproductive because of poor health;

(6) outmoded laws limit the realistic use of paramedical personnel, resulting in increased health care costs; and

(7) the nursing home industry has been the one health specialty which has accepted the responsibility for developing long-term care through the years.

(b) It is the purpose of this Act to establish demonstration programs to provide a basis for a commitment to a lasting national program for long-term health care for the chronically ill.

PROGRAM ESTABLISHMENT

SEC. 3. (a) There are hereby authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1973, and $15,000,000 for each of the next two succeeding fiscal years, to enable the Secretary to make grants to any public, nonprofit or proprietary private agency, institution, or organization or provider of services to cover all or any part of the cost of projects for the development or demonstration of several programs in representative areas of the country designed to care for and rehabilitate chronically ill inpatients of long-term health care facilities by testing the economic feasibility, efficiency and health care delivery system, utilizing community chronicare health centers.

(b) To be eligible for a grant under subsection (a) an applicant must give satisfactor assurances of the capability of providing the following:

(1) diagnostic service,

(2) inpatient care,

(3) day care,

(4) rehabilitation service (on both inpatient and outpatient basis), and

(5) outreach service.

The applicant must itself, provide directly (not by contract) at least one of the above mentioned services.

(c) The diagnostic service shall be the point of entry into the system of health care provided by the community chronicare health center and must be available for initial entry or screening and for diagnostic work-up on patients located within a facility, day care and out-patient service elements determined by the therapeutic service team.

SEC. 3. Each community chronicare health center shall maintain a therapeutic service team which shall be responsible—

(1) for establishing and maintaining a total patient care plan following initial screening;

(2) for assessment of patient health status on a continuing basis; and

(3) for the involvement of additional ancillary service professionals for provision of required services.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(1) "Community Chronicare Health Center" means a skilled nursing home, intermediate care facility, or home health agency, which may provide—

(A) primary physician's services;

(B) primary dentist services;

(C) rehabilitation services;

(D) outpatient preventive services;

(E) optometric services;

(F) durable medical equipment;

(G) drugs prescribed on an outpatient basis;

(H) prosthetic and supportive devices; and

(I) home health services.

(2) "Therapeutic Service Team" means the combination of the following personnel working in a community chronicare health center—

(A) a Medical Director who is a licensed physician responsible for the medical services of the patients;

(B) a Director of Nursing who is a Registered Professional Nurse responsible for nursing care of the patients;

(C) a Social Worker who is accountable for expediting programs to meet the social needs of the patients;

(D) a Physical Therapist who is accountable for meeting the physician rehabilitative, habilitative and supportive needs of patients;

(E) a Mental Health Specialist who is responsible for a plan of care for mental, psychoneurotic, and personality disorders of patients; and

(F) other paramedical personnel utilized in a manner prescribed by the Secretary in regulations.

(3) "Secretary" means the Secretary of Health, Education, and Welfare.

REPORT

SEC. 5. The Secretary shall make a report to the President for transmission to the Congress within two years after the enactment of this Act stating the progress under this Act and making recommendations for further action if needed.

Mr. HUMPHREY. I realize there will be no action on this bill in this Congress, but I wanted it to be available for study and for the observation and the comment of those who are interested in this subject matter. At the next session, I shall reintroduce a bill along these lines, in the hope that between now and the next session of Congress I will receive valuable counsel and advice as to how we can better confront the legislative proposal I am offering today.

By Mr. HOLLINGS:

S. 4086. A bill to amend the Ports and Waterways Safety Act of 1972 to provide for a study of the need for regulation of

the construction and operation of artificial structures for offshore port, teminal, or powerplant facilities. Referred to the Committee on Commerce.

Mr. HOLLINGS. Mr. President, today American citizens from all walks of life are beginning to recognize the irreplaceable values of our coastal waters and the vast potential they hold for recreational, commercial, and industrial uses. Although awareness of this situation is expanding through our shared concern about the environment, there remains a general lack of rational planning within coastal areas. Very few States and local governments have adopted the strong regulatory authority necessary to impose standards upon the uses of coastal lands and waters. And in the vacuum created by this lack of authority, things are transpiring which will have tremendous impact upon our coastal environment.

I speak today about the planned construction of offshore port facilities for the offloading of crude oil from huge supertankers, and the creation of manmade offshore islands to house vast nuclear powerplant electric generating facilities.

On September 19, 1972, there appeared an article in the New York Times regarding the signing of a contract between the Public Service Electric & Gas Co. of New Jersey and offshore power systems. The contract requires offshore power systems to deliver two 1.15-million-kilowatt nuclear power generating plants to the New Jersey company. These two plants are to be moored within a huge manmade breakwater located about 3 miles off the New Jersey coast.

Mr. President, I cite this to drive home my point that the Congress of the United States can no longer sit idly by, ignoring this situation. The implications of this mammoth endeavor are quite evident. The environmental dangers inherent in this project were underscored by the fact that the yacht to be used for the contract signing ceremony could not even reach the site because of bad weather and rolling seas. An inauspicious beginning to say the least.

Just as near to reality—if not closer—is the construction of equally large offshore port and terminal facilities. These huge structures are necessary, we are told, because of the ever-increasing energy crisis and this Nation's need to import ever-increasing amounts of crude oil. The world's dependence upon the supertankers necessary to carry this oil add to the threat to our marine environment. Although many minds are bent to the task of planning for these "superports," there are even more questions which must be answered by the policymakers if these projects are to become reality.

The Congress and the executive branch of Government will be called upon to make the difficult decisions which will launch these proposals. But will the President and the Congress be sufficiently informed? Will we have the knowledge, the research information, the expert answers to make our decisions rationally? Today, there are glaring gaps in our understanding of the technical, legal, and economic issues involved in such undertakings.

Because of this, the time has come for Congress to examine this whole question of constructing mammoth and potentially dangerous structures in the ocean. Congress must determine if further legislation is needed to adequately regulate the construction and operation of such facilities.

To accomplish this, I am today introducing a bill to authorize a comprehensive study by the Department of Commerce. The National Oceanic and Atmospheric Administration—NOAA—within that Department is, I believe, uniquely qualified and capable to undertaking such a study, because of its vast expertise and technical competence in matters pertaining to the marine environment. The purpose of my bill is to authorize and direct the Secretary to gather all relevant information about such planned offshore construction projects and submit his report to Congress within 18 months. Once this is done, the Congress can go about the business of prescribing adequate regulatory measures to prevent serious harm to our commercial, international, and environmental responsibilities. We must tackle this problem before the damage is done, not afterward—when it will be too late.

Mr. President, I ask unanimous consent that the article in the New York Times of September 19 to which I previously referred to be printed at this point in the RECORD.

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

CONTRACT SIGNED ON OFFSHORE NUCLEAR PLANT

(By Gene Smith)

ATLANTIC CITY, September 18.—The potential of offshore floating nuclear power "islands" moved a step nearer reality today at a point just under three miles off the Jersey coast.

The occasion was the signing of a $750-million contract between the Public Service Electric and Gas Company of New Jersey and Offshore Power Systems—a joint venture of the Westinghouse Electric Corporation and Tenneco, Inc.

The contract calls for Offshore to deliver two 1.15-million-kilowatt nuclear power plants to be moored within a huge manmade breakwater southeast of Little Egg Inlet.

While the actual signing on board the yacht Ottelia was conducted in a festive air, the fact that the yacht couldn't reach the exact site 12 miles northeast of here because of foggy weather and rolling seas might be an ominous potent for the fate of the new power plant concept.

Despite the hopes of Westinghouse executives, several Atomic Energy Commission members and other governmental and utility officials, nuclear power plants offshore are bound to run into strong opposition from environmentalists.

However, James T. Ramey, an A.E.C. commissioner, said in an interview on board that the standardization of the components at the new plant, to be built at Jacksonville, Fla., by Offshore power and floated here, should go a long way toward cutting the time required for the usual licensing hearings.

"In the future we would hope to have 'generic hearings' on, say, the first eight plants of this new concept. The plants would be identical so we would have to look at them as a single unit," he said. "However, there would still have to be hearings at the actual sites for construction and installation of components, including an environmental protection hearing."

Mr. Ramey indicted that preliminary regulatory studies on the Westinghouse-Tenneco concept were under way and should be completed by yearend. Next, he indicated, would come the licensing hearing for the offshore plant, which would involve decisions about how these should differ from standard nuclear power plant licensing procedures.

The commissioner emphasized that the A.E.C. would still be the judge on the safety of the floating nuclear power plants, while it would be up to the individual states to arrange for leases and property rights for the sites as well as rate regulations.

AN INTERESTED GUEST

"Our function is essentially limited to the safety aspects," Mr. Ramey said.

An interested guest at the signing was William G. Kuhns, chief executive of the General Public Utilities Corporation, which has operations in this state. He disclosed that his system expected to contract for up to 10 per cent of the floating nuclear plants' capacity.

"We're interested in the concept and the potential for a similar project in Lake Erie sometime in the future," he said. An operating subsidiary supplies power on Lake Erie in Pennsylvania.

It was also learned that the Atlantic City Electric Company, which is conducting merger studies with Public Service, might also take some output from the nuclear plant.

The total cost of the floating nuclear plant is estimated at $1-billion. John W. Simpson, president of the Westinghouse Power Systems Company, said it represented "the largest single equipment contract in the history of the electric utility industry."

"ONLY POSSIBLE SOLUTION"

In his prepared remarks, Mr. Simpson said it was "trite" to talk about an impending energy crisis "because so few people are listening . . . [and] it is with us today."

"After one listens to the almost limitless talk about the energy crisis, one thing stands out," Mr. Simpson said. "The only possible solution is more nuclear power. This is the answer for the short term and the long term . . . the alternative is economic and environmental chaos and a severe disruption of our way of life if we do not get the electric power we need when we need it."

He added that the floating nuclear power plant concept was the best way to "supply one, two or four million kilowatts of electricity, with an absolutely minimum impact on the environment."

Offshore Power has begun work on its Jacksonville, Fla., facility with an aim to deliver the first floating plant to Public Service in 1979. The Florida plant is designed initially to produce two nuclear plants a year and later double that level. Total employment is projected at more than 8,000.

Mr. Kuhns indicated that if standardization is accepted by the A.E.C., floating nucelar power plants might eventually be designed to be moored close to shore in areas of power demand just as gas turbine barges are moored today within New York City limits.

By Mr. BURDICK.

S. 4087. A bill to establish a program for the indemnification of crop losses sustained by farmers as the result of damage caused by migratory waterfowl.

Mr. BURDICK. Mr. President, each fall farmers face the prospect of significant financial loss from migratory waterfowl. Migration to winter feeding grounds occurs during harvest season when fields have been swathed and grain is within reach of the birds. The scope of the prob-

lem is unclear, but Canadian officials estimate that ducks and geese destroy about $6 million worth of grain each year in the three prairie provinces. In two Minnesota counties, studies conducted in 1964 and 1965 show losses in excess of $100,000. In my own State of North Dakota, the county commissioners of two counties have gone on record to the effect that they will not approve any sales of wetlands to the Bureau of Sport Fisheries and Wildlife until a method is found to reimburse landowners for crop damage caused by migratory waterfowl.

The wildlife depredation problem has been of growing concern among grain producers for the past 10 years. In 1962, Congress recognized that breeding and feeding areas for migratory waterfowl were disappearing and enacted an accelerated wetlands acquisition program which authorized the purchase and lease of 2.5 million acres for national wildlife refuges and for waterfowl production areas. Since we have come to recognize waterfowl as a natural resource—one which we are willing to protect by expenditure of Federal tax dollars—I do not feel that it is fair to call upon individual farmers to maintain them.

As early as 1945 the State of Wyoming authorized payments for crop damage by game birds. In the early 1960's, crop depredation within the local feeding zone of Canadian geese from the Horicon National Wildlife Refuge in Wisconsin generated a public outcry that led to payments for crop losses out of conservation funds.

In 1969, the legislative committee of the Migratory Crop Depredation Work Session at College Park, Md., recommended:

> In keeping with the substantial efforts of State agencies and the Bureau of Sports Fisheries and Wildlife to prevent crop damage by migratory birds that federal legislative authority and funds should be sought and suitable criteria be developed to equitably compensate individual farmers in selected critical local situations where substantial damage to individuals by migratory game birds cannot be prevented.

On July 11, 1972, the Canadian Minister of the Environment and the Minister of Agriculture announced the formulation of a 5-year program to reduce waterfowl depredation. Among the provisions of this program is a form of crop insurance to protect farmers from economic hardship.

I think that the trend is clear. The Federal Government should act to protect farmers from crop losses attributable to birds which the Federal Government has rightfully protected. The legislation I am today introducing is intended to focus congressional attention on the problem and serve as a medium for discussion of programs and methods to alleviate the harm to the Nation's grain producers.

In the last Congress, the united support of conservation, sporting and farming groups was instrumental in enactment of the Water Bank Act which compensates landowners for not draining their wetlands. I hope that the depredation proposal will enjoy similar support.

ADDITIONAL COSPONSOR OF A BILL

S. 4038

At the request of Mr. GRAVEL, the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 4038, a bill to establish a National Amateur Sports Foundation.

TEMPORARY INCREASE IN THE PUBLIC DEBT—AMENDMENTS

AMENDMENT NO. 1743

(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 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.

AMENDMENTS NOS. 1744, 1745, AND 1746

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

Mr. HARTKE submitted three amendments intended to be proposed by him to the bill (H.R. 16810), supra.

AMENDMENT NO. 1749

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

Mr. BELLMON. Mr. President, I send to the desk an amendment to H.R. 16810, the debt ceiling bill and ask that it be printed.

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

Mr. BELLMON. Mr. President, this amendment is intended to assist Congress and the President in our joint efforts to hold Federal spending in line with Federal income. Lest we lose sight of what is happening, let us review the astonishing record on Federal income and spending. Federal tax collections amounted to $5.1 billion in 1940 and $36.4 billion in 1950. In 1960, the Government collected $77.7 billion. Receipts totaled $193.7 billion in 1970, under the unified budget concept, in which trust funds are also included along with revenues. This year, fiscal year 1973, Federal receipts will total approximately $223 billion.

Now let us look at Federal spending for those same years: 1940, $9 billion; 1950, $39.5 billion; 1960, $75.5 billion; 1970, $196.5 billion; and 1973, approximately $265 billion. Therefore, despite the increase in collections each year, we have experienced an increase in the national debt during this 33-year period amounting to $433.3 billion. The devastating effect of this burden on persons with fixed incomes, the lost value of savings and insurance, and its damage to the stability of the dollar, is well known. Now we are beginning to see that this huge debt is hampering the ability of the Federal Government to cope with current problems. Interest on the Federal debt this year amounts to $23.1 billion. Mr. President, think how much could be accomplished if this sum were available for education, health, housing, or other services. Clearly, it is time for Congress to act to rectify this dangerous situation caused by continual spending in excess of income.

I share the concern expressed by many that Congress should exercise primary control of fiscal matters and in so doing, act as a "watchdog" over the Federal budget. This amendment preserves the historic role of Congress in the appropriative process and at the same time provides new tools to help the process function better.

Mr. President, briefly here is how the amendment would work:

First. At the time the President submits his budget, he would recommend a limit on spending for the fiscal year which Congress would approve or change.

Second. If appropriations made during the fiscal year exceed the spending ceiling as adopted, this amendment would require the President to proportionately reduce spending on all controllable budget items.

Third. If Congress appropriates in excess of the spending limitations, the limit could be raised by a two-thirds vote of both Houses. This would go far in establishing fiscal responsibility without surrendering to the President the historical role Congress has exercised in the appropriation process.

Enactment of a ceiling on expenditures and appropriations before the appropriations process begins would require Congress to continually monitor the level of appropriations to hold the total at or below the ceiling and hopefully within anticipated revenues. Such constant attention to the Nation's fiscal condition is an important step toward greater fiscal responsibility. Already most States and municipalities follow some such practices, as do successful business enterprises, and millions of American families as they plan the household budget. The Federal Government cannot forever continue on its current profligate financial course without risking economic catastrophe.

Mr. President, under the existing practices, and under the proposal which would allow the President to selectively make a reduction in the level of Federal spending, the Congress has the best of all possible worlds. We can say "yes" to every group that comes to us with a request for more money, tell the President to withhold and not spend a portion of the funds appropriated and then point an accusing finger at the administration when groups come to us asking why the full amount appropriated has not been released for spending. Frankly, this system seems not only unfair but downright hypocritical and callous.

By requiring a proportionate across-the-board reduction of all controllable budget items if the spending limitation is exceeded, Congress would prevent a delegation of authority to the President.

Mr. President, as a former Governor of a State which once faced financial chaos but which now operates on a balanced budget, I know that government can operate in a fiscally responsible manner. I know, also, that government officials need certain tools and restraints to help

them resist the constant pressures to do more and more and tax less and less.

This amendment, if adopted, would be a major improvement in the process of appropriation and fiscal management.

AMENDMENT NO. 1750

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

Mr. TAFT. Mr. President, today I am introducing an amendment to H.R. 16810, the debt ceiling bill, which would allow either House of Congress to override reductions proposed by the President of 10 percent or more in any budget expenditure obligation.

I support the $250 billion budget ceiling for fiscal 1973, because Government spending must be brought under control if we are to successfully restrain inflation. The imposition of a budget ceiling without any accompanying restrictions on the President's power to cut expenditures, however, would be a wholesale abdication of congressional authority and responsibility. One of Congress primary duties is to set the Nation's budgetary priorities. A congressional compromise of this function, in the name of controlling inflation or any other cause, would create a serious imbalance between the powers of the congressional and the executive branches.

If the spending ceiling is enacted, the President will be given a license to cut back or withhold expenditures at an annual rate of about $9 billion. Because expenditures on social security, medicare, medicaid, veterans' benefits, unemployment compensation, and interest on the national debt are all mandated, all cuts would have to be made from other programs. Without any restrictions on cutbacks, a President could drastically reduce Federal expenditures in such areas as school lunches, housing and urban development, aid to education, or pollution control.

My amendment would require the President to give 30 days' advance notice of the reduction of any expenditure or other obligation for fiscal 1973 if the reduction is more than 10 percent. At that time he must also supply Congress with a detailed explanation of the reasons for the reduction. Either House of Congress would then be able to override the reduction by passing a "resolution of disapproval" before the reduction is scheduled to take effect.

A resolution of disapproval would be afforded expedited congressional treatment, so that a final vote on any such resolution could occur before the reduction in expenditure is scheduled to take effect. A motion to discharge a committee of its responsibility to consider the resolution, if made by a proponent of the resolution, would be in order 10 days after the resolution has been referred to committee. Debate on such a motion would be limited to 1 hour, and no amendments or motions to reconsider would be in order. Once the resolution is reported out of committee, a motion to consider it would be highly privileged and not subject to debate. Debate on the resolution would be limited to 10 hours, and a motion to recommit it would not be in order. Motions to postpone consideration of the resolution, and appeals relating to Senate or House procedural rules, would be decided without debate.

I believe that my amendment strikes a proper and workable balance between the necessity to control Government expenditures and the need to retain congressional control of the Nation's purse-strings over the next 8½ months. Unlike the approach of requiring congressional ratifictaion of any cut the President wants to make, my amendment would afford the President the flexibility to effectuate the $250 billion expenditure ceiling without creating a political circus. The President could cut any expenditure by up to 10 percent without fear of a congressional reversal of his actions. He could cut by even greater amounts if neither House of Congress overrode him. On the other hand, Congress would have the power to prevent any really significant presidential alterations in congressionally approved budgetary priorities. A congressional veto arrangement is a much more effective way to retain this power than a requirement that Congress come up with a comprehensive alternative list of cuts before the President can be overruled. Such a veto arrangement would also provide for more intelligent budget control than a "meat ax" approach of cutting all reducible expenditures by the same percentage. Although I have already indicated my strong belief that congressionally approved budgetary priorities should not be subverted, it is simply unrealistic to ignore the fact that there is more fat in some Government programs than in others.

My amendment would provide the necessary safeguard to assure that Congress retains its budgetary powers, without endangering the workability or effectiveness of the expenditure ceiling. I urge the Senate to consider it favorably.

I ask unanimous consent that the 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. 1750

On page 2, after line 23, insert the following:

"(d) (1) Notwithstanding subsections (a) or (b) or the provisions of any other law, the President shall not reserve from the expenditure or obligation of monies pursuant to any appropriation or other obligational authority heretofore or hereafter made available, any amount in the excess of ten percentum of such appropriation or other obligational authority, unless he has notified the Congress of such reservation and supplied a detailed explanation of the reasons for such reservation and the date upon which the reservation is to become effective. Such notification and explanation shall be in writing and shall be submitted to the Congress in session at least thirty days before such reservation is to become effective. Such reservation shall become effective as scheduled, unless either the Senate or the House of Representatives adopts a resolution of disapproval of such reduction within thirty days after receipt of such notice and explanation from the President.

(2) The provisions of sections 910–913 of title 5, United States Code, shall be applicable with respect to the procedure to be followed in the Senate and the House of Representatives in the exercise of their respective responsibilities under this subsection, except that references in such provisions to a "resolution with respect to a reorganization plan" shall be deemed for the purposes of this subsection to refer to a resolution of disapproval."

THE FREE ENTRY OF A CARILLON FOR MARQUETTE UNIVERSITY—AMENDMENT

AMENDMENT NO. 1747

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

Mr. CHURCH. Mr. President, I send to the desk an amendment to H.R. 3786 and ask that it be printed.

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

Mr. CHURCH. Mr. President, this amendment is a technical change in the Tax Reform Act of 1969 which will correct what my studies indicate was an inadvertent mistreatment of authors and artists under that law.

As some Members will recall, it was during the consideration of the 1969 Tax Reform Act that it came to light that some political figures, both Democratic and Republican, would reap large tax benefits by donating their public papers to libraries or universities. It was the feeling of the Congress that, inasmuch as the taxpayers had, in a sense, already paid for the making of these papers, they should not once again be asked to subsidize them, via the tax deduction route, when they were given away by a public officeholder at the conclusion of his career.

In an attempt to solve that problem, Congress changed the tax law. However, in so doing, Congress swung too broad an ax. It not only eliminated the deduction allowable for the donation of public papers of public men, but eliminated the deduction, based on fair market value, which had previously been granted to authors and artists.

The result has been that acquisitions by libraries, museums, and art galleries have been seriously harmed. My amendment would reinstate the tax treatment given to authors and artists prior to the passage of the Tax Reform Act of 1969. The amendment makes it clear that this tax advantage will not be granted to public officials.

The intent of the Congress will thus be carried out, and the oversight in the original act corrected.

ENVIRONMENTAL NOISE CONTROL ACT—AMENDMENT

AMENDMENT NO. 1748

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

Mr. BUCKLEY submitted an amendment intended to be proposed by him to the bill (S. 3342) to amend title IV of the Clean Air Act, and for other purposes.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 1687

Mr. PACKWOOD. Mr. President, I am pleased to announce that the senior Senator from Rhode Island (Mr. PASTORE)

and the junior Senator from Maryland (Mr. BEALL) are joining with 22 of our colleagues and myself as cosponsors of amendment No. 1687, intended to be proposed to the debt limit bill (H.R. 16810), to equalize Federal tax treatment of unmarried individuals.

Mr. President, I ask unanimous consent that Senator PASTORE and Senator BEALL be added as cosponsors of the amendment.

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

ADDITIONAL STATEMENTS

FREEDOM OR PEACE

Mr. GOLDWATER. Mr. President, it strikes me that in recent years the American people have heard more loose and irresponsible talk on the subject of peace than at any other time in our history. Some politicians, not a few news commentators and many misguided citizens have been demanding peace in Vietnam as though the mere cessation of hostilities could give us what we most desire. With a great many others, I prefer to have the right kind of peace—that is peace with honor and freedom—than the "peace at any price" that our liberals and radicals have been urging.

Mr. President, peace can be had at any time and without difficulty merely by agreeing to the enemy's terms. The kind of peace which many of our professional advocates are urging upon this country today is the same kind of peace that we could have had in this Nation's War of Independence simply by submitting to the tyranny of Great Britain. It is the kind of peace that the allies could have gained in World War I simply by knuckling under to the Kaiser. It is the kind of peace that we could have had in World War II by surrendering to the demands of Adolf Hitler, or in Korea by accepting the terms of the North Korean Communists. Mr. President, there is no trick to the problem of achieving peace; but, for an honorable nation, the quality of that peace must be of a high order—in other words, it must be a peace which guarantees freedom.

Because of the great importance of this subject to all American citizens, I should like to make available to the Senate some very pertinent remarks on the subject of peace by a distinguished clergyman who is serving at the present time as Command Chaplain of the Air Force Air Training Command. I ask unanimous consent that an article entitled "Freedom or Peace" by Col. Earl W. Minor be printed in the RECORD.

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

FREEDOM OR PEACE

(By Chaplain (Colonel) Earl W. Minor, command chaplain, Air Force Air Training Command)

Many of our citizens are demanding peace. Every time I hear the cry, a shadow dims the light of meaning. Are they more concerned with peace than freedom? It may be a rerun of the scenario from all unpopular wars or perhaps a new mood in America which says peace is more important than freedom! Is it?

I stood in East Germany and looked to the west. I saw the towers, the guards, the dogs, the mine fields and the wall. But I could not deny that they were at "peace." I asked an East German pastor his greatest wish. "Freedom," he said. "Little good can come from life unless we are free."

I talked to a POW from World War II who spent long years behind the barbed wire fence. I asked him what one thought occupied him most. "Freedom," he said. "I saw dogs walk through the barbed wire fences, roaches crawled to freedom and birds flew freely above. I would rather have been a dog, a bug or a bird and be free than be a man in prison."

A returned POW from the Hanoi Hilton said, "Freedom was the one thought paramount in my mind." Why didn't he say, "Peace was my one thought"? He had peace and it should have been enough to know that he was out of combat and his guardians would now care for his daily needs. He knew and many of us know there is a vast difference between freedom and peace.

Our country was founded by a people who were consumed with a burning passion for freedom and the great documents of government were written by men who wanted freedom more than life itself. Great wars have been fought for freedom for ourselves and for others. America has made one contribution to civilization above all others—freedom for all men.

Peace can be achieved right now without a fight or a protest. You simply agree to the other man's terms. It is so easy! But it is not freedom—true peace will come only when it is established on the terms of free men who insist on freedom for all men.

America must learn again the lessons of the past. Freedom is worth the price. Peace can be had at any time on the other man's terms.

I choose freedom and am glad to pay the price.

CORPORATE RESPONSIBILITY

Mr. MOSS. Mr. President, last week I released a report entitled "Initiatives in Corporate Responsibility" which seeks to present a balanced picture of socially responsible activities undertaken by business concerns. I was heartened with the tenor of the responses to my inquiries and feel that this report has succeeded in giving credit where it is due.

Shortly after releasing the report, I read a most interesting article in the Washington Post by Nicholas Von Hoffman. Von Hoffman relates the story of the Motorola Co. house organ which uncovered some of the reasons for high employee and employer hospital charges. Needless to say, this is responsible corporate activity giving a voice to public concerns. To Motorola, I extend congratulations for another step forward in fulfilling its role in having a social consciousness. Mr. President, I ask unanimous consent that the article from the Washington Post be printed in the RECORD.

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

IN THE PINK OF HEALTH (AND IN THE BLACK) IN PHOENIX

(By Nicholas von Hoffman)

The last periodical in which you would expect muckraking journalism is your company's house organ. So the Phoenix employees of the Motorola company must have done a double take when their very own company newspaper (The Western Voice of Motorola) broke a major story on the high cost of hospitalization.

A big, black headline told the electronics company's workers that "Sky-High Hospital Charges in Phoenix Hurt Employee, Employers and Public." Beneath a bylined story, Ken Piper, Motorola vice president for human relations, declared that "in 1966 Motorola paid to Phoenix hospitals over $1 million excluding doctors' fees . . . in 1970 Motorola paid to Phoenix hospitals over $3 million. There was an increase of 61.5 per cent over 1969 despite the fact that in 1970 Motorola had a lesser employee population."

Then this and other stories went on to tell why both the company and its employees were getting socked. It pointed out that one Phoenix hospital was plugging its $125-a-day, two-room deluxe suites where patients are served cocktails, hors d'oeuvres, breast of chicken cordon bleu at damask covered tables set by ex-airline stewardi in gold mini-skirts who also pour the wine and light the candles.

With an occupancy rate of below 20 per cent on these presidential accommodations, "Who really pays for the 'royal chamber?'" the Western Voice of Motorola asked. "Patients at $125 a day? Oh, no! They are paid for by really sick people at $55 a day for a semi-private room. Two semi-private rooms compare in space to the bedroom and living room of the luxurious suite for a charge to the public of $220 a day versus $125 a day."

That was but the beginning. Piper wrote that costs were ballooning because of unneeded services: "One Phoenix hospital purposes to build a $3.5 million open-heart facility when two similar facilities in the Phoenix area are not being used to full capacity." Beyond that he said that Phoenix patients were being overcharged for drugs, lab tests and the use of operating rooms.

Using Chicago, where Motorola also has a big manufacturing operation, as a base of comparison, the company said that Phoenix patients were being charged 47 per cent more for the common pain killer Demerol than they would be in a Chicago hospital; they were also being charged 131 per cent more for blood typing, 63 per cent more for the use of operating rooms, 17 per cent more per day for maternity care and 70 per cent more for lung X-rays. Beyond that Motorola accused the hospitals of running needless fleets of airplanes and cars, the costs for which were being passed on to patients who got no benefit from them. Lastly, the company produced figures showing that the Phoenix hospitals were enormously overstaffed compared to other cities.

Yet, despite the prodigal scale on which these institutions were on, the company maintained that the hospitals were making a profit of 6.8 per cent on patient revenues. One institution had piled up over $20 million in accumulated surplus earnings. This, Motorola insisted, was because of unconscionable rates which, in the case of two hospitals, ran to about $1,000 a week. The company said that one of its employees was charged $2,482.50 for a two-night stay last November.

The response to this by the American hospital power bloc is instructive. Motorola got a letter from H. Allan Barth, vice president of the Michigan Hospital Association, which said in part, "Since the members of the Michigan Hospital Association are about to purchase equipment for a statewide emergency radio network, I would hope that your organization might have some reasonable explanation to offer because I am sure you are aware of the impact that the Arizona Hospital Association charges will have on the buying attitudes of the hospitals in Michigan" (as quoted in Medical World News, Sept. 22). Contacted by telephone this week, Barth conceded that he had written the letter but said he would have nothing more to say until he'd refreshed his memory about the situation.

Just as important has been the role of the health insurance people. Milton Gan, executive director of the Health Planning Council of Maricopa (Phoenix) County, *was* willing to talk and he said, "One of the biggest problems has been the failure of the insurance companies to take a hand. They're really not concerned about costs. They just pass the added burden on to the consumer."

Although Gan was a little squeamish about Motorola's "tactics," he was quick to say that the company "has rendered a valuable service. It's raising fundamental questions about who makes judgments on what kind of health care is going to be made available. Up to now it's been the hospitals."

So it has been with the health insurers as their willing accomplices, and, if it goes on that way, the health insurance law most likely to pass Congress is going to turn every city into a Phoenix. That needn't be. Motorola has shown what can be done. The company is currently in negotiations with the hospital, and already, Gan says, there are definite signs of reform.

So thank you, Motorola, what you're doing for health is even better than what Quasar is doing for television.

ELMER M. JACKSON III

Mr. MATHIAS. Mr. President, I regret to report the recent passing of one of Maryland's best-known and most respected journalists, Elmer M. Jackson III. At the time of his death, Mr. Jackson was editor and general manager of the Anne Arundel Times. He was past president of the Maryland, Delaware, and D.C. Press Association, the Chesapeake AP Association and the Maryland chapter of Sigma Delta Chi.

I extend my deepest sympathy to Mr. Jackson's family and ask unanimous consent that a resolution honoring Elmer M. Jackson III which was passed at the summer convention of the Maryland, Delaware, and D.C. Press Association be included in the RECORD with obituaries printed in the Baltimore Sun and the Washington Post.

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

RESOLUTION

Whereas, On August 25, 1972, a valued member of the Maryland-Delaware-DC Press Association was taken from the midst of his fellows at an early age, and,

Whereas, Elmer M. (Jay) Jackson, III, had served with distinction in all of the offices of the Maryland-Delaware-DC Press Association, and as a member of its Board of Directors and of its Advisory Council, and,

Whereas, During all of his years of service, he brought to his efforts on behalf of the Association a devotion and determination that have served as an example to his colleagues, and,

Whereas, His many services to the field of journalism in Maryland have earned him the respect and the gratitude of his fellow practitioners of the art and craft of newspapering, now therefore be it

Resolved, By the members of the Maryland-Delaware-DC Press Association, in convention assembled this 16th day of September, 1972, that the name of Elmer M. (Jay) Jackson, III, be inscribed upon the memorial roll of honor of the Association in the headquarters building, and be it further

Resolved, That this resolution of respect be signed by the President and presented to the Jackson family with the condolences of the members of this Association.

WILLIAM R. CRONIN,
President.

[From the Baltimore Sun, Aug. 26, 1972]

ELMER M. JACKSON 3D DIES, WAS ARUNDEL TIMES EDITOR

Elmer M. Jackson 3d, 42, editor and general manager of the Anne Arundel *Times*, died yesterday after a brief illness.

Mr. Jackson, former managing editor of the Annapolis *Evening Capitol* and a chain of southern Maryland weeklies, was admitted to Johns Hopkins Hospital August 1 for treatment of a digestive disorder. He later developed complications.

Long active in Maryland journalism, Mr. Jackson was a past president of the Maryland, Delaware and D.C. Press Association, the Chesapeake AP Association and the Maryland chapter of Sigma Delta Chi.

He is survived by his widow, Marcia Larsen Jackson; three sons, Elmer Jackson 4th, Charles Conrad Jackson and Donald Jackson; a daughter, Donna Jean Jackson; his father; his mother, Mrs. Mary Conrad Jackson, of Washington; a brother, Allen C. Jackson, of Annapolis, and a sister, Mrs. Pamela J. White, of San Diego, Calif.

[From the Washington Post, Aug. 27, 1972]

ELMER M. JACKSON III, ANNE ARUNDEL EDITOR

BALTIMORE, August 26—Elmer M. Jackson III, 42, editor and general manager of the Anne Arundel Times, died yesterday after a brief illness.

Mr. Jackson, former managing editor of The Annapolis Evening Capitol and a chain of southern Maryland weeklies, was admitted to Johns Hopkins Hospital Aug. 1 for treatment of a digestive disorder. He later developed complications.

Long active in Maryland journalism, Mr. Jackson was a past president of the Maryland, Delaware and D.C. Press Association, the Chesapeake AP Association and the Maryland chapter of Sigma Delta Chi. He was the founder of the Anne Arundel County Press Club.

A 1952 graduate of the University of Maryland, he worked in public relations with the Westinghouse Corp. in Pittsburgh before returning to his native Annapolis to help his father, Elmer M. Jackson Jr., in the operation of the Annapolis Evening Capitol and the southern Maryland newspapers.

For a time, he was editor of the Maryland Gazette. At the time of his death, he was on the board of directors of the Anne Arundel Community College.

He is survived by his wife, Marcia; three sons, Elmer Jackson V, Charles Conrad Jackson and Donald Jackson; a daughter, Donna Jean Jackson; his father; his mother, Mary Conrad Jackson, of Washington; a brother, Allen C. Jackson, of Annapolis, and a sister, Pamela J. White, of San Diego, Calif.

GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the founding of the United Nations opened a whole new era in the history of international relations. The dream of a real world community was to be given a chance of realization.

The United Nations is concerned with peace and cooperation between states, but it is also concerned with peace and cooperation between men. Absolutely basic to this goal is that all men, regardless of race, religion, nationality, or culture be allowed to live as they wish, providing they do not impinge on the rights of others.

The world has seen many instances of attempts by one culture to eliminate another. Among the worst of these were the slaughter of the South American Indians by the Conquistadors, the attempted elimination of the Armenians by the Turks, and the horrible slaughter of the Jews of Europe during World War II. These acts have always been morally repugnant. The time has come to see that they are made illegal as well. The aim of the Genocide Convention is to do just that.

It takes a long time for any great goal to become a reality. The documents in the history of the world that potentially had the greatest good to offer have also been among the hardest to effectively implement. This does not mean that the effort should not be made. The Magna Carta and our own Constitution are both great documents in the history of individual freedom. Both were established only with great difficulty. Neither of them were perfect as they were promulgated and they have been changed. None of these things reduces their net worth to the cause of human freedom.

The Genocide Convention is not a perfect document either. But its goal of guaranteeing the right of existence to all peoples is essential. While it may not guarantee an immediate cessation of genocide, it will establish the principle that the nations of the world will not condone it, and will open the way to the eventual elimination of this crime against all humanity.

Mr. President, I urge the Senate to ratify this all-important treaty.

HALL LUSK: JUDGE, SENATOR, AND RESPECTED LAWYER

Mr. HATFIELD. Mr. President, when Senator Richard Neuberger died in 1960, it was my responsibility as Governor of Oregon to appoint an interim successor to him. I appointed a judge on the Oregon Supreme Court, Hall Lusk, to complete the short time remaining in the Neuberger term.

Recently, the Portland Oregonian carried a fine interview with this gentleman, who is an active and alert 89 years old.

Hall Lusk is an Oregonian who stands as one of the most respected people that our State ever has produced. His achievements would take pages to list—as a lawyer, he used his legal talents in a broad way to better our State. His identification as one who fought the Klan in its days of power in Oregon are referred to in the interview and are well known to many Oregonians who remember or who have read about that time in our State's history.

If my memory serves me correctly, the partners in Judge Lusk's first law firm as a lawyer in Portland both had served in Congress. His fine legal mind soon made him one of Oregon's most outstanding lawyers, and he argued the case against compulsory public schooling in the Society of Sisters versus Pearce, in which he presented a brilliantly prepared case to the Supreme Court.

I call attention to this fine interview with Hall Lusk because it manages to capture his wonderful spirit—something all who know him recognize and relish. As a great judge, Hall Lusk has the capacity for analysis, for insight, and for clear expression. As a person, Hall Lusk has compassion, has sensitivity, and has an understanding of people.

Because of its warm portrayal of such a fine man, I ask unanimous consent that the article by Stan Federman in the October 8, 1972, Portland Oregonian about our former colleague, Hall Lusk, appear at this point in the RECORD.

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

LONG-TIME JUDGE IN FAVOR OF STRONG JUDICIARY

(By Stan Federman)

He is 89 years old and continues to be the astonishing long distance runner of the Oregon legal profession.

But for Judge Hall S. Lusk the race is still to be won.

He thirsts for knowledge, looks forward eagerly to tomorrow's challenges and takes quiet pride in past achievements.

Those achievements have been many and varied since that day in 1909 when he first arrived in Oregon, an enthusiastic young graduate of the Georgetown University Law School in Washington, D.C. Admitted to the Oregon Bar in 1910, he has since carved out a legendary 62-year career in his adopted state.

Judge Lusk served 23 years on the Oregon Supreme Court (1937–60)—and another seven on it as a pro-tem justice (1961–68). He was a U.S. senator (1960) when he completed the unfinished term of Richard Neuberger who had died in office. The honor came to Lusk at 76 and made him the oldest man ever to represent Oregon in the U.S. Senate.

He was an assistant U.S. Attorney for Oregon (1919–1921) and also served as a Multnomah County circuit judge (1930–37). He serves as a pro-tem judge for the Marion County Circuit Court and the Oregon Tax Court and may be the oldest practicing judge in America.

During his years as a successful attorney in Portland, he participated in many major state cases. One of them came about after his only try for political office in 1922. It was a time when the Ku Klux Klan was active in the state and it seemed outrageous to Lusk, a Catholic, that he should be the subject of the Klan's withering attacks during his campaign for the Legislature.

So he strongly opposed the Klan and was badly defeated in the election; as were all Klan opponents. "I really took a licking," he said.

An outgrowth of Klan bigotry was a ballot proposal requiring all children to be sent to public schools. It would have compelled Catholics to withdraw their children from parochial schools to meet the new regulation. The proposal passed. Then Lusk and others stepped into the fight.

He was one of the lawyers who represented Archbishop Christie when suit was brought against the state, challenging the law's constitutionality. The case went all the way to the U.S. Supreme Court, for which Lusk wrote a brilliant brief. The high court subsequently ruled against the state.

The court decision was the first major blow against the Klan in Oregon and it never recovered from it, finally dying off politically in a few years.

Sitting in the solitude of the front room in his modest Salem home, Judge Lusk recently discussed his life-long love affair with the law.

The room was warm and comfortable with a "lived in" feeling. He relaxed in a large easy chair, puffing contentedly on an ever-present pipe. Photographs of five daughters ("I'm the legal Eddie Cantor") and 13 grandchildren adorn the walls. There were also a scattering of law magazines and reviews on a table and the book shelves bulged with the classics ("Dickens and Thackeray are my favorites").

He is in good health and despite his age, his scholarly mind is alert and his physical actions are those of a much younger man. There are the crevices of time in his face and hands but they somehow do not matter. One mostly notices the sparkle in his eyes and the quick laugh when he recalls a humorous incident from the past.

He listens intently to a question and then carefully, with that scholarly legal mind he is known for, he answers in precise phrases, using the English language with obvious care and love. As a Supreme Court justice, he was habitually chosen by his colleagues to write decisions demanding a precision of language and he remains a word stylist to this day.

Discussing various aspects of the law, he said that there has been an overall improvement in the character and competency of the legal profession. "Standards have been raised and there is an increasing awareness among young lawyers that the profession is more than a trade or business," he said.

He observed that the law is "a constant, changing thing."

"And this is good! It should be changed as social and economic conditions change. At the same time, though, there is also good in the stability of the law. People have to live by it; businessmen must decide by it."

He said many young attorneys today, filled with idealism and zealous law school instruction, are questioning and probing the old rules and concepts of the law.

"And this, too, is all for the good. This youth movement is in the forefront of the fight to establish liberties of people under the Constitution. But some of these idealistic attorneys tend to employ the law for only social engineering and I question their wisdom in this."

A keen student of the U.S. Supreme Court and the controversy that has swirled about it in recent years, Judge Lusk wonders if the Warren Court decisions will prove to benefit the nation's welfare. He's not so sure they will.

"Repeated trials and hearings in criminal cases, the same case running over many years—these things are a serious reproach to some of those decisions. But such decisions also decreased abuses in the judicial process."

"The real problem of recent times is that the Supreme Court has sometimes engaged in making the law, instead of allowing Congress this privilege. Yet the court still remains the greatest institution we have in government and only time—and the people—will decide whether its decision-making has been right or wrong."

As for Oregon's courts, he believes they are in the "best shape" since he began practicing law. But he warns that the Oregon Court of Appeals is overworked and needs help, either through additional justices or some method to reduce the number of appeals.

He also calls for a fundamental change in the state's selection of judges.

"A judge should not have to run for office every few years. Campaigning and the usual election appeal for campaign funds puts him in a terrible position."

A life-long Democrat, Judge Lusk describes himself as "a conservative with liberal tendencies."

He votes for performance. In the 1952 elections, he supported Adlai Stevenson for president; in 1956 he voted for President Eisenhower.

"I thought that Ike had done a good job and that we should keep him. I guess I'm just not a very partisan Democrat."

This feeling may spill over into the 1972 campaign. He voted for Hubert Humphrey in 1968 but thinks he will probably vote for President Nixon in November.

"I never liked Nixon. I still don't. But he's done a reasonably good job under trying circumstances. I can't vote for McGovern—he doesn't give me any confidence a man should who is running for this office."

During his lifetime, Judge Lusk has always been a judge's judge, a strong and outspoken advocate for an independent judiciary. And he has always been willing to take a stand on what he believes is the "right thing."

Like that famous "Ethelbert the Whale" case.

In the case, a man was charged with killing a wayward whale in the Willamette River by dynamiting it. The incident created a furor when Judge Lusk ruled that the man had not violated a law against killing fish because the whale is a mammal.

It was an unpopular decision but he stuck by it even when his wife, Catherine, now 85, refused to talk to him for a couple of days.

"The law is the law," he said in typical Hall Lusk fashion.

He continues to work at that law today at 89.

He is hearing a Tax Court case and occasionally sits in pro-tem for the Marion County Circuit Court. "I enjoy the work and it seems better than loafing around the house," he smiled.

He has no hobbies except "mowing the grass." But he reads a lot, does some writing and likes to chat with friends who drop by.

Summing up his life, he said:

"A judge doesn't get rich, except in his associations along the way. It's an intellectual life, sometimes a lonely one in the area of decision-making. But I can't think of anything I'd rather be doing. There are always regrets in looking back on a long life—but I have very few. And this is a pleasant thought in one's old age."

A lover of poetry, the judge especially enjoys a short verse by Louis Untermeyer which he often quotes:

"From compromise and things half done,
Keep me, O God, with stern and stubborn pride.
And when at last the race is won,
God, keep me still unsatisfied."

And this says all there is to know about Judge Hall S. Lusk—today, tomorrow and always.

PAN AMERICAN DEVELOPMENT FOUNDATION

Mr. JAVITS. Mr. President, upon the occasion of the annual meeting of the Pan American Development Foundation in Washington, I ask unanimous consent that the translation of an article that appeared in Vision on the valuable grassroots work of this organization be placed in the RECORD.

The Pan American Development Foundation is sponsored by the Organization of American States and is responsible to an independent board of trustees composed of leading citizens from North and South America. I am honored to be a member of this board and note that Senator KENNEDY is also a member.

I also ask unanimous consent that the list of members of the board of trustees be placed in the RECORD.

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

[Published in Vision, the leading Latin American news magazine, Aug. 26, 1972]

LETTER FROM WASHINGTON

(By Winthrop P. Carty)

It is becoming increasingly obvious that traditional foreign aid is not solving Latin America's social problems. Attention is increasingly being focused on new development foundations sprouting up throughout the Hemisphere. The motto of these development efforts has been coined by Sam Greene, founder of the Guatemalan Penny Foundation: "The most important bank in the world is the hands of the poor."

Naturally, the hands of the poor have long worked together in cooperative efforts. But now the programs have become increasingly institutionalized and new financial mechanisms are being fashioned to broaden the movement. In addition, the national development foundations maintain contact with each other and the new Washington institutions created to assist them.

The U.S. Government has set up the Interamerican Foundation, an experimental lending agency, which has made grants totaling $1.5 million to national development foundations in Mexico, El Salvador, and the Dominican Republic. The Pan American Development Foundation (PADF) also arranges foreign financing for the national development foundations. The amount of money generated by the PADF and the NDFs is small compared to that annually extended by such institutions as the World Bank and the Interamerican Development Bank. But Sy Rotter, executive director of the PADF, sees the national foundations "as the cutting edge of new thinking on the question of development."

Presently the PADF has 19 affiliates, including two each in Colombia, Ecuador and Honduras. Each foundation focuses on its own special development problems. In Guatemala, for example, programs are aimed at the nation's predominantly rural population. In overpopulated El Salvador the prime objective has been the construction of urban housing.

But the rationale of the various (nonprofit, private) foundations is very similar. "Government bureaucracy thinks in terms of millions of dollars," says William Báez Sacasa, executive director of the Nicaraguan Foundation, "but the average person thinks in terms of pennies. We must start programming from the bottom up, and the upper classes should learn the importance of new approaches to development problems, not only traditional charity."

The executives of the relatively small foundations share an abiding suspicion of any social project undertaken without prior consultation with the people to be served. A striking example of the dangers of not involving the beneficiaries of a social project occurred this year in St. Louis, Missouri. In the early 1960's, some of the most prestigious planners in the United States constructed a huge housing project in the city's poor section. The project was labeled a model of urban housing.

The poor people who moved into the apartments detested the buildings. The project was considered impersonal. Worse still, they didn't offer protection in high crime areas. The apartment dwellers, many of whom were recent arrivals from rural areas, began throwing rocks through windows, urinating in the halls and pulling the buildings apart in a spasm of frustration and resentment. The community got so out of hand that the municipal authorities had to move the people out and literally dynamite the gigantic building complex. Similar displeasure toward ex-dictator Marco Perez Jiminez' "superblocks" is manifest in Caracas.

"We must constantly remind ourselves," notes Dagoberto Gavidia, president of the Pro Vivienda Minima Foundation of El Salvador, "that we cannot think for others. We must ask people what they want, and let them fully participate in the decision making processes."

The key to the success of the national development foundations is to make credit available to poor people and in the long run, change the lending practices of local banking institutions. It is obviously easier for a bank to make one large loan to a wealthy customer than to make a variety of loans to poor people without collateral. It has been amply demonstrated, however, that when the poor band together in a cooperative venture that the little man will honor his debt. The national development foundations find repayment of loans well over 90%, and less than 5% of the loans have to be written off as uncollectable.

It also has been fully demonstrated that poor people can build their own houses, construct their own schools, increase their income, and improve their social condition—if given credit and some unobtrusive assistance.

The U.S. Government is experimenting with a new system of extending guarantees to lenders to the poor. For instance, if a Colombian bank grants credit to a cooperative for a social project, the Overseas Private Investment Corporation, a U.S. government agency, could promise to repay 75% of the loan in the event the project fails. Commercial banks in the U.S. are also interested in granting loans to the marginal sectors in Latin America.

The national foundations don't offer the solution to the enormous Latin American problems that the Alliance for Progress promised to do. But by experimenting at the grassroots level, the foundations are reaching for the assets of the most important bank in the world, the hands of the poor. Given the total bankruptcy of the present foreign assistance program, Washington is watching the national development foundations with increased interest.

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VIOLENCE AND THE MEDIA

Mr. BAKER. Mr. President, last January, the Surgeon General of the United States, Dr. Jesse L. Steinfeld, issued a report on the effect of televised violence on children. In response to that report, the Communications Subcommittee of the Senate Commerce Committee held 4 days of hearings to determine what action, if any, should be taken by the Congress, the Federal Communications Commission, and other interested parties. Among the witnesses who appeared before our subcommittee was FCC Chairman Dean Burch, who, among other things, recommended that the advertiser must assume some responsibility for improving the quality of children's programs.

Realizing the importance of the Surgeon General's conclusion that there is a causal connection between televised violence and antisocial behavior in some children, the National Business Council for Consumer Affairs, composed of representatives of major advertisers and advertising agencies, in a report to Secretary of Commerce Peter G. Peterson, called for voluntary restraints by advertisers and others in the use of violence in the media pending the results of in depth research.

I am greatly encouraged by this commitment by the business community to take immediate, positive steps to reduce violence on television.

I ask unanimous consent that the statement issued by the National Business Council for Consumer Affairs be printed in the RECORD.

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

VIOLENCE AND THE MEDIA

Richard Nixon, August 5, 1971: "In recent months I have been gratified by the increasing desire of the business community to take a more active role in meeting the concerns of the American consumer. These businessmen recognize that the concerns are widespread and often spring from valid complaints. They also share my belief that neither the government nor the consumer movement can alone solve these problems, but that we must also rely upon the traditional goodwill and sound practices of the business community. Because of this growing interest, I have today signed an executive order creating the National Business Council for Consumer Affairs . . ."

The issue of the impact of violence in the nation's media has surfaced as a major concern in the past months. The Surgeon General recently has published a comprehensive study entitled "Television and Growing Up: The Impact of Televised Violence." Intensive hearings on the subject have been held in the Congress of the United States, through the Sub-Committee on Communications of the Senate Commerce Committee. While existing data are not conclusive, we do feel that these recent contributions indicate that there may be a link between televised violence and aggressive behavior by certain individuals in our society.

As members of the Sub-Council on Advertising and Promotion of the National Business Council for Consumer Affairs, as businessmen, and as advertisers, we are concerned. We are concerned about the violence and crime in this country, and about any actions that might help provide prevention and cure.

Until the results of more definitive research are published, we presume televised violence in the media may be a factor in stimulating aggressive and violent behavior by some members of our society. In recognizing this fact, we do not suggest that the elimination of violence in media will eliminate crime. It won't. However, to the extent that depiction of violence in media may contribute to the encouragement of violence, those of us who bear any responsibility for media presentations must be concerned. At the same time, we recognize also that advertisers should not attempt to "censor" program content, particularly in areas such as news reporting, but we do believe that certain positive steps can be taken now by all involved.

We therefore request the Secretary of

Commerce to call on all members of the business community, including advertisers, advertising agencies, and media, for their support of the interim principles and goals indicated in the following statement:

First, to encourage the development on an individual basis of specific policies and procedures by media, program producers, and all involved in the creation and delivery of media presentations, which will *help eliminate gratuitous use of violence* and provide standards for acceptable depiction of violence, when it has material relevance to the message to be conveyed.

Second, to encourage advertisers and advertising agencies to establish individual policies designed to *reduce further the use of violence as an attention-getting device* in any and all contexts, whether it be an attempt to win attention for an advertisement or to win audience for a program.

Third, to *encourage intensive and careful research* by academicians and appropriate agencies to determine more specifically the impact of depicted violence on the media's consumers, in the realization that further work is needed to identify clearly the nature and extent of the problem.

As representatives of major advertisers, advertising agencies, and media . . . and as members of the NBCCA Sub-Council on Advertising and Promotion . . . we pledge our personal commitment to these objectives.

In this regard, we commend particularly the television network representatives who have outlined specific new policies and practices designed to control further the use of violence on television, and particularly in children's programming.

It is not our intent to imply that it is in the best interest of society for television programming to depict our community as being free of violence. Presentations by media are often necessarily a reflection of life as it was lived that day, and as such must mirror truthfully the good and the bad. It would serve us little were television programs to portray only the credit side of the ledger of life and fail to prepare society, particularly our youth, to recognize and be able to cope with the debit side. We recognize, however, that much is at stake, and careful consideration must be given to any depiction of violence.

As members of the National Business Council for Consumer Affairs we are charged by Executive Order of the President with the responsibility of advising the President through the Secretary of Commerce on programs of business relating to consumer affairs. Accordingly, we are also asking Secretary Peterson to convey this statement to President Nixon, both as an expression of our concern, and as a commitment on behalf of the business community to seek further definition and resolution of the problem.

THE SECOND TRAIL OF TEARS

Mr. HARRIS. Mr. President, I invite the attention of Senators to an article about the Tellico project in Tennessee. The Tellico project threatens to inundate the historic homeland of the Cherokee nation by damming the Little Tennessee River to create a 17,000-acre reservoir. There was little if any concern expressed at the start of this project by the TVA of the consequences for the Cherokee homeland and historic sites. Typically, successful efforts have been made to preserve Fort Loudoun, a British outpost, from the flood waters—but those sites of historic significance to the Cherokee nation were left to the impending flood waters.

In 1972 the Environmental Defense Fund was successful in obtaining a preliminary injunction temporarily halting the project. Gov. Winifred Dunn has also publicly opposed the project. But TVA has appealed and is making plans to continue and complete the project.

Mr. President, I hope that this callous indifference to the heritage of the Indian people can be changed and that we, as a nation, afford the same respect to the history of Indian people as we do to the history of the white settlers. I ask unanimous consent that the article," The Second Trail of Tears," be included in the RECORD.

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

[From the Historic Preservation, April–June, 1972]

THE SECOND TRAIL OF TEARS

(By Jon. T. Brown)

(NOTE.—Mr. Brown, is a counsel for the Environmenal Defense Fund. He formerly was special assistant to the Solicitor for the Department of the Interior.)

More than 100 years ago Gen. Winfield Scott, acting on the orders of President Martin Van Buren, drove 13,000 Cherokee Indians westward out of Tennessee and North Carolina on what has become known as the infamous Trail of Tears.

During that march, thousands of Indians died from the cold, starvation and disease. The fortunate who were able to escape fled into the mountains of North Carolina, Georgia and Tennessee. They now form part of the Eastern Band of the Cherokee Indian Nation.

Today the Cherokee Nation is faced with a second Trail of Tears. Unfortunately, it is once again to be inflicted by the same federal government that is charged with the trusteeship and protection of the American Indian. This 20th-century Trail of Tears is more silent, and less violent than the first. It comes wearing the shibboleths of the American ethic—progress, enhancement of the natural environment and economic development.

It is a product of the attitude that when progress is at stake, there is little or nothing that is sacred. It would transform the first Cherokee Trail of Tears into a virtual torrent—burying forever much of the historic heritage of the Cherokee Nation.

Since 1968 the Tennessee Valley Authority has undertaken the construction of a water development project known as the Tellico Project, located in eastern Tennessee. It is scheduled for completion in 1975 and will consist of a main dam on the Little Tennessee River and a 17,000-acre reservoir.

The reservoir will obliterate the final 33 miles of the free-flowing Little Tennessee River—a magnificent trout stream that is currently under consideration for Wild and Scenic River status by both the state of Tennessee and the United States. Even more important than the purely environmental consequences that would ensue from the Tellico Project, the undertaking will flood and irreparably destroy the historic homeland of the Cherokee Nation.

In the years before the first Trail of Tears in the 1800's, the Cherokees made their homes along the banks of the Little Tennessee River. A number of significant Indian cities and villages were located in the area of the Tellico Project. One was Chota, the historic and sacred capital of the Cherokee Nation. Another was Tenassee Town, the Cherokee village site from which the state of Tennessee derives its name. It too will be completely flooded by the Tellico Project.

Tuskogee Town, the birthplace of Sequoyah, the Cherokee Indian scholar who gave birth to the Cherokee alphabet and enabled the tribe to become literate in a matter of months, is another site that will be flooded by the Tellico Project.

The irony of the situation is that there also exists in the area a former British outpost, Fort Loudoun, which was the first permanent white outpost west of the Appalachian Mountains. Fort Loudoun has been fully restored and has been declared a National Historic Site. It will be preserved from the flood waters of the Tellico Project by a series of dams and dikes.

No such consideration has been afforded the Indian village sites. They will be completely destroyed and inundated by the project. The sites themselves are at present undeveloped and largely unexplored. They are evidenced, primarily, by a few burial mounds along the river—some Cherokee and some from an earlier Indian culture.

If the Tellico Project is allowed to be finished, thousands of years of archeological history will be completely lost. Excavation has been minimal at the very best, but it has already disclosed evidences of a Hebrew culture in the New World, and the existence of a culture in the area that is far older than that of the Cherokees.

The TVA plans to close the floodgates to the Tellico dam in 1975. If the archaeological work in the area is unfinished at that time, it will remain unfinished. The National Park Service has devoted the minuscule sum of $50,000 to complete the massive excavation work that is necessary in the area—an area that really was a crossroads of diverse cultures and the sacred homeland of the Cherokee Nation prior to the first Trail of Tears.

Perhaps even more significant and tragic than the inestimable archaeological loss in the area is the callous treatment of a native American culture that this project represents. This nation should no more flood the birthplace of Sequoyah or the sacred capital of the Cherokee Nation than it should pulverize Plymouth Rock or tear down the Lincoln Memorial. We have no right to obliterate the culture and historic homeland of another people.

What we seem to have forgotten, with respect to the American Indian, is that his heritage is our heritage, and that even if it were not, it deserves our respect. If we persist in this madness, we will have blessed the philosophy of the TVA official who said that the flooding of the Indian sites under the Tellico Project is not an act of destruction but an act of preservation.

In August 1971, the Environmental Defense Fund, a national organization of scientists and lawyers that has been successful in halting or delaying other public works projects of a similarly deleterious nature, filed a suit in Washington, D.C., to halt the Tellico Project. On January 11, 1972, following a transfer of the case, the Honorable Robert L. Taylor, United States District Judge for the Eastern District of Tennessee, issued a preliminary injunction temporarily halting the project. In addition, Gov. Winfield Dunn of Tennessee has now publicly opposed the project. While the initial battle may have been won, however, the war continues. The TVA has appealed the injunction, and has shown no signs of abandoning the project.

Consequently, the Environmental Defense Fund has been joined in its efforts by other organizations, such as the Eastern Band of Cherokees, the Tennessee Game and Fish Commission, the Tennessee Archaeological Society, the Sierra Club, the National Audubon Society and the Wilderness Society. The assistance of these groups will be invaluable in helping to stop the Tellico Project. But without the concerted help and dedication of other citizens around the country, it is clear that the homeland of a great people will be buried forever under the final Trail of Tears of the Cherokee Nation.

THE HIGHWAY TRUST FUND AND MASS TRANSIT

Mr. HATFIELD. Mr. President, the Salem, Oreg., newspaper, the Oregon Statesman, recently editorialized regarding the decision of the Senate to allow use of a portion of the highway trust funds for mass transit.

I ask unanimous consent that this editorial from the September 26, 1972, Oregon Statesman appear at this point in the RECORD.

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

BREAKTHROUGH

The Senate took a giant step last week when it approved legislation that would allow for the first item, the use of federal highway trust funds for mass transit.

The battle to divert some highway funds to other road building (in Oregon the money can be used also for parks) finally is starting to loosen some chinks in the concrete-minded highway, petroleum, construction and tire makers' lobbies. It has taken the evolution of nerve-wracking and stupendous traffic jams in some of the major cities to make the breakthrough.

Less progress has been made at the state level. Bills inevitably are introduced in the Oregon Legislature to free some of the funds for mass transit. But, as inevitably, they are squashed in committee without a very formal burial, as in the 1971 legislative session.

The Senate bill is as liberal as it can be, given the pressures to keep the uses of highway funds tightly restricted. The legislation probably will be watered down in the House. Some expect the House to cut out the Senate allowance that the funds can be used to build rail systems. The Senate bill also permits using highway money to buy buses.

But the Senate action alone is a highly significant breakthrough in an area which too long has been dominated by largely selfish interests.

Mr. HATFIELD. In addition, Mr. President, I also want to point out to my colleagues that the Oregon State Highway Commission has announced it will support use of some Oregon highway trust funds for mass transit at the State level. An informative article detailing the highway commission plans appeared in the September 25, 1972, Oregon Journal, a Portland newspaper. I ask unanimous consent that this article appear following the editorial referred to above.

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

HIGHWAY COMMISSION TO BACK MASS TRANSIT SUBSIDY

(By Robert Shepard)

SALEM.—A proposal to allow the use of some Oregon highway funds to subsidize mass transit will likely go to the 1973 Legislature with the support of the Oregon Highway Commission.

Glenn Jackson, commission chairman, says the idea is to "subsidize mass transit in an area where mass transit could be used as a substitute for highway construction."

Jackson says the commission is now working on a formula by which the interest that would normally be paid on bonds sold to finance a new highway project would instead be turned over to a transit system.

If $20 million worth of bonds were sold for a proposed highway project in Portland, for example, the interest would amount to about $1.2 million. Under the plan being considered by the highway commission, that $1.2 million would be used to subsidize mass transit and the new construction would be skipped.

An unsuccessful initiative earlier this year by STOP (Sensible Transportation Options for People) would have allowed highway funds to be used for mass transit without setting a limit on how much money could be diverted for that purpose.

The commission, as well as the highway lobby, was opposed to that plan, but Jackson says the highway users group supports the interest money idea plan.

"I think the attitude of the road users group is getting more liberal," Jackson says. "I think they recognize that there is a state highway responsibility in urban areas in which mass transit has to be considered as a substitute for moving people." But there are some users who feel mass transit is a "localized city problem," Jackson admits.

Jackson does not feel the highway lobby has been over-protective. "The Highway Commission and Department was formed in 1917 to get Oregon out of the mud. Our whole program has been designed to create a highway system for Oregon and any diversion of those funds until the highway system is completed is resisted by the road users."

The federal interstate freeway building program begun in the 1950s will probably end around 1978, Jackson says. After that there will be a "complete new distribution system" for the highway trust fund.

"I don't think there's any question about it that part of the trust account is going to mass transit," he says.

Jackson expects the new formula also will provide money to meet the needs of the state's primary and secondary highways. There are about 75,000 miles of nonfreeway highways that need attention and money from the trust fund would allow Oregon to "clean up our deficiencies much more rapidly than we're doing at the present time," he stated.

A greater reliance on mass transit in urban areas is inevitable because of the increasing traffic congestion, Jackson says. "The space just isn't here" to keep up with the growing number of cars.

"Sooner or later we're going to have to face up to the fact that both on a traffic basis and a pollution basis we'll have to control the number of automobiles going into the central area," Jackson says.

Such control will have to be exercised with care, however. "Downtown Portland represents a tremendous investment as a home for retailers and offices and everything else. If you're going to make it a penalty in terms of transportation to go to town then you're drying up an asset. You are cutting off your nose to spite your face," he says.

But Jackson feels it is "reasonable to assume that an adequate, well patronized mass transit system will reduce the road and street requirements in the years to come."

One of the major problems Jackson sees is insuring that the system will be used—that it will provide "a logical substitute for the guy who is now using his automobile."

This means providing complete service which, in turn, assures that such a system will not be able to pay its own way.

"You could take some of the selected routes and do fine, but if you're going to have a mass transit system that is going to be operated in lieu of new highway construction you are going to have to have a hell of a lot of schedules that are not going to pay. So you've got a subsidized system."

Jackson thinks it will be at least two years before the effectiveness of San Francisco's Bay Area Rapid Transit System (BART) can be assessed.

THE PEARL HARBOR NAVAL SHIPYARD

Mr. INOUYE. Mr. President, the outstanding record of the Pearl Harbor Naval Shipyard was recently saluted by Secretary of the Navy, John W. Warner.

Secretary Warner noted the recent qualification of the Pearl Harbor Naval Shipyard for the Treasury Department's Minute Men flag with five gold stars representing 25 consecutive years of outstanding support of the U.S. Navy savings bond program.

This achievement of sustaining a bond enrollment average of 90 percent for all shipyard personnel over such an extended period of time is a remarkable performance deserving of our recognition and appreciation.

I would like to join Secretary Warner and send these men a well-earned congratulations for their accomplishments.

EFFECTIVE PRISON REFORM

Mr. BROOKE. Mr. President, in recent weeks our attention has been focused repeatedly on the District of Columbia corrections system. The District has had more than its share of problems—including an inordinate number of escapes from its corrections facilities.

But it has also taken positive steps to deal with its problems. A recent strike at the Lorton Reformatory turned into an effective bargaining session which led to constructive and needed change in procedures at the institution.

Mr. President, I am pleased to report that a member of my staff played a leading role in the negotiations process. Miss Ann Cunningham has a long history of experience and involvement in the corrections field. Her letter to the editor, printed in Tuesday's Washington Post, makes a number of points which we all must heed if we are to find a solution to the problems of crime and violence which plague our society. I ask unanimous consent that her letter be reprinted at this point in the RECORD.

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

TRANSFERRING LORTON WOULD BE "TRAGIC MISTAKE"

News stories about prisons all too often tend to emphasize the negative—60 escapes, overcrowded conditions, lack of medical facilities, stabbings, pipings, work strike, inmate control, the potential for real violence. And such stories, in turn, reinforce the community with its general view that prisoners are anti-social, and that therefore the community's traditional role of "non-involvement" is completely justified.

Last week, at Lorton, a milestone was achieved in the field of corrections and full and accurate press reports (particularly the Washington Post) did much to destroy old myths among the public. The event has overwhelming local and national significance. The men at Lorton declared a work strike. The Department of Corrections responded promptly and constructively by their immediate presence at the institution—and the dialogue began one rainy day last week on the football field at Lorton—with 1,600 inmates, corrections officers and community participants.

The men presented grievances—not demands. They pinpointed the problems and gave suggestions for their possible solutions. They thoughtfully recognized that while some of their grievances implied long range solutions, some were immediate and they divided their package accordingly. The administration responded with equal thoughtfulness and constructive policy change. To term the resolutions "concessions" is a misnomer and a disservice to the inmates who, through their own efforts, merely obtained a recognition of basic decent living conditions.

A curtain around bathroom facilities, flood lights in the parking lot, mail privileges, physical examinations for all inmates, a doctor on duty, a dentist three days a week, special diets for those inmates requiring special food—none of this seems too important, perhaps, to those of us in this community who regard such things as necessities of life. But let us look back to the uprising at Attica just one year ago: For years the men at Attica tried to be heard and few would listen; for years they tried to find a path of progress within the system and, for the most part, found their path blocked. They finally chose the only way they believed was left open to them to present their grievances. And—what is significant to us is that the demands of the men at Attica were not very different from the demands of the men at Lorton.

The strike is over. The men at Lorton have returned to work. And far beyond the resulting institutional improvements the negotiations encouraged, these men gained a mutual trust and understanding with the administration (as William Claiborne's article ably pointed out), and they found that pursuing necessary and legitimate reforms through the system works. This is perhaps the most important by-product of the negotiations.

Now, once again, there is talk about a transfer of Lorton Reformatory to the Federal Bureau of Prisons. I believe this would be a tragic mistake. For one, it would be an unconstructive move by various elements of the community (Congress and the Department of Justice in particular) who in no way took part in what happened at Lorton last week. Politics and rhetoric are not part of a solution. The cultivation of trust and of an ability to work within the system are an essential part of real corrections reform. Transfer would destroy the positive momentum and renewed faith of the men in "the system" and it would show that we, as a community, react only symptomatically to a problem and cannot deal realistically with our social needs.

The problems of the Department of Corrections are not over. There is still much to be done. A key area which needs immediate attention was brought up by the inmates themselves—that is, the role of the correctional officer, the primary relationship between that officer and the resident of Lorton. The men last Friday publicly recognized the difficult, dangerous and often frustrating role of the correctional officer—and then the men suggested that his grievances be heard in similar forums. *This suggestion cannot and must not go unnoticed.*

In recent weeks, The Washington Post's editorials have demonstrated a clear sensitivity to the correctional process—a sensitivity which, and rightly so, goes far beyond the dialogue between the administration of the Department of Corrections and the inmates. For we cannot forget that men in prison are essentially invisible people. And because we don't see them, we, as a community, can afford to react to even their most basic needs with tremendous indifference. We must involve ourselves in this process if we are to achieve the hopeful end result of the correctional process—that these men are transformed from burdens on society to contributing members of the community to which one day 99 per cent of them return. All of which means responsive institutions, constructive programs, jobs, housing, family responsibility—and all of these goals, by their very nature, cannot be independently achieved.

ANN CUNNINGHAM,
A participant in the recent grievance negotiations at Lorton Reformatory.

SENATOR McGOVERN'S PLAN FOR ENDING THE WAR

Mr. MANSFIELD. Mr. President, last evening on national television the Democratic candidate for President, GEORGE MCGOVERN, in clear and unequivocal terms specified in detail his seven-point plan for ending the war and extricating this country from further involvement in Indochina.

I ask unanimous consent that the full transcript of GEORGE MCGOVERN'S message of last evening be printed in the RECORD at this point.

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

SPEECH BY SENATOR GEORGE MCGOVERN

NARRATOR

During the great Civil War when this dome was being added, Abraham Lincoln said: "Let the building go on . . . if people see the dome going on, they will know that the nation is going on."

For almost two hundred years now we have been going on. And the question we ask each time we hold a Presidential election is how shall we go on into the American future. What kind of country will this be—what kind of Americans will we be—on our 200th birthday?

Even today, on the East side of the Capitol, the inaugural platform is being constructed. On January 20th a man will stand here to take the oath of office. Who this man will be—will be determined not only by the issues that face this nation, but by the kind of human qualities the American people wish to see in their next President.

Tonight, from the Senate Wing of the Capitol—the candidate of the Democratic Party for the Presidency of the United States, George McGovern, speaks to the nation.

SENATOR GEORGE M'GOVERN

Tonight, I ask you to think carefully about an issue that has troubled me more than any other for the last nine years—the War in Vietnam.

On September 23, 1963, I warned that our deepening involvement in the affairs of the Vietnamese people was "a policy of moral debacle and political defeat."

Under three separate presidents—two of them Democrats and one of them a Republican—I have opposed this War. During these same long years, Mr. Nixon has supported the War. This, I think, is the sharpest and most important difference between Mr. Nixon and me in the 1972 presidential campaign.

Mr. Nixon has described the Vietnam War as our finest hour. I regard it as the saddest chapter in our national history. Our problem with this terrible war does not stem from the lack of bravery or skill on the part of our fighting men. Indeed, no better American army has ever been sent abroad. Our problem is that we have asked our armed forces to do the impossible—to save a political regime in Saigon that doesn't even have the respect of its own people. I've been to Vietnam more than once talking to our GI's They've told me in countless conversations of the frustrating and impossible nature of this assignment.

Before the 1968 election, the Republican candidate, Mr. Nixon, told you that he had a secret plan to end the War. He refused to discuss the details, but he asked your support in the election, and he offered peace in return.

That promise has been broken, and the destruction in Southeast Asia has increased.

The War goes on for our sons who are still ordered into battle. It's true that men have been withdrawn from Vietnam, but half a million American fighting men ranged in the Pacific, Thailand and Guam are still carrying this war to Vietnam.

Tonight, as I speak to you, some of these men may die. Forty percent of all the Americans lost in Vietnam have died in the last four years; died under the present Administration. Since January of 1969, 20,000 young Americans have come home—not in glory, to the cheers of a grateful country—but in death, to the bitter tears of their families. The secret plan, the secret plan for peace will forever remain a secret to them.

The War goes on also for our prisoners in North Vietnam. Tonight, on the other side of the world, they sit and think of us—of their homes, their families, of children who are growing up without fathers, of a country they may never see again. And in the last four years, 550 more Americans have been taken captive or listed as missing in action. More than 100 of them in the last six months. And if anyone says that the promise to end the War has been kept, let him tell that to the families of the brave men who waste away in the cells of Hanoi. "Now, Mr. Nixon says we must bomb and fight to free our prisoners. But just the reverse is true. We must end the bombing—end the fighting—if we're ever to see these prisoners again. Prisoners of war come home when the war ends—not while the war continues.

The war also goes on for the millions of Americans like you who bear its cost. Every single week this war claims $250 million of your taxes. Every week it inflates the cost of everything you buy. Each week it costs $250 million that we need to employ men to rebuild our cities, to fight crime and drugs, to strengthen our schools, and to assist our sick and elderly.

Since he came to the presidency, Mr. Nixon has spent $60 billion of your money on this war. $60 billion of your taxes to kill human beings in Asia instead of protecting and improving human life in America. $60 billion in the last four years—not for a cause, but for a mistake—not to serve our ideals, but to save the face of our policymakers.

And the War goes on also for the people of Indochina. Indeed, they are literally being crushed under the weight of the heaviest aerial bombardment the world has ever known. The bombing of Indochina has doubled under the present Administration, and while General Thieu is secure in his palace, 6 million of his fellow Vietnamese are victims—people dead, maimed or driven from their homes. Most of these people are not enemies, but innocents. Our bombs bring them not freedom, but terror. Bombing does not save their land. It destroys it.

The reality of this war is seen in the news photo of the little South Vietnamese girl, Kim, fleeing in terror from her bombed-out school. She has torn off her flaming clothes and she is running naked into the lens of that camera. That picture ought to break the heart of every American. How can we rest with the grim knowledge that the burning napalm that splashed over little Kim and countless thousands of other children was dropped in the name of America?

Now, there are those who say that you will accept this because the toll of suffering now includes more Asians and fewer Americans. But, surely, conscience says to each of us that a wrong war is not made right because the color of the bodies has changed. We are all created in the image of God.

As a bomber pilot in World War II, like

millions of you, I did what had to be done. Our nation took up arms and laid down lives because tyranny threatened all that we held precious. I loved America enough to offer my life in war thirty years ago. And for nine years I have loved this country enough to risk my political life to call us home from a war in Asia that does not serve the interests and the ideals of the American nation.

What, after all, is our purpose in Southeast Asia?

Now, we used to say that we fought in Vietnam to stop Communist China or to stop Communist Russia. But these nations are now quarreling among themselves, and Mr. Nixon's public opinion rating have gone up after he was wined and dined in the communist capitals of Peking and Moscow. How can we really argue that it is good to accommodate ourselves to a billion Russian and Chinese Communists—but that we must somehow fight to the bitter end against a tiny band of peasant guerrillas in the jungles of little Vietnam?

Incredible as it seems, when all is said and done, our purpose in Vietnam now comes down to this—Our policy-makers want to save face and they want to save the Saigon regime of General Thieu. Now, that is a fundamental difference between President Nixon and me on the issue in Vietnam. It is a choice, after all, between saving face or saving lives. It is a choice between four more years of war, or four years of peace.

The Nixon position is that the Thieu regime represents self-determination for the people of South Vietnam. Let me tell you what I think his regime represents.

I think our support for General Thieu actually denies the people of South Vietnam the right to choose their own government. The Saigon lawyer, a former President of Rotary International, who had the courage to run against General Thieu four years ago, was sent to jail for five years. Last year, General Thieu issued a decree to force all the other candidates out of the race. This year, he abolished all the local elections. So he could extend his dictatorship to every village in South Vietnam. General Thieu has closed newspapers, simply for printing the truth. He has presided over the execution of 40,000 people without trial on the mere suspicion that they did not support his policies.

The Thieu regime stands for the theft of billions of dollars of our aid, stolen by powerful officials to enrich themselves while their countrymen are in the grip of starvation and disease. And every GI who has served in Vietnam knows that that's the truth.

Corrupt Vietnamese officials have enriched themselves putting heroin into the veins of a hundred thousand of our GI's. That same poisonous heroin from Southeast Asia is now being shipped into our cities, our suburbs, our streets and even into the schools of America. And every Vietnam GI knows that is true.

This corrupt dictatorship that our precious young men and our tax dollars are supporting cannot be talked clean by official lies. And it can't be washed clean by American blood. Instead, our own most precious values are corrupted by the very government we fight to defend.

Now, Mr. Nixon would continue the war to preserve General Thieu's power. On that, he and I disagree. I say—General Thieu is not worth one more American dollar, one more American prisoner, one more drop of American blood. Mr. Nixon and I also disagree on how to find peace—and this is the second fundamental difference between us.

He has chosen what he calls "decisive military action" to end the fighting. Despite all the highly publicized "secret" meetings with the other side, he has persisted in the belief that we can find peace only in a wider war. But the escalations of 1965 and 1967 were also "decisive military actions" and they did not end the war. They only increased the killing and increased the costs.

Mr. Nixon's invasion of Cambodia, made without the approval of Congress as required by our Constitution, that was a "decisive military action," but it did not end the war. It only brought the war to more people who had been living in peace and it brought communist rule to two-thirds of that previously neutral country. The mining of North Vietnamese harbor was a decisive military action, but it did not end the war. The supplies still flow into the South, and our adversary is reported by our own observers to be as strong as ever.

For nearly thirty years, the people of Vietnam have been at war. For nearly thirty years, the Japanese, the French, the Americans have tried "decisive military action" to win a satisfactory peace. And for thirty years, each, in turn, has failed.

Now, the answer to failure is not more of the same. And yet I fear continued war is what the Nixon Administration has in store if they stay in power.

Secretary of Defense Laird recently admitted to a Congressional committee that the fighting could continue far into the future under present policy.

Four years ago last night, on October 9, 1968, Mr. Nixon, as a candidate for President, said to a crowd in California, and I quote: "Those who have had a chance for four years and could not produce peace should not be given another chance." Now, Mr. Nixon has had his chance. He could not produce peace in four years. And we have every indication that he cannot produce peace in eight years.

So, I ask the American people—Shall we break free at last from General Thieu? Shall we forget about saving face and begin saving the soul of our nation? Shall we demonstrate that we are determined to stop the killing and to stand for peace? My answer is—Yes.

Let me now set forth the specific steps that I would take as President to carry out that determination.

Immediately after taking my oath as President, if the war has not ended by then, I would issue a National Security Directive to the Secretary of Defense, to the Joint Chiefs of Staff, and to our commands in the field, with the following orders:

Immediately stop all bombing and acts of force in all parts of Indochina;

Immediately terminate any shipments of military supplies that continue the war;

Immediately begin the orderly withdrawal of all American forces from Vietnam, from Laos and Cambodia, along with all salvageable American military equipment. And we will assign whatever transportation is required to complete that process and to complete it within 90 days—a time period that I've been told by competent military authority is well within our capability.

Secondly, I would issue the following instructions to our negotiators in Paris:

Notify the representatives of the other side that we have taken these steps to end the hostilities; and that we now expect that they will accept their obligation under their own Seven Point Proposal of 1971—to return all prisoners of war and to account for all missing in action. We will expect that process to be completed within 90 days to coincide with our complete withdrawal from the war.

We would further notify all parties that the United States will no longer interfere in the internal politics of Vietnam, and that we will allow the Vietnamese people to work out their own settlement. The United States is prepared to cooperate to see that any settlement, including a coalition government, gains international recognition.

Thirdly, I would send the Vice President to Hanoi to speed the arrangements for the return of our prisoners and an accounting of the missing. I would also instruct our diplomats to contact the opposing parties in Laos and Cambodia in order to secure release of prisoners held in those countries, and an accounting of missing in action, including American civilian newsmen now missing in Cambodia. There are six known prisoners in Laos, and nearly 300 missing. No effort has been made to secure their release.

Fourth, after all of our prisoners have been returned, and we have received a satisfactory accounting for any missing men, I would order the Secretary of Defense and the Joint Chiefs to close our bases in Thailand, to bring home any troops and equipment still there, and to reassign elsewhere any ships still stationed in the waters adjoining Indochina.

Fifth, as the political solution in Vietnam is worked out by the Vietnamese themselves, we should join with other countries in repairing the wreckage left by this war.

Sixth, I would ask the Congress to take immediate action on an expanded program for our veterans. I think it's simply a disgrace that our government is able to find these young men to send them off to war, but somehow, we look the other way when they come back in need of an education or decent medical treatment, or a decent job.

Now, like many other veterans of World War II, I received a four year education under a generous GI Bill of Rights. I think Vietnam veterans need that help more than those of us who fought a generation ago because we came back with the welcome of a nation that knew we had fought and won a necessary war. The Vietnam veterans come back to a country that largely believes this war was a mistake. So, we ought to literally put the arms of this nation around these young men and guarantee them either a good job or a fully funded higher education Months ago, I sponsored in the Senate a Vietnam Veterans Bill of Rights that would do precisely that.

Finally, when the war has ended, when our troops and prisoners are home, and when we have provided for the veterans of Vietnam, we must then consider the young men who chose jail or exile because they could not in conscience fight in this war. So, following the example of earlier presidents, I would give these young men the opportunity to come home. Personally, if I were in their position, I would volunteer for two years of public service on subsistence pay simply to demonstrate that my objection was not to serving the nation, but to participating in a war I thought was morally wrong.

We are not a vindictive or mean-spirited people. And we must act as Lincoln told us—"with malice toward none and charity for all." We must bind up the wounds of this nation, and we must bring all of our sons back. In that same spirit, we must oppose any so-called war crimes trials to fix the blame for the past on any citizen or any group of citizens. Vietnam has been a terrible experience for all of this, on every side of this issue. And this is not the time for recrimination. It is the time for reconciliation.

So, this is what I would do to bring America home from a hated war, and it is a program that will work. The people of France were once trapped in Vietnam, even as we are. But in 1954, they chose a new president, Pierre Mendes-France, whose highest commitment was to achieve peace in Indochina. His program was very similar to mine. And within just five weeks, the war was over. Within three months, every last French prisoner had been returned.

Now, I ask you to remember that I speak to you as one who has publicly opposed this war for nine years. I ask you to remember that my opponent has supported American military intervention in Vietnam ever since 1954. I ask you to recognize that every detail of my position is fully out in the open. It is a public plan—not a secret plan.

Often during this last tortured decade, I've reflected on a question from the Scriptures: "Which of us, if his son asked him for bread, would give him a stone?" Our sons have asked for jobs—and we've sent them to an Asian jungle. Our sons have asked for an education—and we've taught them how to kill. Our sons have asked for a full measure of time—and 50,000 of them have been lost before their time.

So, let us seize the chance to lift from our sons and our selves the terror of this war, and bestow the blessings of peace. And then we can restore our sense of purpose and our character as a great nation.

This is not just a question of material wealth—although the billions which would otherwise be lost in Southeast Asia could then be used to secure a better life for our own people. But more important for America, there will be a special healing in the wings of peace. It will be a healing of our doubts and a rekindling of our faith in this great and good land, and in our own capacity to make it so.

On the night when the last American soldier from Vietnam has landed in San Francisco, there will be a new birth of confidence and hope for all of us. On that night, we will know that, once free of the waste of this war, we can begin the rebuilding of our own land—a task that can provide a fulfilling job for every man and woman in America, who is able to work. On that night, America can begin to be America again. It can be the America that we learned to love in the days of our youth—a country that once again stands as a witness to the world for what is noble and just in human affairs.

This is the choice of a century. But it is also the same choice that human beings have faced from the very beginning. So, let us heed the ancient words: "I have set before you life and death, blessing and cursing. Therefore, choose life, that thou and thy seed may live."

Thank you. God bless you.

NARRATOR

One hundred and seventy-five years ago, Alexander Hamilton pointed out this building to a foreign visitor and said: "Here, sir, the people govern."

If the people are to continue to govern in the United States, then the people must be heard. In today's presidential elections, that is an expensive process. And the McGovern Campaign tonight needs money.

Mr. Nixon has collected the largest political campaign treasury chest in the history of the Republic. $10 million of it is secret money, given by wealthy interests whose names the President refuses to disclose.

But Senator McGovern is depending on the people—and his contributors are clearly identified. Rather than asking twenty-five contributors to give a million dollars each, Senator McGovern wants a million contributors to give $25 each.

By sending a contribution tonight, you can truly help. You can help assure that George McGovern will continue to be heard; that the Democratic Nominee for the Presidency will get to tell his story completely and without distortion as the campaign goes into its final weeks.

Send your contribution. Whatever you can afford. To: McGovern for President, Box 100B, Washington, D.C.

That's—McGovern for President, Box 100B, Washington, D.C.

Thank you, and good night.

THOUGHTS ON INCREASED FEDERAL SPENDING

Mr. JAVITS. Mr. President, on June 7, 1972, Andrew Heiskell, the chairman of time Inc. addressed the City Club of New York on the grave fiscal problems facing our Nation, our States, and our cities.

All of us must share Mr. Heiskell's concern over the budgetary situation and the implications this has for the future economic growth and stability of the United States economy. This relates also to our enormous defense budget which continues to consume almost one-third of all budgetary expenditures; and to our continuing tragic involvement in Vietnam.

I share Mr. Heiskell's evaluation that if the cities of America die, the communities within 50 miles of them, "will die on the vine."

I ask unanimous consent that Mr. Heiskell's address of June 7, 1972 and the New York Times press report of June 8 on it be printed in the RECORD at this point.

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

ADDRESS BY ANDREW HEISKELL, THE CITY CLUB OF NEW YORK, JUNE 7, 1972

Thank you very much for those kind words and the honor you do me.

I must confess to some misgivings about being feted as a distinguished New Yorker in a year when—on the good days—the news about our cities in general and New York in particular is ghastly. I couldn't help reflecting that it may have become as obsolete to select a citizen of the year as it has become to select fashion leaders of the year. At just about the time I was engaged in such melancholy reflection a copy of the Brookings Institution's recent study of the federal budget and national priorities came across my desk. That excellent and thought-provoking document suggests that just as man of the year may have become obsolete and just as fashions of the year may have become obsolete so may some of the beliefs and expectations of the last decade become obsolete.

The Brookings study shows that federal spending for domestic social programs has risen so astronomically over the past decade that it is now well over 80 billion dollars a year more than it was a decade ago. The price tag on what the Brookings report identifies as the major Great Society programs alone comes to 34 billion dollars a year more than it did a decade ago. We estimate that there are somewhat more than 5 million families who live below what we define as the poverty level in this country. Now, if my arithmetic is correct, federal social spending today is the equivalent of $16,000 a year more per impoverished family than it was ten years ago. The money spent on the Great Society programs alone equals almost $7,000 a year more per family than it did in 1963. The point is not that monies earmarked to help the poor have been misappropriated or disappeared into some kind of bureaucratic void. Obviously the programs measured by the Brookings report were meant to help various parts of society in various ways. The point is that the enormity of the sums spent is out of all proportion to their impact on the problems involved.

I think one of the conclusions we must draw from the Brookings study is that dollars alone will not solve our problems—although God knows money is important and we're going to have to spend a lot more before we begin to make a real dent in the urban crises.

Another conclusion that seems inescapable is that it would be a mistake to look primarily to the Federal Government to solve our problems. That is not to say that the Federal Government does not have a crucial role to play in the struggle. Indeed some of our urban problems are of such a nature that they can be attacked successfully only on a national level. But as is becoming increasingly evident the Federal Government has only a finite amount of money to spend and—tax increases and reforms notwithstanding—the upper limit of that amount is being approached without any indication that the solutions to our urban problem are in sight.

The Brookings report makes one realize that good intentions without a clear understanding of their consequences are an exercise in futility as well as a misuse of funds. Take programs for housing the poor as an instance. The net effect of various government acts in this area have been four:

(1) To bid up the price of land

(2) To grossly increase the costs of labor

(3) To bring about the abandonment of existing housing

(4) To make the ownership of slum housing often more profitable than the ownership of improved property because of the nature of real estate taxes.

And so it goes in field after field of effort to better the lot of the poor. In education for example federal funds allocated for improving teaching techniques have by and large simply taken the place of local funds which formerly were used to purchase teaching materials and are now used to cover school operating costs—mainly salaries.

Cities are going broke while providing pensions for countless civil servants after only 20 years of service at 50% of the rate of pay during the last year of employment.

Now I'm not arguing that transit workers or firemen or schoolteachers weren't entitled to better treatment. But I am saying that the poor are right when they angrily protest that all that money doesn't reach them. Damn little of it does.

So its not surprising that a commission established last year by the National Urban Coalition found in city after city that the problems that led to the riots of the 60's had worsened rather than improved. To make matters even more difficult some of us, not used to moving in the public arena, were dismayed to find our efforts rewarded by criticisms by some for our lack of sincere commitment and by others for misusing the stockholders' money. As a result quite a few businessmen have withdrawn from the fray.

They are mistaken. For without a real understanding of government policies and their consequences, we will simply embark on more and more policies that have momentary voter appeal but little real impact in terms of the urban scene.

Quite a few of you have suffered through my pleas to help one urban cause or another. I have used the argument of good citizenship, enlightened self interest or brotherhood of man. Tonight I suggest to you that the size of the figures revealed in the Brookings report are not only important to you because they come out of your corporate or personal income but even more because those expenditures are of such a magnitude that they should make a *real* difference to the state of our urban civilization.

They are also an interesting yardstick of scale—both financial and philosophical. Most of you worry about pro bono publico contributions at the level of $10,000 or maybe even $100,000. At the same time your company is contributing at the $1,000,000 or $10,000,000 rate or even more in taxes.

Shouldn't you be spending a proportionate amount of time on evaluating the way these dollars are utilized. Shouldn't you be asking questions. Shouldn't you have persons of major rank in your businesses watching the governmental process. Surely you have many executives monitoring every $25,000,000 corporate expenditure. Shouldn't you be monitoring your $25,000,000 tax bill.

You and your business are dependent for your *rewards* and *satisfactions* on the well being of your urban environment. If there is one thing we have learned in recent years it

is that this job cannot be delegated to elected officials and civil servants. Unless we can involve all our institutions in the process of government, then government will fail. Is the effort worthwhile?

I suggest to you that for all their problems the cities are not only an integral part of the country but also among our most impressive national assets. What aspect of national life would not be diminished by the disappearance of a great cosmopolitan center like New York. Last year 16 million people visited this city to take advantage of our museums, theaters, concert halls, universities, hospitals, libraries and other attractions of urban civilization. Eliminate New York City and what happens to those communities within 50 miles of it. They will die on the vine. And yet many commuters feel no responsibility for New York City. Edmund Burke once said "The only thing necessary for the triumph of evil is for good men to do nothing." The City Club represents the kind of enduring commitment needed to solve our problems. I hope that all of you will continue to prove that "good men can do great things for New York City."

[From the New York Times, June 8, 1970]

HEISKELL SCORES PUBLIC SPENDING—TIME CHIEF URGES BUSINESS TO MONITOR GOVERNMENT

Declaring that the upper limit of Federal spending on urban problems was being approached with no solution in sight. Andrew Heiskell, chairman and chief executive officer of Time, Inc., urged businesses last night to monitor the governmental process.

In an address at a dinner meeting of the City Club of New York in the New York Hilton, Mr. Heiskell said that most businesses "worry about pro bono publico contributions at the level of $10,000, or maybe even $100,000," while they contribute $1-million, $10,-million or even more in taxes.

"Shouldn't you be spending a proportionate amount of time on evaluating the way these dollars are utilized?" he asked. "Shouldn't you be asking questions? Shouldn't you have persons of major rank in your businesses watching the governmental process?"

The Time executive said that the solution of urban problems could not be delegated to elected officials and civil servants. "Unless we can involve all our institutions in the process of government, then government will fail," he said.

Mr. Heiskell cited a Brookings Institution report that Federal spending on social programs had risen by $80-billion in a decade, and said the sums spent were "all out of proportion to their impact."

Declaring that "cities are going broke" paying pensions at half pay after 20 years' service, he said he was not arguing that civil servants were not entitled to better treatment but that "the poor are right when they angrily protest that all that money doesn't reach them; damn little of it does."

Mr. Heiskell received the club's Distinguished New Yorker Award for his leadership of Time and extensive civic work.

OPPORTUNITY INDUSTRIALIZATION CENTERS DAY, OCTOBER 11, 1972

Mr. BOGGS. Mr. President, today is Opportunity Industrialization Centers Day throughout the United States, a day set aside to give deserved recognition to the excellent work that is being done through the OIC organization all over the country.

I have been very close to the OIC movement since its inception some 8 years ago and during that time I have come to know and to develop the deepest respect and admiration for OIC's founder, the Reverend Dr. Leon Sullivan.

Wilmington, Del., is one of many cities where OIC rallies are being held today, and I greatly regret that I am unable to be there. However, as I indicated in a message that I sent to the rally in Wilmington's Rodney Square, the press of Senate work makes it necessary for me to be in Washington today.

Eight years have passed since the first OIC became a reality in Philadelphia. Now, there are more than 100 centers across the Nation, including the excellent ones we have in Wilmington and Dover.

There are, it seems to me, several sources behind the strength of the OIC concept. Perhaps the most important is OIC's ability to bring together various elements of our society into a common cause: a better opportunity for all Americans. It is a cooperative effort involving citizens, governmental units, and businesses.

We in Delaware are especially proud of our OIC program. The State government has seen fit 2 years in a row to support it with appropriate funds—as far as I know—Delaware is the only State that has done this.

As the sponsor of the first OIC legislation, I believe completely in the excellent work of the program. It is meeting a need, and meeting it with great success.

None of this, of course, would have occurred without the drive, the exceptional organizational ability of Dr. Sullivan. We all owe him a great deal. He is a great American who serves his fellow man with dignity, compassion, and distinction. He is a tireless worker who has achieved near miracles in a short span of time. I congratulate him and all his associates in OIC for their fine work.

There are few, if any, Federal programs from which the taxpayer gets a greater return than the OIC program. Dollar for dollar, the return has been far greater than money spent in most other programs. Cost per OIC trainee has been about $1,500, which is about one-third of the cost of many Federal programs.

The reason, mainly, is that OIC's are not merely job training enterprises. They are comprehensive programs which begin with pretraining counseling and end with job placement and follow-up at regular intervals.

OIC's also are located where the need for job training is greatest—within our urban centers. The trainee remains with his family and friends in his own neighborhood. OIC's prepare the individual for actual job training by means of a prevocational feeder program designed to provide basic reading and writing skills and to build his self-confidence.

Following completion of the feeder program the trainee learns a skill which is in demand by businesses in the area. The trainee thus has a realistic goal for which to strive. Many times he is guaranteed employment before his OIC training is completed.

That is the briefest possible sketch of what OIC's are doing and how they operate. The real story of their success lies in the restored dignity of a man or woman who has developed a marketable skill, who knows the worth of being needed, and who now is able to contribute something of value to his community and to society as a whole.

This, then, is the organization—Opportunities Industrialization Centers—and its founder—the Reverend Dr. Leon Sullivan—whom we salute in rallies across America today. I hope that OIC Day will demonstrate to all Americans the need to get behind the OIC's to help them to achieve the goal of human betterment that we all seek.

OCTOBER COMES TO PAINT THE HILLS

Mr. ERVIN. Mr. President, an article by my friend John Parris entitled "October Comes To Paint the Hills" appears in the Asheville, N.C., Citizen for October 8, 1972. As one who has often looked upon the hills and mountains of North Carolina during the magic month of October, I can appreciate what a good job he has done in picturing in words what the good Lord accomplishes when he takes his paint brush and covers the hills and mountains of western North Carolina with glory.

I ask unanimous consent that a copy of this article by John Parris be printed at this point in the body of the RECORD.

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

[From the Asheville (N.C.) Citizen, Oct. 8, 1972]

OCTOBER COMES TO PAINT THE HILLS

(By John Parris)

LAUREL COVE.—The wind hums a tune as old as leaf-color on the earth, and the loosed leaves dive like swallows in the sky.

The mornings shiver and the nights whisper of frost.

The days are full of wine and gold.

And there is the beauty of early rainbow-streaked sunsets against the darkening hills.

Old October, the gypsy man with a paint brush, has come once again to splash the landscape with brilliant hues of blazing colors.

Already there are shades of red and scarlet showing in the dogwood, the sourwood, the black gum, and the Virginia creeper.

Bright yellow and bronze are appearing in the birches, the hickory, the ash, the locusts, and the tulip trees.

The fronds in the sumac clumps show red, the goldenrod has come to bloom, the fruit of the pokeberry hangs like so many tiny bottles of burgundy.

The strawberry bush, which mountain folks call "hearts abustin' with love," dangles its rich glossy fruits from frosty-pink husks.

The fall asters lightly frost the roadsides.

Soon the transformation will be complete and spectacular color will sweep the hillsides and valleys.

The color is expected to be at its best from the middle of the month until early November.

The season's first frost has already walked across the mountains which the Indians called the Great Blue Hills of God.

But it walked lightly, gently.

Contrary to popular opinion, Jack Frost does not paint the leaves.

Actually, a severe, early frost will kill the leaves before they can turn color.

In the fall, the tree itself cuts off life from its leaf. It cuts it off by growing a row of brittle, corky cells at the base of the twig.

This cuts off the circulation of the sap.

So summer's green disappears and the latent red and yellow get their chance.

For when the life in the leaf cell goes, so does the green, and the gold comes out.

Light also is essential to bring out reds and purples. Just as light is necessary to bring out an image on film.

So if the frosts continue light and there are bright sunny days, there will be an abundance of color.

Right now nature is nursing the color toward its spectacular peak.

For October has once again come to the hills.

And October is a time to walk a rainbow trail, wander down a quiet back country road, or just sit for a spell on a mountain top under a sky as blue as fall asters.

The gloomy poets have spoken of October and autumn as a time full of sombre solemnity and a pathetic sense of old age.

But who can stand among the hills and look at the blaze of October's colors and declare them solemn?

Who can drink deep draughts of the autumn winds and talk about senility?

For October is a wind in the heart and fire in the heels.

It is a time when hills and valleys beckon and lure.

The forests are Indian-painted, Indian-haunted.

It is a time too of scent and sound, a time of breadth and depth and distance.

It is a time when a midday sky is so deep, so clear that you can see half way into forever.

October in the hills is really a special time.

It is much more than just color in the trees.

It is harvest at the full.

It's sagging orchards steaming with amber spice and shocks of fodder standing like teepees in the fields.

It's blue smoke drifting out across a cove where sorghum-juice simmers over a hickory-fed furnace.

It's squirrels harvesting acorns in a big white oak.

It's partridge rocketing from the brush and winging away in swift silence.

It's quail feeding at sunrise, roosting at daydown.

It's an owl calling, cool dews falling.

It's pawpaws dropping, persimmons ripening.

It's a time when the 'possum goes to his tree and the 'coon roams the night.

It's the day-tang of walnut hulls and sumac berries.

It's chinquapins falling and buckeyes slipping from their sheafs.

It's hound dogs belling the midwatches of the night.

It's golden cider and apple butter, piles of pumpkins and strings of leather-britches and peppers.

It's the winey smell of oak being cut for the fireplace.

It's 'possum-grape jelly and wind cranberry sauce, honey in the jar and kraut in the crock.

It's a time when the katydids rasp their last calls of the season, when the whippoorwills go south.

It's the moon of the hunter, the wind of the fallen leaf.

It's the chit-chat of an idle squirrel, a groundhog fattening up for the long winter sleep.

October in the hills is all this and more.

But, most of all, it is a month of hope and joy.

MORGAN BECK—AN OREGON LEADER WHO WILL BE MISSED

Mr. HATFIELD. Mr. President, the death of any friend causes a person sorrow. The death of a man whose life affected his city, his region, and his State brings added sorrow, both to his friends and to those who were touched by his involvement in the life of his town.

I speak today in memory of Morgan Beck, who died recently. Morgan served with distinction as the mayor of Ontario, Oreg., and the citizens of his hometown share my sorrow at his untimely death.

Mr. President, my colleagues have heard me speak before about the need to revitalize the small towns and rural areas of this country. When I have been involved in such actions, I have had in my mind men such as Morgan Beck to give the leadership at the local level so desperately needed if we are to stem the migration to our urban and suburban areas.

Morgan Beck was a man whose activities touched many areas of his hometown, and the region of eastern Oregon abutting Idaho. I will not merely read a list of his civic activities, for only a listing of them would fail to indicate the human factor so important in all that Morgan Beck did. As in so many of our small towns, one vital, involved person can shape the direction of a city, of a civic group, of a county. Morgan Beck gave that kind of effort to all that he attempted.

In a tribute from a friend, Morgan Beck was described as a good listener. That is one of his traits, but he translates talk into action. His efforts on behalf of his city are numerous, and I always found him involved whenever the welfare of his city was at stake.

Mr. President, Morgan Beck was only 53 when he died. He still had a long life ahead of him, and a life that would have continued to make its mark on his hometown.

The Daily Argus Observer, the newspaper in Morgan's hometown, carried an editorial noting his many contributions, along with some comments from other people from Ontario.

I ask unanimous consent that this material from the September 27 Observer, which gives some indication of the high esteem we all had for Morgan Beck, might appear at the conclusion of these remarks.

Mr. President, I want to add that I shall miss Morgan Beck as a person. My remarks have touched on him as a force in his community, but I also knew him to be a ready man with a smile, someone whose compassions and whose understanding of human problems were evident to all of us who knew him well.

I feel the sorrow of the loss of a true friend. Morgan was my campaign manager in my 1966 senatorial campaign, and followed a warm association prior to that.

Morgan was a man of many varied interests and talents. Because of these varied interests, he was always a pleasure to talk with. One facet of his talents unknown to many was his cooking skills. My wife Antionette, as my Senate colleagues are aware, has written three cookbooks, with her personal favorites of many of our Oregon friends included. In her most recent book, "Food for Fellowship," there is a Morgan Beck special recipe. She shares my sorrow at his untimely death.

The people of Ontario will have people who will carry on the many projects where Morgan's touch was felt. They will carry these on, but they cannot replace the special qualities that he brought to all that he did.

Oregonians who knew Morgan Beck I know share my sorrow. We have lost a true friend.

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

MAYOR MORGAN G. BECK

With heavy hearts we say farewell to Morgan G. Beck, community figure, respected and honored Mayor, friend and confident.

His passing at the too-young age of 53 leaves voids not only in the City of Ontario and in other government circles, but also in the many groups in this community and the Treasure Valley to which he devoted his energies.

Morgan Beck was a personable and gracious man. He loved people, and in an expanded sense, this was translated into a love of his community, and his country.

Since Morgan Beck's first city office as councilman in January of 1953, few projects for community betterment were undertaken that did not number him among the prime movers.

Since 1944 when the family first moved to Ontario, Morgan Beck has taken an active part in the community and these activities lead into work with the League of Oregon Cities where he served on the board of directors for several years and on most of its numerous committees.

He gave freely of his time and talents and frequently was called to Salem to testify before legislative committees on proposed legislation as it pertained to cities.

Even in his high school and college days, Beck was singled out as a leader and was noted for his service to the community.

This dedication to serve his fellow man continued throughout life as Beck worked in his chosen profession and served on the board of directors of the National Certified Livestock Marketing Association, and held all offices including that of president just last year.

In Ontario, the Kiwanis Club, the Malheur County Fairboard, Toastmasters, the Lay Board of Holy Rosary Hospital and many other groups have felt his guiding hand.

He has been a major force in the recent development and growth of the City of Ontario. Water and sewers have gone from a 'one-horse' system to one we can be proud of and one which will serve for considerable growth without needing extensive and expensive additions.

Two major interests of Mayor Beck were the City-County Library and the excellent baseball diamond. His untiring efforts in such projects will be sorely missed.

The Ontario Jaycees selected Morgan Beck as their "Distinguished Citizen" in 1953.

Morgan Beck drew from others a respect which he did not at all demand. His door was open to all; his employees at the Ontario Livestock Commission Company, city employees and all Ontario residents. He knew when to listen and had a real ability to work with people.

He derived great enjoyment from his family. Even the most casual visitor to his home could soon detect this love. To his loved ones, Mrs. Beck, their children and their families, we express sympathy in this hour.

Truly, here was a lifetime spent in service to others.

IN MEMORIAM

Jim Leslie: "The brilliant, inquiring mind and the sensitive nature of Morgan Beck are gone and the void will never be quite filled. This soft spoken friend of so many was a fascinating combination of some of the best personality and temperament traits and the privilege of associating with him was a prized relationship.

"Here, combined in one most unusual man, were a devotion to family which was a constant inspiration to friends, the kind of dedication to service which would result in twenty years in city government, a capacity as manager and analyst which would provide leadership to a very complex business and a lively and continuing interest in sports and music.

"Perhaps, along with the sorrow that attends the loss of a friend and the grief we feel for his wife and children, we are selfishly troubled by the personal loss of someone who can't be replaced. If so, he should move us to do better than we might have had we not known him.

"Because he was here, Ontario is a better town than it might have been. Because he was a friend, many lives are brighter than they might have been. We are grateful for having known him."

Leonard Cates, President, Ontario City Council: "The City of Ontario had Confidence, a word which declares 'To Trust in, or Reliance upon another'.

"This was our thinking and admiration of Morgan Beck, who served as Mayor of our city.

"I speak for each member of the city council; We will miss his good judgment and his pleasant personal conduct. What a tribute he was to each one of us in our community and especially to his family. Again, I use the word, Confidence."

John B. Collins, City Manager:

"In earlier editions of this week's Daily Argus Observers, the reader can find facts about Morgan Beck's illustrious career in business and government service. Several comments about his spiritual value to the city also seem appropriate.

"Mayor Beck's total and obvious friendliness to everyone was a dominant and pervasive characteristic. His charm and openness made all of us feel as if we were close friends of his. He had a way of raising his arm in greeting each passerby he knew—and he knew each one of us.

"He was a master of the art of listening. He listened carefully to whatever was being said, but this listening quality didn't make him a passive man. After listening and considering various points of view, he didn't hesitate to express his feelings about what was being discussed. Often, if he disagreed with someone, he would joke about it, thus softening the impact of his logic.

"The manner by which he conducted city council meetings was nothing short of magnificient. I have watched 20 mayors in other cities conduct council meetings and none could hold a candle to Mayor Beck. Without ever raising his voice or being even the least bit unpleasant, he brought often rancorous council meetings to positive conclusions.

"He had a way of mediating deeply held opposing points of view with the result of reaching the right decision.

"His sense of humor was classic. The understated, dry comment was not intended to draw a guffaw or belly laugh. It always gained a grin or a chuckle from a receptive audience.

"Mayor Beck was devoted to his family and his community. He spent an incalculable amount of time attending city meetings in the 20 years he served us, but he probably spent more time than that, while at home, answering phone calls from people in the city who felt comfortable calling 'the mayor at home'.

"The oath of the citizen of ancient Athens, Greece, to his city was carried out by Morgan Beck. It says:

"We will never bring disgrace to this, our city by any act of dishonesty, or cowardice, nor ever desert our suffering comrades in the ranks; we will fight for the ideals and sacred things of the city, both alone and with many; we will revere and obey the city's laws and do our best to incite a like respect in those above us who are prone to annul or set them at naught; we will strive unceasingly to quicken the public sense of civic duty. Thus in all these ways, we will transmit this city greater and more beautiful than it was transmitted to us."

POLLUTION IN THE GREAT LAKES

Mr. HART. Mr. President, why, we are asking today, is this administration willing to spend billions of dollars to destroy people and land in Southeast Asia when it is not willing to spend to reclaim and revitalize our land here at home?

How can destruction of another land justify spiraling neglect of our own land?

How can we spend billions to shatter the land of Vietnam and fail to spend $100 million to save the Great Lakes?

These are questions the Nixon administration needs to answer and so far they have failed.

Last winter the Environmental Protection Agency recommended a $140 million crash program to fight pollution in the Great Lakes.

Despite a plea by a bipartisan group of 13 Senators, the administration refused to fund its own proposal.

Ironically, the proposal required not new programs, but only a change of spending priorities.

The delay means further destruction of the world's largest fresh water resource, complicates further the task of reversing the spread of pollution and adds dollars to the cost of whatever program is finally launched.

The program could have been funded by the savings from a 25-a-day reduction in the number of bombers sent over Vietnam.

Perhaps that sounds like a sizable cut, but consider these figures.

The war costs the United States $20 million a day.

In the years between 1965 and 1971 alone we have exploded 26 billion pounds of munitions in Indochina.

That breaks down to 142 pounds for every acre or 584 pounds for every person.

And in the last year the bombing has increased.

To what end? To what end?

No matter who wins the conflict in Vietnam, the people of the country and their land will be the losers.

And too, pollution-threatened waters like the Great Lakes which must wait in line until the bombing, destruction, and killing in Vietnam ends.

The Great Lakes antipollution program and a host of other domestic programs must wait, in fact, retreat, while we wage a war against the land and people of Vietnam. The record of retreat against pollution goes like this:

The administration pledged a "total mobilization" to fight pollution but has continually refused to spend all the antipollution funds provided by Congress.

The President issued a ringing declaration when signing the Environmental Protection Act, but since then the administration has sought ways to soften the act's impact.

Under prodding from Congress, the administration agreed to enforce an 1899 law banning the dumping of material in navigable waters, but has since retreated.

The White House holds conferences on problems of youth, but refuses to move effectively against the threat of lead-paint poisoning.

Some time ago former Attorney General John Mitchell cautioned the people of this country to watch what the administration did rather than to listen to what it said.

In the case of the environment, as in other areas, that has turned out to be distressingly good advice.

Certainly one cannot be anything but pessimistic about a second Nixon administration. Environmental programs and all domestic programs would be bound to suffer.

The President wants a spending ceiling which would require a 20-percent cut in most domestic programs.

The President has promised he would not raise taxes.

His former Treasury Secretary, who comes from an oil State, says there are no tax loopholes to close, and the Pentagon wants to increase its budget by more than $25 billion over the next 5 years.

That does not leave much new or old money for fighting pollution in the Great Lakes or anywhere else.

This Nation needs a new administration willing and able to end the bombing in Vietnam, willing and able to redirect Federal spending into vital domestic programs, and willing and able to withstand the pleas of special interest which would slow or stop efforts to protect the environment.

NATIONAL CEMETERIES ACT OF 1972

Mr. THURMOND. Mr. President, on Monday, October 9, 1972, the Senate passed the National Cemeteries Act of 1972. This bill, which was a committee substitute for H.R. 12674, combines portions of the House bill and S. 2052 as originally introduced, together with additional amendments. I am proud to have been the sponsor of S. 2052.

The committee substitute, as approved by the Senate, will establish within the Veterans' Administration a national cemetery system. Certain cemeteries would be transferred from the Department of the Army to VA jurisdiction. However, there would be four important exemptions. The Arlington National Cemetery and the cemeteries at our service academies will not be transferred to Veterans' Administration jurisdiction. Neither would the American Battle Monuments Commission nor cemeteries under the jurisdiction of the Interior Department.

Mr. President, this bill provides for a comprehensive study of our national cemetery system and our national burial policy. Recommendations will be submitted on or before July 1, 1973.

Two other important features of this bill should be mentioned.

First, the bill authorizes a special burial plot allowance of $150 when a veteran is not buried in a national or other Federal cemetery. This is in addition to the present allowance of $250 for burial and funeral expenses. For veterans who die of service-connected disabilities, there are additional benefits of up to $800.

Finally, Mr. President, this bill authorizes the burial of an unknown soldier at Arlington National Cemetery.

Mr. President, it was with great pleasure that I was able to work with Senator HARTKE and the other members of the Committee on National Cemeteries Act of 1972.

DETENTE BETWEEN ENERGY CONSUMERS AND PRODUCERS NEEDED

Mr. BELLMON. Mr. President, some of my colleagues from the other side of the aisle have in recent weeks attempted to support their candidate for the Presidency by representing him to be an enemy of the oil companies. They describe the present-day oil companies as being a heinous outgrowth of their turn-of-the-century predecessors. They describe the oil companies as robber barons, huge monopolies, omnipotent, getting richer all the time, with no end in sight to their growing power.

While such representations may have appeal to those who prefer invective to fact, I am confident that the majority of the American public would be interested in learning that the oil companies have been sailing through troubled waters and that there will be some shipwrecks ahead.

Economists are predicting that by 1985 the United States will be over 50 percent dependent upon foreign sources of oil. Most of the imports will be coming from the Middle East and North Africa. All of the major oil-exporting countries belong to a tough-minded producers' cartel, the Organization of Petroleum Exporting Countries, or OPEC for short.

Some of its members—Libya, Algeria, and Iraq—have already begun to nationalize the oil companies operating in their territory. They say to the oil companies, "What was yours yesterday is ours today," and they simply expropriate the assets. Others have used slightly less drastic measures such as substantially raising prices. OPEC is presently demanding 51 percent equity participation in the oil companies. That is obtaining control over their operations beginning with 20 percent equity participation this year to be followed by a 51-percent share by about 1980.

The OPEC countries control over 75 percent of the known oil reserves in the free world. With a seller's monopoly they have the power to command what they wish. All of the OPEC countries are riding the crest of a new wave of economic nationalism. Most of the OPEC nations are Arab, fiercely anti-Israeli, and one country—Libya—has threatened to cut off oil supplies to the United States unless we change our policies toward Israel. King Faisal of Saudi Arabia, however, has opposed using oil as a political tool. But the stability of present Middle Eastern governments is another potential problem.

The Soviet Union, which is self-sufficient in oil, encourages the Arab countries to continue nationalizing U.S. oil companies in order to curb what they call capitalistic imperialism.

The Saudi Arabian oil minister, who is representing the OPEC countries in the ongoing "participation" negotiations with our international oil companies, recently told a U.S. audience that unless consumer nations allow the new national oil companies of the OPEC countries access to downstream facilities—meaning transportation, refining, and marketing outlets—the OPEC countries will not permit expansion of oil production. Several of the OPEC countries are receiving more revenues from selling their oil than their economies can absorb. Thus, they can afford and probably will act to prevent production rates from expanding.

Assuming, however, that oil will continue to flow at the rate the international market can absorb, economists predict that the growing U.S. dependence on foreign oil will by 1985 result in an annual balance-of-payments deficit of $25 billion. As we become less self-sufficient in petroleum, competition for OPEC oil will intensify, as Western Europe and Japan seek to satisfy their own oil needs. They are already about 90 percent dependent upon OPEC oil.

Because of the gas shortage and the restrictions on coal production, our demands for oil are skyrocketing beyond normal expectations. It is forecast to leap from a little over 14 million barrels a days in 1970 to over 30 million barrels a day in 1985, of which more than half is expected to be foreign oil.

Domestic oil is harder to find. In the 1930's the oil industry found 275 barrels of oil for each foot of exploratory drilling. In recent years the figure has fallen to 35 barrels. Drilling deeper costs more.

Exacerbating the cost difficulties has been the impact of the environmental movement. The social demands for clean fuels have been escalating. Following the oil spill off Santa Barbara a few years ago, environmental lawyers went to work to oppose offshore operations of the oil companies. Opposition was redoubled as two additional offshore mishaps occured in the Gulf of Mexico; and later, a Federal court ordered the Interior Department to resubmit its environmental impact statement after expanding the discussion of alternatives to include foreign sources. The lease sale was then canceled.

Later, realizing that the gulf contains large quantities of much-needed oil and clean-burning gas, the litigants bringing the earlier action decided not to try to stop the recently held sale in offshore Louisiana.

Yet strong environmental resistance to conducting offshore lease sales on the Atlantic seaboard continues to develop. Yet, the east coast is where oil is needed most.

In order to lessen dependence on foreign oil the construction of the Trans-Alaska Pipeline has been proposed. It would carry oil from the North Slope to Valdez to be transported from there by tanker to the lower 48 States. The North Slope of Alaska represented the largest domestic discovery made in recent years, which is estimated at 10 billion barrels or more. It must stay in the ground until a means of transporting it is agreed upon and constructed.

In the meantime more foreign oil continues to flow into U.S. ports. Moving the oil in small tankers costs more and the industry wants to carry it in supertankers to keep costs down. But the United States does not have a single port capable of accommodating the giant tankers. There has been resistance on environmental grounds to the construction of deepwater ports and to the construction of new refineries to process both foreign and domestic crude.

As just indicated, the demand for petroleum products is on the rise while the ability to provide the supply is hampered by difficulties: cost-price relationships, environmental constraints, inefficient uses, and national security implications.

Regarding national security, some have argued for abandonment for our oil import quota system. Save our domestic fuels, they say. But at what prices? With what impact on our growing balance-of-payments deficit? With what impact on domestic employment? With what impact on our gross national product? And most importantly, with what detriment to an independent foreign policy and continued military security?

These questions are sobering. The facts which give rise to them are not exaggerated. In the "business" section of last week's Time magazine the story of the oil industry's problems in the Middle East is vividly told. In sharp contrast to the conclusions of my colleagues on the other side of the aisle that oil companies should be taxed more severely and further restricted by tougher environmental regulation, Time magazine arrived at a different conclusion:

> Until an economically practical, environmentally acceptable substitute is developed the U.S. and other Western countries may well be forced to make the best of their weighty reliance on oil by rethinking many of their national policies. This could include making tax and environmental laws more—not less—favorable to domestic drilling, stepping up trade with nations that are rich in natural gas, notably the Soviet Union, and revising basic foreign policy in the Middle East. Even under the best of circumstances, Western businessmen will probably be dealing more and more with Middle Easterners—as valued customers for their products, as well-oiled sources of credit and as powerful stockholders in their companies.

Mr. President, I ask unanimous consent that a copy of this article be printed in the RECORD.

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

(See exhibit 1.)

Mr. BELLMON. Mr. President, I can

understand my colleagues' proclivity for pouring invective upon the oil companies. Representing, as they do, constituencies which are energy consumers. Not energy producers, they seem to feel they are saying what their voters want to hear.

However, the day is upon us when the interests of energy consumers are no longer served by actions or rhetoric which reduces this Nation's suppliers of secure low-cost fuel. Imported natural gas already costs the customer three times as much as gas from domestic wells.

Actions of the OPEC countries clearly show that "cheap foreign oil" is going the way of the prehistoric dinosaur from which it came.

The time is at hand when domestic energy consumers, and those who represent them in Government, need to wake up to the fact that this Nation's fuel situation is reaching the critical phase where interests of both groups are parallel. Neither group will be served by energy shortages which weaken the Nation's economy and strength. An answer, if one can be found at all, can only come if there is more understanding and less unfounded accusation—more willingness to face facts and less eagerness to invent distortions.

Mr. President, detente is the order of the day in international affairs. Much meaningful progress has been the result. Perhaps, once the election is behind us, progress in finding answers to our Nation's energy problem can come if we can achieve a similar condition between the energy consumer and the energy producer and their representatives here at home.

EXHIBIT 1

CASH FLOOD IN THE MIDDLE EAST

A recurring hint of humor cut through conversation at last week's International Monetary Fund meeting in Washington. The waggish word was that the organization's annual meeting ten years from now will be run not by the suave, dark-suited Americans and Europeans who have always dominated the IMF but by white-robed sheiks from the Middle East. Western moneymen chuckled nervously, for they know too well that the energy shortage is critical and that the oceans of oil buried beneath the Arabian peninsula and North Africa are far larger than any yet found elsewhere. The staggering deals that Middle Eastern leaders have been extracting from Western oil companies may very well lead to significant redistribution of the world's monetary wealth. They could ultimately reverberate soundly through the social development and political life of many nations.

As recently as 1970, the eight Middle Eastern and North African members of the Organization of Petroleum Exporting Countries (OPEC)—the three others: Venezuela, Nigeria and Indonesia—were collecting about $5.8 billion annually in oil payments. Since then they have negotiated a jump of almost 40% in their base rate of payment, and they hold contracts that will increase the take by 10% annually through 1975. They have also canceled out the unfavorable effects of the devaluation of the dollar simply by demanding a compensatory rate hike. In addition, they have begun bargaining for part ownership in drilling operations that will probably be paid for by production increases, thereby leaving their normal revenues intact.

As a consequence of these steeply spiraling price demands, the annual oil revenues paid to the nine nations in 1975 may well rise to $15 billion—a five-year increase of 159%. In the years beyond, OPEC oil receipts will grow to nearly unbelievable sums. Continental Oil Chairman John G. McLean estimates that aggregate OPEC revenues between 1970 and 1985 could reach half a trillion dollars, or almost half the current annual U.S. gross national product. "So far the flow of money has been a tide," says Walter Levy, a top consultant to international oil firms. "Now it has become a flood."

In the past, the U.S. has been little concerned about such a deluge, since it depends on the Middle East for only 5% of its oil: by contrast, 80% of Western Europe's oil comes from there, as does 83% of Japan's. Now the relative oil isolation of the U.S. is about to dwindle. Domestic supplies, including the newly discovered reserves on Alaska's North Slope, simply cannot keep up with demand. Nor can the reserves of Venezuela, traditionally the nation's largest foreign supplier. As a result, says Allan C. Hamilton, treasurer of Standard Oil of New Jersey, "by 1980 fully 37% of the U.S. supply of oil will originate in the Eastern Hemisphere, mostly in the Middle East." In that likely event, even the threat of a petroleum shutdown in that sorely troubled part of the world could cause an oil panic in the U.S.

NEW SHAREHOLDERS

How will the new oil billionaires spend their money? That is an increasingly vital question, since oil payments that are not returned to customer nations—say in the form of purchases of machinery and consumer products—can cause a deficit in overall trade balances. Westerners are seeing more and more of their money remain abroad: both the Iraqi government and Libya's fiery strongman Muammar Gaddafi have used some of their bountiful oil revenues to buy military hardware from the Soviet Union. Gaddafi has also become a kind of Islamic buccaneer whose bankroll helps support the Palestinian fedayeen terrorists. Such expenditures are not calculated to keep international trade accounts in balance.

Other Arab leaders are growing increasingly sophisticated about using their wealth for productive purposes. Saudi Arabia's King Faisal is tying together his vast land with a network of roads. The Kuwait Investment Board, headquartered in London, is skilled in selecting high-yield Eurobonds and low-risk commercial paper; the proceeds support a welfare society for the emirate's 830,000 inhabitants. The Shah of Iran has undertaken a monumental program of social development based on building industries like steel, aluminum processing and tractor manufacturing. In line with that plan, Iran will probably become the first OPEC nation to buy a stock interest in the "downstream" oil operations of refining, shipping and marketing. Since the oil industry needs huge amounts of capital over the next few years to meet world demand, leaders of other OPEC nations may decide that their natural wealth is best protected by making big investments in the stock of the oil companies that at one time were regarded as their colonizers.

The West's growing dependence on Middle Eastern crude oil could ultimately be broken by finding a practical substitute source of energy. Nuclear power offers what appear to be the best possibilities, and gasoline extracted from shale or coal is also promising. Each price increase for oil makes the high cost of any feasible substitute less and less of a problem, though the environmental drawbacks remain large.

Until an economically practical, environmentally acceptable substitute is developed the U.S. and other Western countries may well be forced to make the best of their weighty reliance on oil by rethinking many of their national policies. This could include making tax and environmental laws more—not less—favorable to domestic drilling, stepping up trade with nations that are rich in natural gas, notably the Soviet Union, and revising basic foreign policy in the Middle East. Even under the best of circumstances, Western businessmen will probably be dealing more and more with Middle Easterners—as valued customers for their products, as well-oiled sources of credit and as powerful stockholders in their companies.

FALSE CLAIM ABOUT NUCLEAR ELECTRICITY REFERRED TO FEDERAL TRADE COMMISSION

Mr. GRAVEL. Mr. President, when one of America's largest corporations uses its vast financial power to feed outright lies to the public, I think that corporation has gone too far. The act is all the more disgusting because such a corporation is really taking dollars from consumers and then using those dollars against them. It is the strong taking advantage of the weak, which is no one's idea of the American dream. Who needs corporations like that?

I am referring specifically to a two-page, full-color Westinghouse advertisement which appeared in the September 18, 1972, issue of Time magazine, the September 25, 1972, issue of Newsweek magazine, and perhaps in other publications also. Such ads cost plenty. According to Time magazine, the price is about $70,000 for nationwide distribution, and about $30,000 for eastern regional distribution.

The ad states that the nuclear breeder reactor "will produce essentially no radioactivity" when, in fact, the breeder reactor will necessarily be the greatest radioactivity-producing machine ever conceived.

DISMISSING THE LAWS OF PHYSICS

Any kind of nuclear fission reactor, whether it is a breeder or a nonbreeder, uranium fueled or plutonium fueled, water cooled, gas cooled, or sodium cooled, produces radioactivity in direct proportion to the amount of energy it produces.

A large nuclear electric plant of 3,000 thermal megawatts—about 1,000 electrical megawatts—will produce as much radioactivity in each year of its operation as the fissioning of approximately 1,000 Hiroshima atom bombs. As long as nuclear fission is used, there will never be a cleaner way. To claim essentially no radioactivity is outrageous.

ASKING THE FTC TO INVESTIGATE

Therefore, I am asking the Chairman of the Federal Trade Commission to investigate the claim and to take appropriate action against Westinghouse for this deception.

Mr. President, I ask unanimous consent that my letter to Miles Kirkpatrick, Chairman of the FTC, as well as the full text of the Westinghouse Corp. advertisement, be printed at the end of my remarks.

In addition, I am providing three brief scientific papers which refute Westinghouse's claim that breeder reactors "will produce essentially no radioactivity." Two of the papers are by Dr. John W. Gofman, who is codiscoverer of the fissionability of uranium-233. The third is by Dr. Hannes Olof Alfven, who won the 1970 Nobel Prize for physics.

SCIENTIFIC PAPERS REFUTE PROMOTIONAL FALSEHOODS

Mr. President, I ask unanimous consent that the following three papers be printed at the end of my remarks:

First is a paper by Dr. Gofman which explains how the operation of a large nuclear powerplant compares with the fissioning of 1,000 Hiroshima atom bombs. It is entitled "The Fission-Product Equivalence Between Nuclear Reactors and Nuclear Weapons."

Second is an article by Dr. Gofman entitled "The Case Against Nuclear Power," which appeared in abbreviated form in volume two, No. 3, of the Catalyst magazine, together with the "Catalyst's biographical sketch of the author.

Third is an article by Dr. Alfven entitled "Energy and Environment," which appeared in the May 1972, issue of the Bulletin of the Atomic Scientists.

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

U.S. SENATE,
Washington, D.C., October 10, 1972.

Hon. MILES W. KIRKPATRICK,
Chairman, Federal Trade Commission, Washington, D. C.

DEAR MR. KIRKPATRICK: I believe that the Westinghouse Corporation has committed an unlawful act under the provisions of the Federal Trade Commission Act which prohibits unfair or deceptive acts or practices in commerce.

Westinghouse put a two-page, full-color adertisement into the September 18, 1972 issue of Time magazine, the September 25, 1972 issue of Newsweek magazine, and perhaps into several other publications.

The ad, which shows a tombstone inscribed, "U.S. Economy, Victim of Energy Crisis, Circa 2000 A.D.", is entitled on the opposite page, "For Sale: The Answer". Westinghouse then argues that the nuclear breeder reactor will be a wonderful solution.

The text presents several highly contested assumptions about the so-called "energy crisis" as fact (e.g., a causal relationship between economic prosperity and increased energy consumption, a shortage of usable coal, a cost-advantage for the breeder compared with other energy sources), and concludes with an outright falsehood which I quote:

"Breeder power plants will produce . . . essentially no radioactivity".

The irrefutable fact is that the breeder power plant will necessarily be the greatest radioactivity-producing machine of all time. Ask any competent physicist. He will explain the elementary facts of physics, which are fully understood by Westinghouse.

The facts are these. Any kind of nuclear fission reactor produces radioactivity in direct proportion to the amount of energy it produces. A large nuclear electric plant of 3,000 thermal megawatts will produce as much radioactivity in each year of its operation as the fissioning of about 1,000 Hiroshima atom bombs. It is certainly deceptive, in my opinion, to dismiss this as "essentially no radioactivity".

As long as nuclear fission is used to make electricity, there will never be a "cleaner" way, and this is so whether the nuclear reactor is a breeder or non-breeder, uranium- or plutonium-fueled, water-cooled, gas-cooled, or sodium-cooled.

In addition to radioactive fission products, all nuclear power reactors produce plutonium, a radioactive substance so toxic that a piece the size of a dust particle, inhaled and deposited in the lung, can kill you.

The very purpose of the breeder power plant is to produce even more plutonium than do the nuclear power plants already in operation and under construction.

The false claim by Westinghouse, that "breeder power plants will produce . . . essentially no radioactivity", required only eight words, but it involves the central issue of the whole nuclear power controversy.

Westinghouse, for years, has been promoting nuclear power as a so-called "clean" source of energy, when in fact it is the dirtiest technology so far conceived by man. Unless the nuclear power program is stopped, the quantity of radioactive garbage and plutonium produced in this country by 1980 will be more than enough to kill every living thing on earth. Nuclear power is "clean" only the way coal is "clean". They are both clean provided you succeed in keeping their poisonous pollutants out of the environment.

If Westinghouse prevails with its nuclear sales campaign, the future of life on earth will depend on near perfection in the handling and containment of radioactive poisons created by nuclear power reactors. Would anyone suspect that fact from the Westinghouse advertisement?

Attached is a copy of the Westinghouse ad, plus two papers by eminent scientists providing the facts which completely refute Westinghouse's claim that the breeder "will produce essentially no radioactivity."

A decision in favor of nuclear electricity is a decision which will affect all men for all time. Therefore I am incensed that the Westinghouse Corporation would stoop to lying about the crucial issue of radioactivity.

The nuclear power controversy is being fought with all the dollars on one side. There is no one except Westinghouse who can afford to run ads replacing the original falsehood with fact.

Therefore, I herewith request that the Federal Trade Commission not only investigate this particularly deceptive advertisement under your authority, but that the F.T.C. require Westinghouse to pay for two-page, full-color "corrective advertisements" in every publication where the falsehood has appeared.

Very truly yours,

MIKE GRAVEL.

Attachments:

Westinghouse advertisement "The Fission-Product Equivalence between Nuclear Reactors and Nuclear Weapons" by Dr. John Gofman.

"Energy and the Environment" by Dr. Hannes Alfven.

[From Time magazine, Sept. 18, 1972]

TEXT OF WESTINGHOUSE BREEDER ADVERTISEMENT

[Text From the Tombstone]

U.S. economy victim of energy crisis, Circa, 2000 AD.

FOR SALE: THE ANSWER—THE ENERGY CRISIS CAN BE AVERTED BY THE BREEDER POWER PLANT; WESTINGHOUSE IS SPENDING $60,000,000 OF ITS OWN MONEY TO HELP DEVELOP IT

The "energy crisis" means that the U.S. will not have enough usable coal, oil and natural gas left to keep going. Something our grandchildren would not thank us for.

Breeder power plants remove the threat

The "breeder" is a special kind of nuclear power plant. It's strange: it makes more fuel than it uses.

(You don't refuel a breeder power plant when it's time to put more fuel in; you refuel when it's time to take fuel *out*.)

A new natural resource—Our biggest

With breeder power plants, the U.S. will gain a new natural resource of energy for making electricity. A far greater resource than all our coal, oil and gas combined. Enough, all by itself, to keep a growing U.S. going for hundreds, probably thousands, of years.

That's why Westinghouse is spending the $60,000,000 of its own money.

To help make the first U.S. breeder power plant a success.

P.S.—Less urgent than the energy crisis, but not to be overlooked: breeder power plants will produce no smoke; essentially no radioactivity; much less "thermal pollution"; and electricity at lower fuel cost. Prototype breeders are being built in France and England, and one is operating in Russia.

THE FISSION-PRODUCT EQUIVALENCE BETWEEN NUCLEAR REACTORS AND NUCLEAR WEAPONS

(By Dr. John W. Gofman)

What is desired here is a determination of the comparison of production of long-lived fission products (for example, Strontium 90 or cesium-137) in nuclear power reactors with such production in nuclear weapons. In particular we shall determine what megatonnage of atomic *fission* bombs is required to produce an inventory of long-lived fission products equivalent to that within a 1000 megawatt (electrical) nuclear generating station that has operated for one year.

Listed below are certain physical conversion factors and parameters of relevance, together with the source of such information.

Energy Units: 1 Kilowatt-hour = 8.6×10^5 gram-calories.

Reference: Handbook of Chemistry and Physics, 44th Edition, 1962–3, Chemical Rubber Publishing Co., Cleveland, Ohio. Page 3305 (Units and Conversion Factors).

EQUIVALENTS OF 1 KILOTON OF TNT

1 Kiloton TNT = 10^{12} gram-calories.

1 Kiloton TNT = 1.15×10^6 kilowatt-hours.

Reference: "The Effects of Nuclear Weapons", Samuel Glasstone, Editor, Published by the U.S. Atomic Energy Commission, Revised Edition, February, 1964 (U.S. Government Printing Office, Washington, D.C.) page 14, Chapter I, Table 1.41.

YIELD OF HIROSHIMA BOMB

1 Hiroshima Bomb is roughly 20 Kilotons TNT.

Reference: Ibid., page 6, Chapter I.

CALCULATIONS

1. In one year of operation of a nuclear reactor, long-lived fission products that have been manufactured will not have decayed significantly. Hence the inventory at the end of one year will be almost precisely equivalent to the total quantity of such fission products that has been produced.

2. The nuclear generating station will be taken as 33% efficient in the conversion of thermal to electrical energy. Thus 3000 Megawatts (thermal) yields 1000 Megawatts (electrical). Obviously, the calculation can be correspondingly modified for any other efficiency value chosen.

3. The nuclear generating station will be presumed to operate at full power throughout the year. Clearly, the calculation can readily be modified for any deviation from 100% operation over the full year.

Now, 1 year of operation represents 24×365, or 8760 hours of operation.

If 1 Kilowatt-hour = 8.6×10^5 gram-calories, then 1 Megawatt-hour = $8.6 \times 10^5 \times 10^3 = 8.6 \times 10^8$ gram-calories.

Therefore 1 Megawatt-year (or 8760 megawatt-hours) = $(8.76 \times 10^3)(8.6 \times 10^8) = 7.53 \times 10^{12}$ gram calories.

For 3000 Megawatts (thermal) for 1 year, we have $3 \times 10^3 \times 7.53 \times 10^{12} = 2.26 \times 10^{16}$ gram-calories.

But 1 Kiloton TNT = 10^{12} gram-calories.

Therefore a reactor at 3000 Megawatts (thermal) for one year is equivalent to

$$\frac{2.26\times10^{16}}{1\times10^{12}}=2.26\times10^{4}\text{ Kilotons of TNT}$$

1 Megaton = 1000 Kilotons.
So 2.26×10^{4} Kilotons represents

$$\frac{2.26\times10^{4}}{10^{3}}=22.6\text{ Megatons.}$$

So, we can say 3000 Megawatts (thermal) for one year is equivalent to 22.6 Megatons of fission bomb.

Now, taking 1 Hiroshima bomb as 20 Kilotons, we can say 3000 Megawatts (thermal) for 1 year equals

$$\frac{2.26\times10^{4}}{20}=1130\text{ Hiroshima bombs equivalent}$$

(Note: The energy of the reactor and of the bomb are totally from nuclear fission. Hence, if we have compared equal *energy* production, we have automatically compared equal fission product production. And since, for long-lived fission products we neglect the decay, we can say the inventory of fission products (*long-lived*) in a 3000 Megawatt (thermal) reactor is equal to that from 1130 Hiroshima bombs.

We can check this calculation by an alternative one. We listed above that 1 Kiloton TNT=1.15×10^{6} kilowatt-hours.

Also, 3000 Megawatts (thermal) for 1 year=$3000\times8760=2.628\times10^{7}$ megawatt-hours.

2.628×10^{7} megawatt-hours=2.628×10^{10} kilowatt-hours.

Therefore, 3000 Megawatts (thermal) for 1 year represents

$$\frac{22.628\times10^{10}}{1.15\times10^{6}}=2.29\times10^{4}\text{ Kilotons.}$$

(Note: Calculating above via calories, we got 2.26×10^{4} Kilotons. Within rounding off errors, this result is identical, approached via Kilowatt-hours or calories, which is, of course, expected).

Converting to Hiroshima Bombs equivalent, we have

$$\frac{2.29\times10^{4}}{20}=1145\text{ Hiroshima Bombs}$$

(Via calories, we obtained 1130 Hiroshima bombs, again in agreement, within rounding errors).

SOME POSSIBLE MODIFICATIONS

(1) It is claimed that in the future, nuclear reactors may operate at 40% efficiency (thermal to electrical) instead of the 33% efficiency employed in these calculations.

In such a case, the Hiroshima Bomb equivalent would be

$$\frac{(1130)\times33}{40}=932\text{ Hiroshima Bombs}$$

for 1000 Megawatts (electrical) (2500 Megawatts (thermal))

(2) One might, for any calculation, consider that the reactor will not operate at 100% power throughout the year. Estimates like 75% have been suggested.

If a 1000 Megawatt electrical plant, with 33% efficiency, operates 75% of the year,

The Hiroshima Bomb equivalent=(0.75)(1130)=848 bombs.

If a 1000 Megawatt electrical plant, with 40% efficiency, operates 75% of the year,

The Hiroshima Bomb equivalent=(0.75)(932)=699 bombs.

Therefore, looking toward the future, and using 40% efficiency and 75% operation, it appears that 699 Hiroshima bombs equivalent is the lowest figure.

(3) The Hiroshima Kilotonnage was taken as "roughly" 20 Kilotons.

Dr. Herbert York, in "Race to Oblivion", suggests the Hiroshima bomb may have been 14 Kilotons.

Above we calculated for 3000 Megawatts (thermal) for one year we have the equivalent of 2.26×10^{4} Kilotons TNT.

If one Hiroshima Bomb is 14 KT, then 3000 Megawatts (thermal) for 1 year=

$$\frac{2.26\times10^{4}}{14}=1614$$

Hiroshima Bombs, instead of the 1130 bombs calculated above.

[From the Catalyst magazine, Volume II, Number 3]

THE CASE AGAINST NUCLEAR POWER

(John W. Gofman, M.D.)

Dr. John W. Gofman is Professor of Medical Physics at the University of California, Berkeley and Research Associate at the Lawrence Radiation Laboratory (Berkeley and Livermore)—posts he has held since 1947.

His scientific contributions are many. He was co-discoverer of U^{232}, Pa^{232}, U^{233}, Pa^{233} co-discoverer of slow and fast neutron fissionability of U^{233}, co-inventor of uranyl acetate process for plutonium separation; co-inventor of columbium oxide process for plutonium separation. He has done research on low dose radiation, chromosomes, and cancer. And he has been Group Leader of the Plutonium Project at the Lawrence Radiation Laboratory, Berkeley (1941–43).

An outspoken critic of nuclear power, Dr. Gofman has co-authored two books on the subject: "Poisoned Power" and "'Population Control' Through Nuclear Pollution." He has written three other books and over 100 papers on heart disease, and he has published some 130 scientific papers.

Dr. Gofman has a Ph.D. in Nuclear/Physical Chemistry from the University of California, Berkeley (1943), and an M.D. from the University of California, San Francisco (1946).

INTRODUCTION

It is the purpose of this discussion to show why nuclear fission power is a misadventure that deserves early termination.

A new power source must be acceptable for periods measured at least in centuries, preferably in millenia, and must be meaningful on a global scale. If our concern is over a power source for just a century or so, we should expand immediately and drastically our conversion of coal to low-pollution synthetic gas. If our concern is for a longer period, we must necessarily consider the consequences of global, long-term use of any novel power source.

Would nuclear power be acceptable as a global, long-term power source?

MAGNITUDE OF THE PROBLEM

No matter how distasteful it may be to the ecologist, we must assume that Dr. Alvin Weinberg's pessimistic projections may become reality. He projects:

(1) Global population reaches 15-billion people.

(2) The global *per capita* energy consumption becomes equal to that for the U.S.A.

(3) The U.S. *per capita* consumption doubles, going from the current 10 kilowatt (thermal) consumption rate to 20 kilowatts (thermal). Such consumption includes electricity and all other forms of energy dissipation.

Since current global consumption is at a rate of 5-billion kilowatts (thermal), the Weinberg projection is for a sixty-fold increase, to an ultimate rate of 300-billion kilowatts.

Two profound biological poisons *inevitably* accompany nuclear fission energy utilization. These are long-lived fission products, particularly strontium-90 (Sr^{90}) plus cesium-137 (Cs^{137}), and plutonium-239 (Pu^{239}), which has a half-life of 24,400 years.

All these poisons increase the mortality rate due to cancer, and all the evidence indicates that such increase is in *direct proportion* to the radiation dose produced as a result of combined internal plus external exposure to these poisons. Essentially all body organs are susceptible to radiation-induced cancer induction.

Radiation received by germinal tissues (ovary or testis) will increase genetic mutations, again in direct proportion to the dose received, and in time, increase the incidence of a host of genetically determined diseases, including coronary heart disease.

THE FISSION PRODUCTS, STRONTIUM-90 AND CESIUM-137

Sr^{90} and Cs^{137} have half-lives in the neighborhood of 30 years. This means that if we produce them at a constant rate, their quantity will build up to a constant value in about four half-lives, approximately 120 years. At that point their rate of decay will be equal to their rate of production.

We can, for reasons shortly to become apparent, describe the annual production rate in terms of equivalent number of atomic fission bombs. Atomic fission bombs are described in terms of megatonnage of TNT equivalent. The combined atmospheric weapons testing of the USA, UK, and USSR up through 1963 amounted to a total of 250 megatons TNT equivalent.

In one year a 3000-megawatt (thermal) nuclear fission power installation produces as much Sr^{90} and Cs^{137} as would 23 megatons of atomic fission bombs. So in Weinberg's projected world of 300-billion kilowatts (which is 300-million megawatts), the annual production rate will be

$$\frac{3\times10^{8}}{3\times10^{3}}=10^{5},$$

or 100,000 times as much. One hundred thousand times 23 is 2,300,000 megatons of equivalent fission products, as an *annual* production rate.

Since these long-lived products build up for about 120 years, the final inventory (when we lose fission products as fast as we make them) will be about 43 times as much as the annual production. So it will finally be an inventory of Sr^{90} and Cs^{137} amounting to about 100-million megatons equivalent, and if we continue to utilize nuclear energy, the inventory of these poisons will remain constant at this level.

Let us consider the consequences of distributing *one one-thousandth* of this inventory to the biosphere. That would mean introduction to the biosphere of 100,000 megatons of equivalent Sr^{90} and Cs^{137}. Weapons testing introduced 250 megatons of Sr^{90} and Cs^{137} and provoked an appreciable radiation dose to everyone over the entire Northern Hemisphere, some 19 millirads for 1963 alone, gradually decreasing.

The introduction of 100,000 megatons over the globe would be the same as 50,000 megatons over the Northern Hemisphere, or 200 times as much as weapons testing did, meaning average doses in the first year of about 3800 millirads to all inhabitants.

If people were concerned, as they should properly have been, about 19 millirads from weapons test fallout, what should they think about 3800 millirads?

To be sure, it is not likely that the distribution would be even, so some people would receive far more than the average, others far less. But since the effects are approximately proportional to dose, the *net* human suffering from extra cancer and genetic diseases would be roughly comparable, whether the distribution is even or uneven.

Nuclear power proponents would immediately claim that it is preposterous to contemplate the release of 1/1000 of the radioactivity inventory.

This means that proponents are able to predict the entire course of future human events, globally, including human performance, human psychology, all forms of civil and military strife, including sabotage, all natural disasters, including earthquakes and others.

Today we realize we cannot do very well at predicting whether an airplane will be hijacked, even after screening passengers. But the nuclear proponents are perfectly willing to do better—they will predict essentially the entire course of human affairs for the next several hundred years.

Rational humans might be a bit skeptical of such prescience. There is one way, and one way alone, to guarantee that such disasters won't occur—simply do not produce this astronomical inventory of long-lived radioactivity. This would mean turning away from nuclear energy as being unacceptable on this set of grounds alone.

THE PLUTONIUM PROBLEM

Nuclear energy has no meaning without plutonium-239. This element, the most poisonous element handled in quantity by man, is the ultimate fuel of the forthcoming nuclear breeder reactor.

When a steady state is reached in the future, with Weinberg's 300-million megawatts of power, the plutonium produced each year will be just equal to the plutonium used up each year. That amount will be 15,000 tons of Pu^{239} per year.

This sounds innocuous until we consider just one biological effect of plutonium-239. If dispersed as fine particles into the atmosphere, the final form is almost certain to be plutonium dioxide. Finely divided particles of plutonium dioxide represent an almost unique cancer hazard when inhaled.

For particles one micron in diameter, Dr. Donald Geesaman has estimated that one fatal human lung cancer will occur for every 10,000 such particles inhaled. But one person doesn't have to inhale all the 10,000 particles. The same number of fatal human lung cancers will result if one person inhales 10,000 particles, if ten people each inhale 1,000 particles, if one hundred people each inhale 100 particles, if 1,000 people each inhale 10 particles, or if 10,000 people each inhale one particle.

Additionally, it doesn't change matters if 10,000 particles are inhaled by people within one year, ten years, or one hundred years. The same number of fatal lung cancers will occur.

Let us return to our future annual chemical processing of 15,000 tons of Pu^{239}. In kilograms this represents 15-million kilograms of Pu^{239}.

Suppose, with all circumstances of accidents, civil disorder, errors, etc., we contain 99.9999 percent of the plutonium. Such perfection in containment would represent a monumental human achievement. But let us still assume it will be achieved.

The amount escaping confinement is then one part out of one million. But this would still represent 15 kilograms of Pu^{239}. In the course of 100 years, we would have dispersed 1500 kilograms of Pu^{239}. How many lung-cancer doses does this represent?

It has been estimated, based upon Geesaman's work, that 1 kilogram of P^{239} dispersed into particles each one micron in diameter represents 18-billion human lung cancer doses. Therefore, 1500 kilograms represents 27-trillion human lung cancer doses.

If we assume only one particle out of every million is inhaled annually thereafter, we would be creating 27-million fatal cases of lung cancer each year thereafter.

The plutonium particles, once dispersed into the environment, can settle to the ground and be borne aloft by winds for centuries and still be essentially fully capable of producing lung cancer. In human time scales, plutonium dispersed into the environment will be a hazard essentially forever, provided we regard 100,000 years as equivalent to forever.

We may not need to wait for the fully developed plutonium energy economy for our dismal nuclear future. One plant alone, in Barnwell, South Carolina, expects to be making *many* shipments of plutonium in liquid solution in tanks, *by* truck, per year, in a decade or so. Each shipment will carry 50 to 75 kilograms of plutonium. Each shipment will therefore represent enough plutonium for about one trillion human lung-cancer doses. Any plutonium dispersed to the environment is virtually impossible to remove from the environment.

The nuclear proponents have, of course, a stock answer. "We realize", they tell us, "that plutonium is deadly. So we will contain it perfectly."

The grotesquerie of building our energy economy upon plutonium is exceeded only by the grotesquerie of men of supreme arrogance.

WHY?

The problem of containment of astronomical quanties of Cs^{137} and Sr^{90} is sufficient by itself to make a rational society pause before embarking full-scale upon nuclear energy utilization. The problem of plutonium containment is far worse.

One trap has been carefully laid for the unwary public. This is in the form of the oft-repeated statement that we are making steady progress in nuclear engineering, that we can anticipate a steady increase in its safety.

Eco-pornography takes many forms, but none exceeds such statements, as "Nuclear power is clean." *No possible* engineering development can produce power from nuclear fission *without* creating Sr^{90}, Cs^{137}, and Pu^{239}. And these *will* be produced in direct proportion to the power produced by nuclear fission. This is a fact of physics. Man's future existence depends strictly and totally upon *containment* of these irreversible poisons.

If energy generation could be accomplished in no other way, one might understand society being will to gamble its future *existence* upon such containment.

But we are absolutely certain that several highly attractive, non-polluting alternatives will be able to provide all the energy required—even Weinberg's pessimistic 300-million megawatts.

Solar energy is one such *certain* source by itself. The nuclear proponents argue that solar energy may cost more than nuclear fission power. The question is, "Who will use the 'cheap' nuclear power after the human species has disappeared?"

[From the Bulletin of the Atomic Scientists, May 1972]

ENERGY AND ENVIRONMENT

(By Hannes Alfvén)

[In the fall of 1971, the Bulletin published a series of 28 articles under the general title, "The Energy Crisis." They were statements of diverse opinion on the nature of the crisis and on methods of resolving it. In the view of Hannes Alfvén, the Bulletin's "Energy Crisis" has set the stage for a continuing discussion of the energy problem and the future of mankind. In this article, Professor Alfvén contributes to such a discussion by summarizing the issues and suggesting a program of action. He is a member of the Royal Institute of Technology in Stockholm and Professor of Physics at the University of California, San Diego. In 1970, he shared the Nobel Prize in physics with Louis Neel of France.]

Is there an energy crisis? It seems that the "crisis" is much exaggerated. At least in part, the very rapid increase in energy consumption is due to "promotional rates." A distinction must be made between real needs and market considerations. But even if one cannot speak of a crisis, our technological culture depends to a large extent on an abundance of energy. It is highly desirable to get more energy, especially for the less developed countries. Also, in the industrialized countries a certain increase in power supply is desirable to the extent that this can be achieved without too much insult to the environment. Thus, the main real argument against continuing to burn fossil fuel is the increased concern about pollution.

The price of different kinds of energy is important to the consumer, but it is not equally important for the planning of energy policy. The reason is that the price reflects the real costs only to a limited extent. It is mainly decided by the policy of governments and private companies. Hence, introducing the present (or future) price of different fuels into a discussion of energy policy easily leads to circularity in reasoning. This is especially applicable to the price of fission energy, which is made attractive by a low price. This price, however, does not include the development costs which have been charged to military funds in connection with the production of bombs, or which will be left to future generations to take care of in dealing with radioactive wastes.

If methods for purifying fuel and cleaning the exhaust of gases are successfully developed, we can meet energy needs adequately with fossil fuels for a period long enough to plan and deploy a sensible world policy for the energy supply and for developing new energy sources. The main new energy sources which sooner or later must take over are: fission energy, fusion energy and solar energy. Whether geothermal energy is abundant enough to be of major importance is not quite celar. Waterfalls and tidal energy will not be very important.

FISSION ENERGY

The energy generation process in a fission reactor leads to production of plutonium. (In some reactors plutonium is burned.) In all reactors the quantities of plutonium are of the order of kilograms or more. The energy generation processes necessarily lead also to the production of a number of other radioactive substances, among them strontium-90.

Both plutonium and strontium-90 are among the most poisonous substances we know. Under certain conditions a few micrograms (one millionth of a gram of one billionth of a kilogram) is lethal: It produces cancer. The quantity of these substances in one ordinary reactor is of the order of a billion times the lethal dose. Hence the acceptability of fission energy depends on whether it is possible to keep these substances under control so that human beings are efficiently screened from them.

UNKNOWN PROCESSES

In the biosphere there exist a number of complicated processes which may enrich both plutonium and strontium (and other radioactive substances)—for example, in some common foodstuffs. Several of these processes are known, but there are reasons to suppose that there also are a great number of still unknown processes. Hence, plutonium, strontium (and a number of other radioactive substances) must be efficiently separated from the whole biosphere. Only very small quantities can be allowed to leak out. They decay automatically but some of them so slowly that the radioactive waste must be kept isolated from the biosphere for hundreds or thousands of years.

During the whole development of fission reactor technology the constructors have been aware of the importance of an efficient confinement of radioactive substances, although not until recently has the extremely dangerous nature of these substances been fully clarified. An enormous amount of highly qualified work has been devoted to insulating the poisonous substances.

It is claimed by the reactor constructors

that under normal operating conditions a fission reactor is no insult to the environment. This is questioned by some environmentalists. Because of the enormous complexity of the problems neither side can prove their views definitely. From the discussion, one gets the impression that the claim of the reactor constructor—that the reactor under normal operating conditions is not harmful—is likely to be correct. If we accept this view it is appropriate to express great admiration for this achievement. Nobody who has visited a reactor station can avoid being deeply impressed by the ingenuity and skill which are manifest in the safety precautions.

THE WASTE PROBLEM

But the fission reactor represents only one part in a complicated series of operations for fission energy production. When the fuel elements are burnt out, they are taken out of the reactor, transported to a fuel processing plant, and later transported back again to the reactor. The processing plant extracts the highly radioactive waste, which is stored and finally placed in "repositories," where it should remain indefinitely. The waste consists of extremely poisonous radioactive substances which must be kept isolated from the biosphere until they decay after centuries or millennia.

The fuel processing plants have not received so much attention in the discussion. It seems not to be clear to what extent they are dangerous; but at least for the moment it can be assumed that under normal conditions a processing plant is reasonably safe, or at least can be made safe without too much effort.

The handling of the waste seems to be a highly controversial problem. It is theoretically possible to transmute the radioactive substances into nonradioactive—and hence innocent—elements by nuclear reactions. If this were done the waste problem would be solved. But such operations are complicated and probably very expensive. If this solution is chosen, fission energy would lose the economic attractiveness which it now has, at least formally. (It has been suggested that the waste products should be shot out in space. Space would be a safe repository but to shoot them out is extremely expensive. Moreover, if a rocket fails, there is a serious risk of atmosphere poisoning.)

According to present plans the waste is to be deposited in salt mines. It is claimed by some that these are geologically so stable that there is no risk of leakage from the repository into the biosphere. This is questioned by a number of geologists. There is no doubt that the salt mines could be considered safe for any normal waste products. But because of the very large quantities of extremely poisonous substances, it is required that the repository should be absolutely free of leakage for periods of hundreds or thousands of years. No responsible geologist can guarantee this, simply because the problem is one of which we have no experience.

KEY ISSUES

We now approach the key issues. The reactor constructors claim that they have devoted more effort to safety problems than any other technologists have. This is true. From the beginning they have paid much attention to safety and they have been remarkably clever in devising safety precautions. This is perhaps pathetic, but it is not relevant. If a problem is too difficult to solve, one cannot claim that it is solved by pointing to all the efforts made to solve it.

The technologists claim that if everything works according to their blueprints, fission energy will be a safe and very attractive solution to the energy needs of the world. This may be correct. Hence, they consider all the objections to be due to "ignorance," "viciousness," or "hysteria." This is not correct. The real issue is whether their blueprints will work in the real world and not only in a "technological paradise."

Fission energy advocates say that in all other technologies one accepts certain risks, and that there is no way of completely eliminating all hazards. They claim to have taken all reasonable precautions to eliminate risks. What more can they do? This may very well be true, but it is irrevelant because we are facing risks the nature of which we have never before experienced. The consequences of nuclear catastrophes are so terrible that risks which usually are considered to be normal are unacceptable in this field.

Opponents of fission energy point out a number of differences between the real world and the "technological paradise." Fission energy is safe only if a number of critical devices work as they should, if a number of people in key positions follow all their instructions, if there is no sabotage, no hijacking of the transports, if no reactor fuel processing plant or repository anywhere in the world is situated in a region of riots or guerrilla activity, and no revolution or war—even a "conventional" one—takes place in these regions. The enormous quantities of extremely dangerous material must not get into the hands of ignorant people or desperados. No acts of God can be permitted.

Those advocates of fission energy who contributed to the Bulletin's "Energy Crisis" issues have not given any reasonable answer to these objections. It is difficult to see how a satisfactory answer could be given. But if it cannot, we have to conclude that fission energy does not represent an acceptable solution to the energy problem. It will place an unendurable burden on the safety and health of future generations.

What has been said here applies both to the present-day fission reactors and to the projected breeders. In general, the breeders are much more dangerous, and current plans to develop breeders should be revised.

FUSION ENERGY

A problem which was not discussed in the "Energy Crisis" articles is the relation between the peaceful atom and its militant twin brother. This is an extremely serious problem, even more important than the problems discussed here; it would, however, carry us too far to discuss it here.

Although a fusion reactor cannot be constructed today, enough is known of the basic processes of fusion and plasma physics to discuss the general properties of future fusion reactors.

In contrast to the fission process, the fusion processes which release energy do not result in radioactive waste products. In principle, therefore, fusion energy is "clean" in the sense that it is not necessarily associated with the production of radioactive substances. The nuclear processes in a fusion reactor produce radiations but these can easily be screened so that they do not reach the environment.

In case of a reactor accident fusion reactions stop immediately by themselves. In the reactor there are radioactive intermediate products which theoretically may escape, but as the total quantities of radioactive material are very small in a fusion reactor, compared to a fission reactor, the danger is much less. Moreover, the radioactive products (mainly tritium) are much less dangerous to the biosphere.

TWO PROBLEMS

Due to the intense neutron radiation inside a fusion reactor the structure of the reactor may become radioactive. But, because there is a certain choice of structural material, the most dangerous elements can be avoided.

In order to construct a fusion reactor, two difficult problems must be solved: the confinement of a plasma and the transfer of the energy of swift neutrons. The first problem requires a general development of plasma physics. Very substantial progress has been made in this area and we expect that the problem will be solved in the near future. The second problem is related to the handling of neutrons in the breeder; this also is likely to be solved in the near future.

What the "near future" means depends on how much effort is devoted to research and development in this field. If the construction of a fusion reactor is considered to be very urgent, 10 years may suffice. There are four different lines of approach which attract most interest: Tokamak, ring configurations, mirror machines with direct conversion, and evaporation of pellets. It is very likely that at least one of them will be successful.

As the fuel is heavy hydrogen which can be obtained from ordinary water, there is enough raw material available in all countries. Thus, the fusion reactor would be an "almost clean" long-term solution of the energy problem.

SOLAR ENERGY

Solar energy converters produce no wastes. Large areas of land with sunny climate have to be used to collect solar radiation. If desert areas are used, the insult to the environment may not be considered serious.

Solar energy is available now, but at a price which is some hundred times the ordinary price of energy. There are a number of different ways of collecting solar energy: by mirrors, plastic lenses, "hot-house" arrangements, photoelectric cells, and so forth. A research and development effort will certainly reduce the price but the attainable level is impossible to predict at present.

Solar energy is available preferentially in countries with a sunny climate. The power is about one gigawatt per square kilometer during sunny hours. Storage of energy for periods with no sunshine complicates its use. There is also the possibility of using solar energy normally collected by and stored in the seas ("sea-thermal" energy).

"Geothermal energy is already in use as a locally important energy source in some countries, for example, Iceland and the Soviet Union.

Looking at the geographical distribution of energy sources, we can summarize:

1. Fossil fuels, uranium deposits and sunshine have a very uneven geographical distribution.

2. Fusion energy will be available to all countries, but as it will require much scientific and technological knowledge, the industrialized countries will have an advantage.

3. Access to energy sources is so important to our technology that the needs of all countries must be satisfied to a reasonable extent.

4. The struggle for energy sources is a major factor in world policy. In order to make possible a balanced and peaceful development in the world, energy problems must be handled by an international body.

Our most immediate need is to solve the problems of using fossil fuels with a minimum of environmental insult. Methods of purifying fuels and clearing exhaust gases should receive high priority.

Clarification is necessary with respect to the extent—if any—to which fission energy is a realistic solution of the energy problem. New suggestions of how to avoid the fatal consequences of the use of fission energy should be considered. A strong effort should be made to develop fusion and solar energy. Environmental consequences should be carefully studied.

Methods of transporting energy (through tankers, pipelines, electric transmission lines, or other means) should also be developed.

ONE WORLD PROBLEM

The energy problem should be approached as one world problem: how to satisfy reasonable needs of all nations. It should not be treated as a series of national problems:

how to satisfy the energy demand of our own nation even at the expense of other nations.

The possibility of depoliticizing the world energy problem deserves special attention. An international institute ("world energy agency"), as far as possible independent of pressure from government and economic interests, is necessary. (In this connection the Pugwash Movement, which already has devoted much attention to these problems, has considerable responsibility.)

To build up such an institute would be a very important task. It is possible that the International Atomic Energy Agency (IAEA) could serve as a nucleus: it has done competent work in the field of fission energy and devoted considerable interest to the problems of fusion energy. It also has had unique experience in handling relations with the governments of different countries. An international institute of the SIPRI (Stockholm International Peace Research Institute) type may also be considered. The proposed institute should study the needs of energy in different countries, compare possible ways to satisfy this need, and plan a world energy policy, in a rational and at the same time realistic way.

CURRENT STATISTICS FOR REVENUE SHARING ALLOCATIONS

Mr. GURNEY. Mr. President, local government officials throughout Florida have communicated to me their concern that current statistics be used in determining their government's respective shares of revenue sharing funds. This is particularly important to local and State governments in areas such as Florida, where populations shift rapidly. Municipalities in Florida, for example, have been known to triple their populations in less than 3 years. Because it is during such periods of rapid growth that local demands for capital expenditures are greatest, the need for current revenue sharing statistics is critical.

I am sure that other Senators have had similar expressions of concern from local government officials within their own States. Perhaps they are reassured, as am I, to know that the House Committee on Ways and Means, the Senate Committee on Finance, and the conference committee on H.R. 14370 all foresaw this problem, and made provisions for a solution to it.

Section 109(a)(7) of H.R. 14370, as reported by the conference committee, reads as follows:

(7) Data used; uniformity of data—

(A) General rule.—Except as provided in subparagraph (B), the data used shall be the most recently available data provided by the Bureau of the Census or the Department of Commerce, as the case may be.

(B) Use of estimates, etc.—Where the Secretary determines that the data referred to in subparagraph (A) are not current enough or are not comprehensive enough to provide for equitable allocations, he may use such additional data (including data based on estimates) as may be provided for in regulations.

This wording is identical to that used in the corresponding sections of both the Senate and the House versions of H.R. 14370. Furthermore, the conference report goes on to say:

These rules [those contained in the entirety of Section 109(a)] are substantially the same as contained in both the House bill and the Senate amendment.

Looking to the Senate Finance Committee report on H.R. 14370 for a detailed explanation of how current estimates were intended to be used in the implementation of this section, we find, in wording virtually identical to that in the original House committee report on H.R. 14370, the following guidelines:

Dates used for data.—In general, the data to be used for allocations and entitlements under this subtitle are to be those available on April 1 immediately preceding the beginning of the entitlement period for which the data are to be used. The data are to be the most recently available data provided by the Bureau of the Census. However, the Treasury Department is given authority to vary these general rules in order to achieve more equitable allocations, to attain greater uniformity, and to reflect the most recent developments. It is important to note that the data for any unit of local government used with regard to any allocations must be comparable to the data used for the other units of local government sharing in that allocation. For example, a special census of population for a municipality may not be used in allocating funds among municipalities within a county area unless there are corresponding updated population data for all the other municipalities located in that county area. If, as the committee understands and expects, information gathered as a result of Internal Revenue Service efforts to determine residences of taxpayers and their dependents (sec. 124 of this bill, described below) enables the Bureau of the Census to make accurate estimates of population and per capita income for all the units in a county area, then such updated estimates may be used even though they are later than the last official census figures.

The operation of these provisions may be illustrated by the following example, relating to the data to be used for allocating funds between the county government on the one hand, and the units of local government located within that county on the other hand. That allocation is to be made on the basis of the adjusted taxes of those governments. The most recent information now available on that point relates to fiscal year 1967, having been gathered in the regular 5-year Census of Governments for 1967. That information is to be used as the basis for the allocations for the January-June 1972 entitlement period. The committee has been informed that the Census Bureau is prepared to conduct a special survey of all the units of local government to gather data from which their adjusted taxes for fiscal year 1971 may be determined.

This information is expected to become available by the end of October 1972. It is intended that this information be used in the allocation of funds between county governments and local governments (and as one of the elements in the allocation of funds among local governments) for the fiscal year 1973 entitlement period. If this information is not available early enough, then it may be that the first quarterly installment of the fiscal year 1973 entitlement period may have to be paid in accordance with estimates based on the 1967 data. In such a case, the subsequent installments are to be so adjusted that the total amounts paid for the fiscal year 1973 entitlement period are based upon the fiscal year 1971 data.

The committee has further been informed that data relating to fiscal year 1972, derived from the regular 1972 Census of Governments, can be made available early in 1973. That information is to be used for determining allocations for the fiscal year 1974 entitlement period. Annual limited censuses are to provide this data for later years.

The type of data used for the various sections of this subtitle, the data currently available, and the source and expected time at which later data is expected to be available is shown in Table 4 below.

TABLE 4.—H.R. 14370, DATA USED AND SOURCE OF DATA

Type of data	Bill section and use of data	Basic source of data
1. Resident population, money income	Sec. 104(a) and sec. 105(a) and (b) allocation among States, county areas, and local governments.	Bureau of the Census Decennial Census.
2. Determination of eligible local governments	Sec. 105 allocation to local governments.	Bureau of the Census, Decennial Census and Census of Governments.
3. Adjusted taxes (all taxes minus those for education), intergovernmental transfers.	Sec. 104(a) and sec. 105(a) and (b) division among county government, all cities, and all townships and allocation among county areas and among local governments, sec. 105(b)(4)(C) limitation.	Bureau of the Census, Census of Governments (complete coverage every 5 years).
4. State and local government tax collections, by State, fiscal year basis.	Sec. 104(a)(1) allocation among State areas	Bureau of the Census, Governmental finances, annual.
5. Personal income, by State	Sec. 104(a)(1) allocation among State areas	Department of Commerce, Survey of Current Business.

Type of data	Data currently available	Date and source of later data
1. Resident population, money income	1970 population and urbanized population and 1969 money income (for places over 2,500; under 2,500 not published but available from the 1970 census).	Anticipated Census estimates of population and income based on income tax return data for local units and welfare recipients; data provided by HEW if feasible and at reasonable cost. Estimates if feasible, probably every 2 or 3 years.
2. Determination of eligible local governments	1967 Census of Governments and 1970 decennial census	Bureau of the Census, annual investigations, and local reports of incorporations, annexations, etc.
3. Adjusted taxes (all taxes minus those for education), intergovernmental transfers.	Fiscal year 1967 taxes and taxes for education. Fiscal year 1967 intergovernmental transfers on Census tape.	Limited census of all local governments for fiscal year 1971 taxes and education taxes and intergovernmental transfers in process. Results expected in October 1972. To be done annually.
4. State and local government tax collections, by State, fiscal year basis.	Fiscal year 1970	In September of each year the data for the prior fiscal year are to be available.
5. Personal income, by State	Fiscal year 1970	Data are generally available with about a 3-month lag.

I am confident that the Secretary of the Treasury will conform to this unanimity of congressional intent, and will indeed make every reasonable effort to utilize the most current statistical estimates possible in determining revenue-sharing allocations for every State, county area, and local government.

SENATOR METCALF REPORTS ON ESTIMATED REVENUE SHARING ALLOCATIONS FOR MONTANA

Mr. MANSFIELD. Mr. President, my distinguished colleague, Senator LEE METCALF, has some remarks on revenue sharing allocations for Montana, which are as follows:

Mr. METCALF. Mr. President, the Joint Committee on Internal Revenue Taxation has recently made available the dollar allocations that local and State governments would receive under the revenue sharing legislation recently approved by the House-Senate conference committee.

It should be emphasized that the printout prepared for the joint committee is only an estimate of allocations to communities and counties with populations of 2,500 or more and should not be regarded as a final Treasury Department determination of the actual allocation of funds which will be made once the payment process begins. These figures provide, first, a general range estimate of what any particular community may expect to receive, and, second, provide a reasonable picture of the distributional relationship among various units of government within a State or within a county resulting from the application of the formula outlined in the legislation.

I am advised by the Treasury Department that there may be errors and omissions in this printout and that the Department is correcting the figures as quickly as possible. I am assured, however, that the figures appearing below give a reasonably good picture of the distribution of funds under the State and Local Fiscal Assistance Act of 1972, H.R. 14370.

Under the bill, Montana will receive $20.6 million in revenue sharing funds. This money will be divided between the State and local governments with $6.9 million going to the State, and $13.7 million allocated to local governments.

In order to make this important information available to my constituents in Montana, I append some data extracted from the supplemental report on H.R. 14370.

REVENUE SHARING FUNDS FOR MONTANA

[In dollars]

Total State grant to all locals	13,724,130
Amount returned to Montana State government is	0
Beaverhead County area	192,249
Beaverhead County govt	136,804
Total to all cities over 2,500	51,472
Total to all cities under 2,500	3,972
Total to all townships	0
Dillon City	51,472
Big Horn County area	219,945
Big Horn County govt	164,058
Total to all cities over 2,500	43,159
Total to all cities under 2,500	12,728
Total to all townships	0
City of Hardin	43,159
Blaine County area	192,779
Blaine County govt	145,385
Total to all cities over 2,500	0
Total to all cities under 2,500	47,394
Total to all townships	0
Broadwater County area	72,389
Broadwater County government	48,784
Total to all cities over 2,500	0
Total to all cities under 2,500	23,605
Total to all townships	0
Carbon County area	167,167
Carbon County government	130,224
Total to all cities over 2,500	0
Total to all cities under 2,500	36,943
Total to all townships	0
Carter County area	56,054
Carter County government	52,757
Total to all cities over 2,500	0
Total to all cities under 2,500	3,297
Total to all townships	0
Cascade County area	1,569,561
Cascade County government	927,387
Total to all cities over 2,500	626,748
Total to all cities under 2,500	15,426
Total to all townships	0
Great Falls City	626,748
Chouteau County area	157,672
Chouteau County government	138,793
Total to all cities over 2,500	0
Total to all cities under 2,500	18,879
Total to all townships	0
Custer County area	245,091
Custer County government	166,482
Total to all cities over 2,500	78,262
Total to all cities under 2,500	347
Total to all townships	0
Miles City City	78,262
Daniels County area	88,351
Daniels County government	69,232
Total to all cities over 2,500	0
Total to all cities under 2,500	19,119
Total to all townships	0
Dawson County area	322,941
Dawson County government	234,958
Total to all cities over 2,500	82,870
Total to all cities under 2,500	5,113
Total to all townships	0
Glendive City	82,870
Deer Lodge County area	448,546
Deer Lodge County government	305,423
Total to all cities over 2,500	143,123
Total to all cities under 2,500	0
Total to all townships	0
Anaconda City	143,123
Fallon County area	116,063
Fallon County government	93,870
Total to all cities over 2,500	20,680
Total to all cities under 2,500	1,513
Total to all townships	0
Baker City	20,680
Fergus County area	274,373
Fergus County government	181,750
Total to all cities over 2,500	80,298
Total to all cities under 2,500	12,325
Total to all townships	0
Lewistown City	80,298
Flathead County area	550,440
Flathead County government	355,943
Total to all cities over 2,500	194,497
Total to all cities under 2,500	0
Total to all townships	0
Columbia Falls Town	37,443
Kalispell City	100,224
Whitefish City	56,831
Gallatin County area	464,013
Gallatin County government	292,694
Total to all cities over 2,500	145,514
Total to all cities under 2,500	25,806
Total to all townships	0
Bozeman City	145,514
Garfield County area	51,469
Garfield County government	48,687
Total to all cities over 2,500	0
Total to all cities under 2,500	2,782
Total to all townships	0
Glacier County area	309,013
Glacier County government	224,842
Total to all cities over 2,500	59,085
Total to all cities under 2,500	25,086
Total to all townships	0
City of Cut Bank	59,085
Golden Valley County area	26,680
Golden Valley County government	24,409
Total to all cities over 2,500	0
Total to all cities under 2,500	2,271
Total to all townships	0
Granite County area	78,435
Granite County government	82,411
Total to all cities over 2,500	0
Total to all cities under 2,500	16,024
Total to all townships	0
Hill County area	348,249
Hill County government	241,184
Total to all cities over 2,500	104,473
Total to all cities under 2,500	2,593
Total to all townships	0
City of Havre	104,473
Jefferson County area	141,050
Jefferson County government	123,053
Total to all cities over 2,500	0
Total to all cities under 2,500	37,997
Total to all townships	0
Judith Basin County area	76,429
Judith Basin County government	70,060
Total to all cities over 2,500	0
Total to all cities under 2,500	6,369
Total to all townships	0
Lake county area	387,313
Lake county government	334,074
Total to all cities over 2,500	0
Total to all cities under 2,500	53,239
Lewis Clark county area	480,275
Lewis Clark county government	269,275
Total to all cities over 2,500	196,712
Total to all cities under 2,500	14,288
Total to all townships	0
Helena City	196,712
Liberty county area	67,603
Liberty county government	55,753
Total to all cities over 2,500	0
Total to all cities under 2,500	11,850
Total to all townships	0
Lincoln county area	137,823
Lincoln county government	94,027
Total to all cities over 2,500	24,942
Total to all cities under 2,500	18,855
Total to all townships	0
Libby city	24,942
McCone County area	67,862
McCone County government	58,567
Total to all cities over 2,500	0
Total to all cities under 2,500	9,274
Total to all townships	0
Madison County area	77,356
Madison County government	63,655
Total to all cities over 2,500	0
Total to all cities under 2,500	13,701
Total to all townships	0
Meagher County area	60,811
Meagher County government	45,267
Total to all cities over 2,500	0

REVENUE SHARING FUNDS FOR MONTANA—Con.

[In dollars]

Total to all cities under 2,500	15,544
Total to all townships	0
Mineral County area	65,455
Mineral County government	56,393
Total to all cities over 2,500	0
Total to all cities under 2,500	9,063
Total to all townships	0
Missoula County area	534,794
Missoula County government	248,553
Total to all cities over 2,500	286,241
Total to all cities under 2,500	0
Total to all townships	0
Missoula city	286,241
Musselshell County area	107,007
Musselshell County government	77,498
Total to all cities over 2,500	0
Total to all cities under 2,500	29,509
Total to all townships	0
Park County area	271,868
Park County government	156,309
Total to all cities over 2,500	111,603
Total to all cities under 2,500	3,956
Total to all townships	0
Livingston city	111,603
Petroleum County area	19,344
Petroleum County government	19,344
Total to all cities over 2,500	0
Total to all cities under 2,500	0
Total to all townships	0
Phillips County area	154,349
Phillips County government	127,815
Total to all cities over 2500	0
Total to all cities under 2500	26,534
Total to all townships	0
Pondera County area	189,454
Pondera County government	146,770
Total to all cities over 2500	34,562
Total to all cities under 2500	8,123
Total to all townships	0
Conrad city	34,562
Powder River county area	50,235
Powder River county govt	45,063
Total to all cities over 2500	0
Total to all cities under 2500	5,171
Total to all townships	0
Powell County area	157,419
Powell County govt	131,682
Total to all cities over 2500	25,738
Total to all cities under 2500	0
Total to all townships	0
Deer Lodge city	25,738
Prairie County area	50,208
Prairie County government	44,134
Total to all cities over 2,500	0
Total to all cities under 2,500	6,074
Total to all townships	0
Ravalli County area	283,893
Ravalli County government	219,036
Total to all cities over 2,500	0
Total to all cities under 2,500	64,858
Total to all townships	0
Richland County area	248,865
Richland County government	193,948
Total to all cities over 2,500	45,370
Total to all cities under 2,500	9,547
Total to all townships	0
Sidney City	45,370
Roosevelt County area	297,034
Roosevelt County government	204,862
Total to all cities over 2,500	45,622
Total to all cities under 2,500	46,551
Total to all townships	0
Wolf Point City	45,622
Rosebud County area	172,862
Rosebud County government	152,005
Total to all cities over 2,500	0
Total to all cities under 2,500	20,857
Total to all townships	0
Sanders County area	203,267
Sanders County government	174,132
Total to all cities over 2,500	0
Total to all cities under 2,500	29,135
Total to all townships	0
Sheridan County area	90,521
Sheridan County government	85,393
Total to all cities over 2,500	0
Total to all cities under 2,500	5,128
Total to all townships	0
Silver Bow County area	1,141,256
Silver Bow County government	809,416
Total to all cities over 2,500	316,961
Total to all cities under 2,500	14,880
Total to all townships	0
Butte City	316,961
Stillwater County area	106,774
Stillwater County government	90,323
Total to all cities over 2,500	0
Total to all cities under 2,500	16,452
Total to all townships	0
Sweet Grass County area	85,399
Sweet Grass County government	70,517
Total to all cities over 2,500	0
Total to all cities under 2,500	14,882
Total to all townships	0
Teton County area	162,504
Teton County government	132,673
Total to all cities over 2,500	0
Total to all cities under 2,500	29,832
Total to all townships	0
Toole County area	167,331
Toole County government	137,900
Total to all cities over 2,500	23,092
Total to all cities under 2,500	6,339
Total to all townships	0
Shelby City	23,092
Treasure County area	28,644
Treasure County government	25,063
Total to all cities over 2,500	0
Total to all cities under 2,500	3,580
Total to all townships	0
Valley County area	223,580
Valley County government	208,451
Total to all cities over 2,500	0
Total to all cities under 2,500	15,129
Total to all townships	0
City of Glasgow	12,884
Wheatland County area	72,475
Wheatland County government	58,507
Total to all cities over 2,500	0
Total to all cities under 2,500	13,968
Total to all townships	0
Wibaux County area	41,983
Wibaux County government	40,447
Total to all cities over 2,500	0
Total to all cities under 2,500	1,536
Total to all townships	0
Yellowstone County area	1,349,606
Yellowstone County government	652,097
Total to all cities over 2,500	696,212
Total to all cities under 2,500	1,297
Total to all townships	0
Billings City	637,296
Laurel City	58,916

FUNDING FOR ANTIPOVERTY PROGRAMS

Mr. JAVITS. Mr. President, on October 6, 1972, I appeared before the Subcommittee on Labor-HEW Appropriations of the Senate Committee on Appropriations urging funding of $2,253,300,000 during fiscal year 1973 for our antipoverty efforts. This is the full basic amount authorized under the Economic Opportunity Amendments of 1969 signed by the President on September 19, 1972.

The amount of my request exceeds by $254,096,000 the amount requested by the administration.

During my testimony, I gave particular attention to two programs of high priority where there are very special needs to be met in this fiscal year: community economic development, and legal services.

For community economic development I requested an appropriation of $69.7 million or $39 million above the administration's request. For legal services I requested $94,346,000 or $22,846,000 above the administration's budget submission.

Moreover, I requested that the committee provide an additional $24.8 million for community action programs generally in order to distribute to Puerto Rico the amount which it is entitled as a "State" without cutting back on the funds available to the 50 States generally.

Under the Economic Opportunity Amendments of 1972, as a result of a provision which I offered, Puerto Rico was given that classification for the purposes of distribution of funds under title II of the Economic Opportunity Act of 1964.

Mr. President, as the ranking minority member of the Committee on Labor and Public Welfare, and as a conferee on the authorization legislation, I consider it extremely important that the 2-year extension contained in the 1972 amendments be backed with appropriations and translated into new effective means to eliminate poverty.

I ask unanimous consent that my testimony, together with supporting documents showing needs on a regional and State basis be printed in the RECORD.

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

TESTIMONY OF SENATOR JACOB K. JAVITS

Mr. Chairman, I appear before the Subcommittee to urge full funding for the programs conducted under the Economic Opportunity Act of 1964 during fiscal year 1973, essentially at the levels of authorization contained in the Economic Opportunity Amendments of 1972, signed by the President on September 19 and to urge earmarking for two programs of particular concern—community development and legal services.

The new two-year extension—which I cosponsored with Senator Nelson in the Senate—authorizes a basic total of $2,353,300,000 for programs under the Act, consisting of $40,000,000 for community action programs conducted by the Office of Economic Opportunity, $555 million for Headstart and Follow-through programs conducted by the Department of Health, Education and Welfare; $900.3 million for manpower training and work experience programs conducted by the Department of Labor, and $58 million for Domestic Volunteer programs conducted by the ACTION agency. This total exceeds by $254,096,000 the amount requested by the Administration for these programs during fiscal year 1973.

As a member of the recent House-Senate conference on the OEO extension and the ranking minority member of the Committee

on Labor and Public Welfare, I want to emphasize that these levels are "floors" as well as "ceilings"; in fact the Conference, on recommittal of the bill by Senator Nelson and myself, pared these amounts down considerably from those previously agreed to by the Conference to meet the Administration's fiscal concerns; the previous Conference action would have provided $676 million above the total authorized in the bill signed into law by the President.

Accordingly, these are not "pie in the sky" estimates but the very minimal required if we are to translate the new national commitment presented by the two-year extension into effective means to eliminate poverty.

The fact is that under the Administration's requests alone we will reach a very small portion of the need.

With respect to manpower training programs, the Department of Labor advises that programs under the Economic Opportunity Act of 1964 and the Manpower Development and Training Act—for example JOBS, New Careers, Mainstream, and Neighborhood Youth Corps—will provide only 1,043,100 annual training slots—reaching less than one-twelfth of the target group.

In the Headstart and Follow-through Programs—which concentrate on the very young, we can provide services to less than one-third of the children who should benefit from them.

And without additional funds for the essential community action programs we will just dent the surface of the need. For example, in the Senior Opportunities and Services program we will reach only 14 percent of the need; in family planning: 12 percent; in Emergency Food and Medical: 6 percent and in Comprehensive Health Services: 8 percent.

These are not my estimates; they are the estimates of the Office of Economic Opportunity.

I ask unanimous consent that a chart showing the percentage of the target population to be reached in each major program be inserted at this point in the hearing record together with a table indicating the levels authorized and requested in respect to each program for fiscal year 1973 compared with fiscal 1972.

The same holds true in the ACTION programs—such as Vista—where we have yet to mobilize individuals and organizations in the Nation to mount the kind of volunteer effort that is truly necessary.

Mr. Chairman, while all these items are essential, I wish to concentrate my remarks on two basic programs which I believe have proven themselves as particularly cost-effective anti-poverty efforts, and where there are very special needs.

Funding for both of these programs—Community Economic Development and Legal services—is authorized under Section 3(c) of the Amendments of 1972, which provide a total authorization of $840 million for fiscal year 1973; this amount exceeds by $80 million the $760 million requested by the Administration.

I appear before you this morning to request that the Subcommittee appropriate the full amount of the $840 million and earmark within that amount $69,750,000 for Community Economic Development under Title VII of the Economic Opportunity Act and $94,346,000 for the Legal Services programs.

For Community Economic Development, my request exceeds by $39,050,000, the $30,700,000 requested by the Administration.

For legal services, my request exceeds by $22,846,000, the $71,500,000 requested by the Administration. In that connection, I should note that under Section 3(c)(2) of the authorizing legislation, the basic amount of $71,500,000 has already been reversed from the $840,000,000 authorized for community action programs generally.

In summary, our requests for these two programs would, in the aggregate, require appropriations of $61,896,000 above the Administration's budget submissions.

The basis for these requests is as follows:

COMMUNITY ECONOMIC DEVELOPMENT

The Economic Opportunity Amendments of 1972 added a new title VII, "Community Economic Development" to the Economic Opportunity Act.

This new title—which I co-authorized with Senator Kennedy and Senator Nelson, the Chairman of the Subcommittee on Employment, Manpower and Poverty of the Senate Committee on Labor and Public Welfare—is designed to support the efforts of community economic development corporations and rural cooperatives, in working with the private sector to reduce poverty in low-income urban and rural areas.

The new authority brings together programs previously conducted under Title ID, "Special Impact" which the late Senator Robert Kennedy and I added to the Economic Opportunity Act in 1967, taking as our model a very successful program in Bedford-Stuyvesant in New York.

Mr. Chairman, our request—which I make on behalf of myself and Senators Nelson and Kennedy—consists of three basic elements as follows:

$64,900,000 merely to implement the completed plans of 39 existing community development corporations to be funded under Part A of the new title; these programs are currently funded under title ID of the Act, Special Impact. The $63,900,000 includes $43,200,000 for urban grantees, $17,100,000 for rural grantees, and $4,600,000 for support activities, such as training, technical assistance, evaluation and research.

$3,850,000 for the maintenance of rural cooperatives projects under Part B of the new title and related rural projects. These activities are currently funded under Section 232 of the Economic Opportunity Act (research and development) and title III a (rural loans) respectively.

$1,000,000 for the revolving loan fund to be established under Part C of the new title VII.

These essential needs are documented on a project and item basis in a letter dated September 25, 1972 to me from the Center for Community Economic Development, Cambridge, Massachusetts, based on a survey conducted at my request. The Center is a non-profit organization chartered to provide policy research and information with respect to community economic development programs.

I ask that this letter from Geoffrey Faux, Executive Director of the Center for Community Economic Development, together with tables and charts be included in the Hearing Record.

As a co-author of the new title, I believe that the activities conducted thereunder have already been proven under existing law as extremely cost-effective means of dealing with the problems of poverty and decay in our inner cities and depressed rural areas.

In a 1971 task force report, the Twentieth Century Fund of New York concluded on the basis of a review of these programs that:

Community Economic Development Corporations have demonstrated: "unique capacity for pooling a community's talents and resources . . . for linking together a variety of businesses and projects . . . and for organizing the community to accept and effectively utilize resources and assistance from outside the poverty area."

The program in Bedford-Stuyvesant, New York—upon which the original Kennedy-Javits title I D was based—is particular testimony to the effectiveness of the program. For a $25 million federal investment during the first four years the Bedford-Stuyvesant program can directly point to over $31 million in non-federal loans and investments, to increased payrolls of over $25 million per year, to private contributions of $8.5 million and to investments in real estate and other assets of $12 million.

This experience is borne out throughout the Nation. ABT Associates of Cambridge, Massachusetts, which has just completed a study of the existing 39 Community Development Corporations concludes that every dollar of Federal money has generated 80 cents in private and 17 cents in "other public" investment, roughly doubling the return.

Thus, we urge the Subcommittee to consider our request for $69,750,000 as one that will be worth at least twice its cost as an anti-poverty effort.

LEGAL SERVICES PROGRAM

Second, on behalf of Senator Case, Senator Mondale, Senator Cranston, Senator Nelson and myself I request an earmarking of $94,346,000 for the legal services program.

Mr. Chairman, one of the greatest disappointments in the recent Conference on the Economic Opportunity Amendments of 1972 was the decision to drop from the bill the new proposal for a National Legal Services Corporation, which had the general support of the Congress and the Administration.

Despite this accord on the desire to expand the program and raise its status by putting it into a non-profit corporation, we just could not reach agreement on key elements, such as the composition of the Board of Directors and related questions of organization.

But notwithstanding that fact, the Conferees did express their support for the existing program and their desire to see it expanded.

The statement of the Conferees appearing at page 26 of the Joint Explanatory Statement of the Conferees (Report No. 92–1086) states:

"The Conferees continue to strongly support the existing legal services program . . . and intend to continue to seek . . . appropriate means of expanding the program . . . to provide the poor greater access to our system of justice under law."

Mr. Chairman, the needs of the program during fiscal year 1973 have been carefully defined by a survey conducted by the National Legal Aid and Defenders Association, at my request.

The NLADA—which is made up of distinguished members of the bar reports that "a total of $94.346 million may be effectively utilized"—and I emphasize those words—"toward meeting basic minimal needs."

This consists of $77,030,000 for projects in the field and $17,316,000 for administration, research and development, support and evaluation and technical assistance.

They are documented on a state, regional and item basis in a letter dated October 2, 1972 from Frank N. Jones, Executive Director of the National Legal Aid and Defender Association.

The letter includes in each case the comparable budget allocation for fiscal year 1973, and the amounts made available in fiscal year 1972 and the amounts needed to maintain programs at the current level throughout the remainder of this fiscal year.

To merely maintain programs at current levels, the National Legal Aid and Defender Association indicates that $78,622,000 would be necessary; this would exceed by $7,150,000 the amount reserved.

I ask unanimous consent that the letter be printed in the Hearing Record.

PUERTO RICO

The 1972 Amendments included a provision which I sponsored, making Puerto Rico a "state" beginning in fiscal year 1973 for the purposes of the allocation of funds under Title II of the Economic Opportunity Act; previously Puerto Rico shared in a 2 percent "set-aside" with Guam, the Virgin Islands, Samoa, and the Trust Territory of the Pacific.

This will be of great and deserved benefit

to Puerto Rico—which has a high incidence of poverty.

However, in order to make available to Puerto Rico its new entitlement, the Administration will have to reallocate funds under Title II which it had planned to make available under its budget requests to a number of other states, in many cases causing a reduction in the programs of those states from the amounts allocated in previous years.

The Administration advises me that as much as $24,800,000 will have to be cut from the ongoing programs in twenty-one states.

These cuts would be made in the community action programs conducted by the Office of Economic Opportunity—such as legal services, senior opportunities and health programs—and in the Headstart program, which is also authorized under Title II of the Economic Opportunity Act, but administered by the Department of Health, Education and Welfare pursuant to a delegation agreement from OEO.

However, the Administration has not yet determined the relative amounts by which it will increase the Headstart program as opposed to community action programs in Puerto Rico in order to provide the aggregate to which Puerto Rico is entitled; thus it is not known what additional amounts may be necessary in one program, as opposed to the other to prevent cuts.

This would seem to create a problem for the Subcommittee since the authorizations for the Headstart programs on the one hand, and community action programs on the other are contained in different sections of the Economic Opportunity Amendments of 1972; the former is authorized under Section 3 (b) while the latter, as I noted, are authorized under Section 3(c).

I have requested from the Administration a revised budget submission indicating the relative amounts of appropriations which should be added for community action programs generally as opposed to the Headstart program in order to provide the aggregate of $24,800,000 which is required.

And I shall submit that statement to the Subcommittee prior to its action in executive session on this supplemental bill, so that it will have the opportunity to take appropriate action in this regard.

Mr. Chairman, in closing, the two-year extension contained in the Economic Opportunity Act Amendments of 1972 constitutes a new mandate—concurred in by the Administration and the Congress alike for the Office of Economic Opporunity and the other Federal departments and for community action agencies on the local level to continue efforts to erase the chronic condition of poverty which continues to grip 24 million of our citizens.

It is essential that we couple this action in respect to the authorizing legislation with the provision of adequate resources to do the job at the levels authorized.

I shall appreciate every consideration to these requests.

UNIVERSE OF NEED ESTIMATES AND PERSONS-SERVED FIGURES—OEO OPERATIONAL PROGRAMS

Program	Universe of need (estimate)	Persons served (and percent of universe of need)					
		Fiscal year 1971		Fiscal year 1972 (estimate)		Fiscal year 1973 (estimate)	
		Number	Percent	Number	Percent	Number	Percent
1. Community action operations:							
(a) Local initiative	[1] 25,600,000	[2] 8,000,000	31	[2] 8,100,000	32	[2] 8,300,000	32
(b) Senior opportunities and services	[3] 5,900,000	800,000	14	800,000	14	800,000	14
(c) Training and technical assistance, State economic opportunity offices	NA	NA		NA		NA	
2. Health and nutrition:							
(a) Family planning	[4] 2,800,000	500,000	18	522,000	19	326,000	12
(b) Emergency food and medical services	[5] 4,000,000	[6] 3,119,000	78	[6] 1,559,000	39	[6] 235,310	6
(c) Drug rehabilitation	[5] 120,000	[7] 12,000	10	[7] 16,000	13	[7] 18,000	15
(d) Comprehensive health services	[1] 25,600,000	[7] 1,580,000	6	[7] 2,324,000	9	[7] 2,124,000	8
(e) Alcoholic counseling	[5] 800,000	[8] 75,000	9	[8] [9] 12,000	1½		
3. Special impact	NA	NA		NA		NA	
4. Migrants and seasonal farmworkers	[5] 3,900,000	405,000	10	450,000	12	450,000	12
5. Legal services program	[5] 5,000,000	[10] 1,000,000	20	[10] 1,100,000	22	[10] 1,200,000	24

NA Not available or not applicable.
[1] Total number of persons in poverty, calendar year 1971.
[2] Number of persons served by Community Action Agency neighborhood service systems.
[3] Number of persons aged 60 or over in poverty, calendar year 1970 (calendar year 1971 figure not yet available).
[4] A study done by Planned Parenthood estimated that in 1969 there were about 5,000,000 low-income women in need of family planning services. However, only about 2,700,000 of these women were actually below the poverty threshold and thus eligible for the OEO Family Planning program. (The rest were between 100 percent and 150 percent of the poverty threshold.) The 2,700,000 figure was adjusted slightly upward to reflect (to a 1st approximation) the shift in the total poverty population from calendar year 1969 to calendar year 1970.
[5] From "Universe of Need Data for Selected EOA Programs (Aug. 11, 1970)," based on data compiled from "Justification of Appropriation Estimates—Fiscal Year 1971," prepared for the congressional committees on appropriations, May 1970.
[6] Includes Indian, migrant, and other headquarters-funded projects.
[7] Capacity of approved projects.
[8] Project capacity (families).
[9] Estimate for Indian projects only (these being the only alcoholic counseling fundings reflected in the appropriation justification).
[10] Cases handled.

Note: It should be noted that OEO programs are not necessarily the only Federal programs serving a given universe of need. This is particularly true in the case of family planning and comprehensive health services, where the decrease in numbers reflects the transfer of projects to HEW funding. The persons served will continue to be served, but will appear in HEW program figures rather than in OEO program figures.

It should also be noted that a person may be served by more than one program. Accordingly the figures given for individual programs cannot be added to yield an unduplicated total of persons served.

OFFICE OF ECONOMIC OPPORTUNITY—FISCAL YEAR 1973 BUDGET REQUEST COMPARED WITH FISCAL YEARS 1971 AND 1972

[In millions of dollars]

	Fiscal year—		
	1971 actual obligation	1972 actual obligation	1973 estimate NOA
I. Office of Economic Opportunity	880.0	699.9	757.2
A. Research, development, and evaluation	84.1	50.9	67.1
1. Operations	78.6	44.2	60.8
2. Program administration	5.5	6.7	6.3
B. Community action operations	410.2	348.4	378.5
1. Local initiative (includes Indians)	355.9	298.2	328.9
2. Training and technical assistance	17.3	11.4	11.0
3. State economic opportunity offices	12.3	12.1	12.0
4. Senior opportunities and services	8.0	8.0	8.0
5. Program administration (includes Indians)	16.7	18.7	18.6
C. Health and nutrition	194.8	157.1	154.8
1. Family planning	18.8	23.9	15.0
2. Emergency food and medical services	48.6	3.5	4.0
3. Drug rehabilitation	13.3	18.0	23.0
4. Comprehensive health	98.7	106.7	95.0
5. Alcoholic counseling	12.0	1.9	14.4
6. Program administration	3.4	3.1	3.4
D. Community economic development	[1] 37.1	[1] 26.9	30.7
1. Operations	36.4	26.1	30.0
2. Program administration	.7	.8	.7
E. Migrant programs	36.1	36.1	36.0
1. Operations	35.1	35.1	35.0
2. Program administration	1.0	1.0	1.0
F. Legal services	61.2	61.9	71.5
1. Operations	58.9	59.6	
2. Program administration	2.3	2.3	
G. VISTA	37.8	(2)	
1. Operations	29.6		
2. Program administration	8.2		
H. General support	18.7	18.6	18.6
II. Department of Health, Education, and Welfare	431.4	3.0	3.0
A. Headstart	360.0	(2)	
B. Follow Through	68.4	(2)	
C. NCAA—Summer youth program	3.0	3.0	3.0

	Fiscal year—		
	1971 actual obligation	1972 actual obligation	1973 estimate NOA
III. Department of Agriculture	9.4		
A. Rural economic opportunity loans	3.4		
B. Program administration	6.0		
IV. ACTION		[3] 37.8	
A. VISTA programs		37.8	
V. Unobligated balances	2.6	1.6	
Total appropriation	1,323.4	742.3	760.2
Supplemental appropriation for emergency food and medical services		[4] 20.0	[5] (20.0)

[1] Represents the special impact program for these fiscal years.
[2] Appropriated to DHEW in 1972.
[3] Transferred to ACTION in 1972.
[4] Available for obligation through Sept. 30, 1972.
[5] Nonadd to indicate that unobligated balance is available through Sept. 30, 1972 of fiscal year 1973.

CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT,
Cambridge, Mass., September 25, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: This is in response to your letter of September 4 requesting a survey of the minimal financial needs of grantees of the Special Impact Program and related activities to be conducted under "Title VII—Community Economic Development", added to the recent Economic Opportunity Act of 1964 by recent amendment.

The information herein is based upon a survey of Community Development Corporations and other grantees, discussions with OEO officials, an examination of the history of the funding of individual Community Development Corporations, and a review of the comprehensive evaluation of the Special Impact Program being conducted by ABT Associates of Cambridge, Massachusetts.

On the basis of our examination, we advise that merely to maintain the current level of operations of the 39 existing Community Development Corporations through fiscal year 1973 will require $40.2 million. Of this amount, urban grantees will require $24 million, rural grantees, $12.7 million, and support programs (training, technical assistance, evaluation and research) $3.5 million. The accompanying table contains our project-by-project estimates for this "maintenance" budget.

As you requested, we have also calculated the amounts necessary to provide sufficient resources to implement the completed plans of the existing Community Development Corporation. We estimate the total necessary for such an effort is $64.9 million, including $43.2 million for urban projects, $17.1 million for rural projects and $4.6 million for support programs. This "implementation" budget also is shown in detail on the accompanying table.

We have also made a calculation of the amount of appropriation necessary to maintain the activities of grantees, other than those supported by the Special Impact Program, whose programs are authorized by Title VII. These are principally rural cooperative projects now being supported out of funds allocated to Section 232 of the EOA (research and pilot programs). Should OEO continue to support these activities under Section 232, there would be no need to finance them under Title VII. There are six programs in that category whose maintenance requires $2,250,000 for fiscal year 1973.

In addition, there are two other items in the budget that must be covered under Title VII or out of Section 232. One item is the administrative expense of continuing to service past loans made by the Department of Agriculture under Title III–A revolving fund. The USDA estimates that this amounts to about $2.6 million for fiscal year 1973. Assuming that the final EOA appropriation bill permits the use of the $1 million in interest currently being earned by the fund to defray administrative expenses, the net cost for this year would be $1.6 million.

The other item is the cost of setting up a new system to administer the revolving loan fund authorized in Part C of Title VII and to be transferred from Title III–A. We are aware that OEO presently has plans for a program to design and implement such a system at an initial cost of $1 million. Since this is a pilot effort, it also could be justified under Section 232.

In summary, we estimate that to maintain the current Special Impact Program at its present level of effort would require $40.2 million. Adding the cost of new development projects ready for implementation by present grantees would bring the total to $64.9 million. Except to the extent that other programs authorized by Title VII can be financed under Section 232 or some other funding authority, maintaining such programs will require another $4.850 million to the total cost of Title VII programs for fiscal year 1973.

I hope this analysis has beer useful. I would be happy to answer any questions you or your staff might have.

Sincerely,

GEOFFREY FAUX,
Director.

FINANCIAL NEEDS OF EXISTING PROGRAMS NOW AUTHORIZED BY PROPOSED TITLE VII OF THE ECONOMIC OPPORTUNITY ACT

Program and location	Maintenance budget (millions)	Growth budget (millions)
Special impact:		
Brooklyn, N.Y.	12.0	15.0
Trenton, N.J.	1.0	4.5
Detroit, Mich.	1.0	1.0
Memphis, Tenn.	1.0	1.0
Cleveland, Ohio		4.0
Bronx, N.Y.	1.0	1.0
East Los Angeles, Calif.	1.0	1.0
Denver, Colo.	1.0	2.5
Chicago, Ill.		1.0
Durham, N.C.		.5
Rochester, N.Y.		.5
Kansas City, Mo.		.5
San Antonio, Tex.		.5
East Boston, Mass.	1.0	1.5
Washington, D.C.	.5	.8
St. Louis, Mo.	.5	.9
Hawaii	1.0	1.0
Buffalo, N.Y.		1.5
Roxbury, Mass.	1.0	1.0
Nassau County, N.Y.		1.0
Harlem, N.Y.	2.0	2.5
Subtotal	24.0	43.2
Rural:		
Arkansas	1.2	1.5
Alaska	3.5	3.5
Georgia		.5
New Mexico	1.2	1.5
Kentucky	1.8	1.8
Washington		.5
Minnesota		.5
Florida	.8	1.0
Alabama	.8	1.0
Virginia	1.8	1.8
South Dakota		1.0
Wisconsin	.8	1.0
Mississippi		.5
Tennessee	.8	1.0
Subtotal	12.7	17.1
Training and technical assistance	2.5	3.0
Evaluation	.5	1.0
Research	.5	.6
Subtotal	3.5	4.6
Other title VII:		
Present R. & D. cooperatives	2.250	2.250
Marketing assistance		
Farmers Home Administration	1.6	1.6
Rural Development Program [1]	1.0	1.0
Subtotal	4.850	4.850

[1] Establishment of system to run rural development loan fund.

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION,
Washington, D.C. October 2, 1972.

Senator JACOB K. JAVITS,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR JAVITS: In response to your request, NLADA has completed an extensive survey and study of legal services programs conducted under Section 222(a)(3) and other sections, of the Economic Opportunity Act of 1964, in order to determine the total appropriation needed for fiscal year 1973.

On the basis of the responses to our survey of the existing 265 legal services programs, we estimate that a total of $94.346 million may effectively be utilized toward meeting basic minimal needs. This total exceeds by $25.784 million the $68.562 million made available during FY 1972, and is $22.846 million above the amount requested by the Administration for FY 1973, which we understand would be reserved under the proposed authorizing legislation, the Economic Opportunity Amendments of 1972.

The enclosed document shows this need on a regional and state-by-state basis.

It should be noted that the funds allocated by the Office of Economic Opportunity from current resources will fund most programs only on a ten-month, rather than a twelve-month, basis through the current fiscal year.

Our survey further indicates that to fund all programs at their current levels for a full twelve-month period, rather than for ten-months, during fiscal 1973, it would require a total appropriation of $78.622 million, or $7.16 million above the amount requested by the Administration.

Of course, this amount would not meet the documented minimal needs, but it would permit programs to continue through this entire fiscal year at the expenditure levels approved by OEO for this year. The documents enclosed also indicate those levels necessary to provide for such twelve-month funding on a regional and state basis.

We greatly appreciate very much your bringing these needs to the attention of Congress. In our opinion, it is important that we begin to more effectively meet needs under the existing programs now that the proposal for a National Legal Services Corporation has not been enacted.

We greatly appreciate your established leadership in support of these efforts to ensure that the poor have full access to the Nation's legal system.

Very truly yours,

FRANK JONES,
Executive Director.

Program	Amount necessary to meet basic minimal needs	Amount needed to fund at current level to full 12 month period (annualization)	Amounts made available during fiscal year 1972	Fiscal year 1973 projected budget allocations
Operations	$77.030	$64.192	$59.650	$61.0
Field programs	(68.332)	(56.841)	(53.690)	
Reginald Heber Smith	(6.301)	(5.251)	(4.007)	
Indian programs	(1.992)	(1.660)	(1.496)	
Other headquarters programs	(.528)	(.440)	(.457)	
Administration	$2.760	$2.300	$2.300	$2.3
Research and development	6.756	[1] 5.630	2.891	3.4
Training and support	5.400	4.500	3.221	4.0
Evaluation and technical assistance	2.400	[2] 2.000	.500	.8
Total	94.346	78.622	68.562	71.50

[1] This includes a special $2,300,000 allocated to California for an experimental project, obligated in 1972 to come out of 1973 funds, plus annualization of present programs in the amount of $430,000.

[2] This increase is accounted for by OLS' 2-year funding of the technical assistance projects in 1971 that now are scheduled for refunding in 1973 (fiscal), and by the fact that less than ⅓ of the legal services programs were evaluated in 1972, being put off until fiscal 1973. The cost of a full cycle (100 percent) evaluation effort would, accordingly, be $1,500,000; the technical assistance cost is $500,000.

[3] These figures are NLADA projections based on expected available budget of $71,500,000 without a legal services corporation.

	Annualized cost to meet present need	Annualized cost present level	Budget allocation fiscal year 1972	Budget allocation fiscal year 1971
Region I:				
Connecticut	$1,773,173	$1,444,311	$1,436,407	$1,415,767
Maine	607,262	506,052	534,056	506,052
Massachusetts	3,005,460	2,504,550	2,184,386	2,411,240
New Hampshire	420,000	350,000	359,826	350,000
Rhode Island	552,000	460,000	470,309	460,000
Vermont	353,097	294,247	332,016	294,247
Total	6,710,992	5,559,160	5,317,000	5,437,306
Region II:				
New Jersey	3,439,900	2,866,584	2,840,282	2,842,694
New York	8,704,163	7,253,469	6,559,326	6,505,544
Puerto Rico	1,147,200	956,000	634,996	
Virgin Islands	115,200	96,000	96,000	
Total	13,406,463	11,172,053	10,133,000	9,348,238
Region III:				
Delaware	115,080	95,900	100,961	97,000
Maryland	604,800	504,000	[1]	642,478
Pennsylvania	2,367,253	1,972,711	2,117,253	1,983,927
Virginia	634,788	528,990	182,459	136,000
Washington, D.C.	1,292,400	1,077,000	1,148,000	1,777,208
West Virginia	341,200	284,334	298,173	274,948
	5,355,521	4,462,935	3,846,846	9,411,561
Region IV:				
Alabama	265,427	221,189	112,274	179,000
Florida	1,753,454	1,461,212	1,526,334	1,460,647
Georgia	1,219,620	1,016,350	738,350	1,017,543
Kentucky	413,416	344,514	404,214	344,514
Mississippi	825,898	688,248	629,628	697,688
North Carolina	384,835	320,695	356,449	362,287
South Carolina	452,574	377,145	356,430	376,771
Tennessee	731,484	609,570	527,320	262,114
Total	6,004,418	5,038,923	4,650,639	4,700,564
Region V:				
Illinois	3,208,155	2,673,463	2,645,073	2,829,723
Indiana	879,956	733,296	809,538	669,774
Michigan	3,332,071	2,776,725	2,382,650	2,999,386
Minnesota	482,180	401,816	401,262	410,502
Ohio	2,504,401	2,087,001	1,852,075	1,894,860
Wisconsin	1,007,209	839,341	814,402	839,341
Total	11,413,972	9,511,642	8,905,000	9,643,586
Region VI:				
Arkansas	$163,608	$136,340	$132,493	$130,176
Louisiana	985,311	821,093	816,532	757,065
New Mexico	397,920	331,600	259,668	325,789
Oklahoma	489,920	407,732	405,398	386,025
Texas	2,395,743	1,966,453	1,935,871	2,234,583
Total	4,431,861	3,693,218	3,549,962	3,833,638
Region VII:				
Iowa	602,760	502,300	422,244	480,094
Kansas	356,400	297,000	302,410	266,388
Missouri	1,184,400	987,000	1,007,296	977,296
Nebraska	433,200	361,000	306,050	320,999
Total	2,576,760	2,147,300	2,038,000	2,044,777
Region VIII:				
Colorado	1,258,759	1,048,965	967,800	942,000
Montana	548,400	457,000	640,238	457,177
North Dakota			[2]	
South Dakota			[3]	
Utah	307,200	256,000	259,336	259,000
Wyoming	120,000	100,000	95,410	94,000
Total	2,234,359	1,861,965	1,782,784	1,752,177
Region IX:				
Arizona	771,000	642,500	480,689	611,100
California	12,131,400	10,109,500	10,253,398	8,542,100
Hawaii	415,200	346,000	346,000	330,500
Nevada	191,040	159,200	158,915	136,700
Micronesia	720,000	600,000	600,000	
Total	14,228,640	11,857,200	11,839,000	9,620,400
Region X:				
Alaska	586,195	488,495	488,495	488,495
Idaho	160,004	133,336	112,085	129,525
Oregon	470,568	392,140	404,140	401,640
Washington	752,232	626,860	622,750	471,335
Total	1,968,999	1,640,831	1,627,470	1,490,995
Grand total, field operations	68,331,985	56,841,227	53,689,707	57,283,242

[1] Bridged.
[2] Indian programs.
[3] Disaster relief.

OFFICE OF ECONOMIC OPPORTUNITY,
Washington, D.C.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: This responds to your recent request for information concerning Title II (Community Action) funding for the Commonwealth of Puerto Rico. As you know, Section 12 of the Economic Opportunity Amendments of 1972 (Public Law 92-424) amended Section 225(a) and paragraph (1) of Section 609 of the Economic Opportunity Act to treat Puerto Rico as a State for purposes of distribution of Community Action funds, including funds for programs under both Section 221 ("Local Initiative") and Section 222(a) (Head Start, Legal Services, etc.). Applying most recent available Census information to the President's budget request, the Office of Economic Opportunity and the Department of Health, Education, and Welfare (which administers the Head Start program) must now provide $37.100 million in funding for the Commonwealth in FY 1973, instead of the $12.300 million previously contemplated. This leaves a net deficit of $24.800 million. When the Congress initially considered this legislation, the Administration advised that it would require a substantial cut-back of existing programs in many states in order to meet the new increases for Puerto Rico.

Shortly before Public Law 92-424 was signed into law, the Director of OEO wrote to the Secretary of the Department of Health, Education, and Welfare a letter recommending a joint task force to coordinate development of new projects for Puerto Rico. His letter and the Secretary's agreement are attached.

I will be leaving for Puerto Rico on October 10, 1972 to coordinate our efforts with local authorities.

I hope this information will be of assistance to you.

Sincerely,

WESLEY L. HJORNEVIK,
Deputy Director.

September 15, 1972.

Hon. ELLIOT L. RICHARDSON,
Secretary, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. SECRETARY: The new authorization, H.R. 12350, contains an amendment to section 225(a) which will require us to treat Puerto Rico as a state for purposes of fair share statutory minimum of programs funded under actions 221-222 of the Economic Opportunity Act, as amended. Preliminary estimates indicates that this will require us to expand the 221-222 programs in Puerto Rico.

Such an expansion will not be accomplished without careful preparation as to funding conduits, technical assistance necessary to mount the new programs and careful selection of programs which it would be feasible to increase in Puerto Rico.

I recommend that we establish, as soon as practicable, a joint task force which can examine these and other related questions. The task force should be composed of programs and fiscal staff from both the Office of Economic Opportunity and the Office of Child Development. If you concur in this recommendation we should each appoint members no later than October 9, 1972 so that work can begin immediately.

Sincerely,

PHILLIP V. SANCHEZ,
Director.

HON. PHILLIP V. SANCHEZ,
Director, Office of Economic Opportunity, Washington, D.C.

DEAR MR. SANCHEZ: Thank for your letter of September 15 concerning the need for cooperative planning between the Department of Health, Education, and Welfare and the Office of Economic Opportunity.

In dealing with the question of increasing the allocation of program funds to Puerto Rico, as authorized by H.R. 12350, I share your concern about the need for careful planning if the objectives of this authorization are to be achieved. I have therefore, asked Mr. Saul Rosoff, Acting Director, Office of Child Development, to appoint an appropriate staff to begin working immediately with your staff on this task.

With kindest regards,

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

WILLIAM BENTON AND THE ENCYCLOPEDIA BRITANNICA

Mr. PERCY. Mr. President, I have been privileged to know William Benton for several decades through his close relationship with the University of Chicago. Others of my colleagues in the Senate served with him when he was here from 1949 to 1953. We know him as perceptive, articulate, keen witted, resourceful, dedicated, possessed of unbounding energy and enthusiasm, loving life and every good thing in it, devoted to his family and friends.

The story of how Bill Benton provided to the University of Chicago the greatest single source of funds, $43 million to date, besides those funds provided by its founder, John D. Rockefeller, is well known to my fellow trustees at the University of Chicago, but not as well known to others outside the university family circle. Because this story is one that should be told, as it provides a suggestion for a continuing source of funds to institutions of higher education, to other administrations and boards of directors, as well as potential benefactors, I ask unanimous consent that the most recent article on this remarkable development involving two remarkable men, Senator William Benton and Gen. Robert E. Wood, that appeared in the Chicago Tribune Sunday, October 8, 1972, be incorporated in the RECORD.

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

GIFT RETURNS $43 MILLION—U.C. AIDE'S ACTION SAVES BRITANNICA BONANZA

(By John H. Thompson)

That's the way it was 30 years ago when the University of Chicago nearly committed a costly error. For fear they might become personally liable if a risky and inappropriate business gamble failed, the university trustees almost blew their chance to place the university imprimatur on the Encyclopaedia Britannica, Inc., the greatest of all English language reference works, when it was offered to the Midway scholars by the late Gen. Robert E. Wood, chairman of the board of Sears, Roebuck & Co.

As it is, Gen. Wood's offer was saved only in the nick of time by William Benton, then a vice president of the university, who put up $100,000 of his own money for operating expenses. This advance enabled the institution to accept the gift which, since 1943, has returned $43 million to the university.

As Dr. Robert M. Hutchins, the university's former president, predicted at the time, the returns to the university in prestige value and educational merit have been incalculable.

TRANSFER WAS COMPLETE

Transfer of this repository of human knowledge from the Chicago mail order house to one of the nation's most renowned universities was a remarkable achievement.

Indeed, few details of this bit of history were known to many of the university's present board of trustees until Herman Dunlop Smith, chairman of the trustees' committee on the Britannica, recently circulated a memorandum describing the event. It was prepared by Herman Kogan, author of "The Great EB" [University of Chicago Press, 1958], a history of the Encyclopaedia Britannica, from its founding in Edinburgh by a Scottish printer in 1768.

As reconstructed by Smith, retired board chairman of Marsh & McLennan Inc., who first heard about it from Hutchins and Benton, the subject of the encyclopedia's future came up unexpectedly during a luncheon conversation between Benton and Gen. Wood at the Chicago Club, Dec. 9, 1941, two days after the Japanese attack on Pearl Harbor.

SUBJECT IS CHANGED

"Changing the subject as they lingered over their coffee," recalled Smith, "Bill Benton asked General Wood if he did not think it unsuitable for a mail order house to own the Encyclopedia Britannica, particularly in war time. [Sears had acquired it in 1920.]

"General Wood agreed, even tho sales of the Encyclopedia would earn some $300,000 before taxes for his company that year. In fact, the general said that Sears never should have acquired the publishing enterprise in the first place.

'That was all the opening Benton needed. He reminded the general that universities don't have much money, that they can't buy businesses, and asked, 'Why don't you make a gift of the Britannica to the University of Chicago?' "

There was a long silence after this, as the two men made their way down stairs to their waiting automobiles. At the curb, Gen. Wood turned back to the university vice president and remarked, "All right, Bill. I'll give you the Britannica."

And he did. But it wasn't easy.

The effort involved persuading university trustees, most of them hard-nosed businessmen, to gamble on publishing an encyclopedia under wartime restrictions. It meant trying to raise funds in a tight money market for operating expenses and to finance purchase of the Britannica, because Gen. Wood's first offer required the university to come up with $300,000 to buy the Britannica book inventory.

"By the end of the year several things had happened," Smith recalled during an interview in his office. "General Wood progressively liberalized his offer until it was completely free of all financial restrictions—a true corporate gift without strings.

GET AN EXEMPTION

"The government agreed to exempt educational books such as a set of the encyclopedia from the wartime ban on installment buying—which could have crippled Britannica sales. Bill Benton exhausted all his outside sources of financing the encyclopedia's purchase or its operation as a university enterprise. And the trustees at long last agreed it was in the best interests of the university to acquire the Britannica and turn its management and control entirely over to Benton."

Refreshing his memory with the Kogan memorandum, Smith said it was difficult to tell which was more frustrating for the ebullient Benton, an optimist by nature: trying to crack the tough nuts on the university board of trustees or the equally tough nuts in the business world, before Gen. Wood's offer expired Feb. 1, 1943.

PUBLISHERS ARE COOL

Benton failed to interest the Rockefeller Foundation in supplying the $300,000, even tho the University of Chicago was founded by John D. Rockefeller. He failed with Lessing Rosenwald, son of the Sears founder.

Benton failed with his former employer, Albert D. Lasker, the advertising genius, and such giants of the publishing world as Henry Luce, of Time magazine, and De Witt Wallace of the Readers Digest.

Indeed, the only publisher who seemed to think the plan workable and profitable, according to Benton was Col. Robert R. McCormick, the late editor and publisher of The Chicago Tribune. The colonel, however, did not want to make a direct gift to the university, then in his bad graces.

"As for the trustees," as Smith remembers, "they were largely skeptical of the whole enterprise. Key trustees, such as the chairman, Harold H. Swift, the meat packer, had been kept closely informed of all the developments from the start. The rest of us were notified officially by Hutchins at a board meeting June 11, 1942. And the big debate was on.

PRESTIGE IS STRESSED

"Hutchins stressed the prestige and educational merit that would accrue to the university thru placing its imprimatur on the Encyclopedia Britannica. Benton, while not ignoring the business risks, emphasized that acquisition of such a going concern as Britannica offered the university a chance to make considerable profits, which could be used to strengthen the faculty, the curriculum and our research facilities.

"On the other side were several trustees who were downright suspicious of the bounty being offered. Some considered the Britannica a 'dead horse,' remembering how near it came to ruin in earlier years. Some thought we could lose our shirts if the government prohibited customers from buying the encyclopedia sets on time.

"Some feared that the encyclopedia publishing business was just too volatile and speculative for the university to get into, and that if we did we might become 'the dead hand of disaster on its neck,' as one trustee called it. Others thought that tactics of high pressure encyclopedia salesmen might become an embarrassment to the university."

NEAR DUMPING IT

Thus, as Smith remembers the events, the trustees were fast approaching a decision to dump the entire project when two events transpired to change the picture completely as the year of 1942 drew to a close.

On Dec. 9, one year to the day of that Chicago Club luncheon, Gen. Wood informed Benton that his firm's board of directors had decided to make the university a complete gift of the Britannica, "lock, stock, and barrel," because of Sears' high position in the excess profits tax bracket.

BENTON GETS REINS

The other event occurred a few days earlier when Benton, fearing that the trustees would reject Gen. Wood's offer, proposed to put up his own $100,000 as working capital, and become board chairman of Encyclopedia

Britannica, Inc., taking full responsibility for its management and development.

President Hutchins and Chairman Swift jointly told the trustees, said Smith, that if they accepted this alternative proposal, Benton should be given the majority stock interest in the enterprise. Happy to escape the risk of running the Britannica themselves, the trustees quickly accepted Gen. Wood's offer and the full Benton proposal.

They also set up a liberal schedule of royalty and other financial payments to the university in return for its imprimatur and the contributions of its scholars.

"Gen. Wood once sent word to the trustees, then still considering his first offer," Smith recalled, "saying they should realize that his gift of the Britannica amounted to a $5-million gift.

"That remark surely must rank as the understatement of the century. The university has received $43 million from Britannica in the form of various financial returns."

VIEWS OF CZECHOSLOVAK NATIONAL COUNCIL OF AMERICA

Mr. DOLE. Mr. President, I call the Senate's attention to the views of the Czechoslovak National Council of America which is located in Cicero, Ill. This organization has found the foreign policy of our Nation in seeking a generation of peace for all the peoples of the world to be highly commendable and in accord with the feelings of Americans of Czech and Slovak heritage.

In considering the issues of importance to international relations the council has suggested an interesting approach to the question of what could be accomplished in the proposed Conference on European Security and Cooperation which is likely to take place next year. This proposal is well articulated and worthy of the attention of this body, and I ask unanimous consent that a copy of the proposal as contained in a letter from the Czechoslovak National Council of America to President Nixon be printed in the RECORD at this point.

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

CZECHOSLOVAK NATIONAL COUNCIL OF AMERICA,
Cicero, Ill., September 15, 1972.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We all know and applaud your quest for a generation of peace. The proposed Conference on European Security and Cooperation seems to be a possible path leading in this direction. We consider it the duty of every citizen to assist you in your quest for peace. Thus, the Czechoslovak National Council of America, speaking on behalf of Americans of Czech and Slovak descent, submits the following for your consideration:

We believe that the position taken by the American delegation, and indeed all western delegations at the onset of the Conference, should be to insist on the

(1) Withdrawal of all Soviet military and police units and Soviet advisers from all occupied nations west of the Soviet Union proper.

(2) Neutralization of the same area and the establishment of a nuclear free zone, both under international guarantees.

(3) Free elections under international control.

The establishment of such a cordon sanitaire would tend to

Eliminate the danger of inadvertent confrontation between the armed forces of the two atomic super-powers;

Mitigate the fears of Western Europe concerning further military penetration of the Soviet Union into Western Europe;

Curtail alleged suspicion on the part of the Soviet Union of Western aggressive intentions and German revanchism;

Increase the chances for an agreed balanced reduction of the armed forces of the East and West;

Make possible the organization of a viable, economic community comparable to EEC (Common Market);

Meet the requirement of self-determination, political independence and territorial integrity of the supposedly sovereign nations living between the Soviet Union and non-Communist Western Europe, stipulated by the United Nations Charter;

Satisfy the wish of the people concerned who have manifested on many occasions their desire for neutrality, such as enjoyed by Austria since 1955.

The achievement of these goals would increase the likelihood of lasting stability, peace and security in all of Europe.

The eagerness now manifested by the Soviet Union to conclude a European security pact leads one to believe that the pressure of circumstances, the unreliability of the satellite armies, the discontent of the satellite people, as well as the good will of the United States might produce an unprecedented degree of willingness on the part of the Soviet Union to agree to these demands.

Very respectfully yours,
Prof. VRATISLAV BUSEK,
President.
Prof. FRANCIS SCHWARZENBERG,
Vice-President.
Dr. MIKULAS FERJENCIK,
Acting Vice-President.

DEATH OF FORMER SENATOR BUSH

Mr. PERCY. Mr. President, we are all saddened to learn of the passing of the former Senator from Connecticut and our friend, Prescott Bush. Senator Bush served in the U.S. Senate from 1953 to 1963. He was a member of the Banking and Currency, Public Works, and Armed Services Committees as well as the Joint Economic Committee of Congress. Senator Bush was recognized as a leading authority on the national economy and Government finance.

He was far ahead of his time in promoting programs to curb inflation, to foster slum clearance, urban renewal and redevelopment, and for flood control and highway transportation. He was an active and stanch supporter of the policies of his friend, former President Dwight Eisenhower.

During World War II, Senator Bush served as national campaign chairman of both the United Services Organization and the National War Fund. Under his direction the USO raised over $33 million for recreational services for the Armed Forces.

I share the deep sense of loss that his family and friends feel at this time and especially to his wife Dorothy and our former colleague in the Congress, George Bush.

Mr. President, I ask unanimous consent that the tributes which appeared in the Washington Post and the New York Times for Senator Bush be printed in the RECORD.

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

[From the Washington Post, Oct. 9, 1972]

EX-SENATOR PRESCOTT BUSH DIES

(By Martin Weil)

Prescott S. Bush, 77, a Republican who served as a U.S. senator from Connecticut from 1953 to 1963, died yesterday in Memorial Hospital in New York after a long illness.

Since retiring from the Senate, Mr. Bush had divided his time between homes in Greenwich, Conn., and Hobe Sound, Fla.

He also resumed his partnership in the Wall Street banking firm of Brown Bros., Harriman & Co., from which he took leave of absence on his election to the Senate.

One of Mr. Bush's five children is George H. W. Bush, the U.S. ambassador to the United Nations.

During his years in the Senate, Mr. Bush established a reputation as a member of the liberal wing of his party, and as a staunch supporter of President Eisenhower.

One of his proposals that attracted considerable attention at the time was a rule to prohibit senators from pointing to the galleries to introduce whatever visitors they deemed worthy.

The proposal was adopted on Aug. 27, 1967.

It conformed with Mr. Bush's image as a diligent, hardworking senator, known for putting in seven days a week on Senate business.

Mr. Bush's first election to the Senate in 1952 came after two unsuccessful tries.

In 1950, he was nominated to oppose incumbent Sen. William Benton, then an interim appointee.

Mr. Bush was defeated by about 1,000 votes out of 862,000 cast. But his campaign attracted notice for its briskness, aggressiveness and, at times, its unconventionality.

The possessor of a good bass voice, and a former member of the Whiffenpoofs, the Yale singing group, he sometimes perked up political rallies by singing in a quartet with fellow Wiffenpoof alumni.

In 1952, he sought the Republican nomination for the Senate again, but lost out to William Purtell at the state convention.

But in the summer of 1952, Sen. Brien McMahon died, and a special election was set to determine his successor. This time Mr. Bush received the Republican nomination.

He went on to defeat then Rep. Abraham A. Ribicoff to fill the four unexpired years of Sen. McMahon's term, and then won election in 1956 to a full six-year term.

In 1962, he announced that he would not seek re-election, concluding that another term would bring him into his 70s, and overtax his strength.

"Fortunately," he said, "we have able younger men available."

Mr. Bush was born in Columbus, Ohio, where his father was a steel manufacturer.

Entering Yale with the class of 1917, he became known not only as a singer, but also as an all-around athlete, playing on the football, golf and baseball teams.

After serving as a captain in the Army artillery in Europe during World War I, he returned to the U.S. and worked for several firms before becoming a vice president of a banking firm that was a predecessor of Brown Bros., Harriman. He later served as a director of many major corporations.

In addition, he was active in a wide range of community affairs, and served as head of the fund campaign of the U.S.O. in 1942, and

of the National War Fund, an amalgamation of war relief agencies, in 1943 and 1944.

In addition to his son, George, survivors include three other sons, Prescott Jr., and Jonathan James, both of New York, and William H. T., of Greenwich, and a daughter, Mrs. Alexander Ellis Jr., of Boston.

Mr. Bush is also survived by his wife, Dorothy, of the home.

[From the New York Times, Oct. 9, 1972]

EX-SENATOR PRESCOTT BUSH DIES; CONNECTICUT REPUBLICAN WAS 77

Prescott Bush, former United States Senator from Connecticut and the father of George Bush, the United States representative at the United Nations, died here yesterday afternoon at the Memorial Hospital for Cancer and Allied Diseases. He was 77 years old and lived in Greenwich, Conn.

Mr. Bush, a tall, lean, well-dressed product of the Ivy League, served in the Senate from 1952 to 1963, was a stanch Republican and supporter of President Dwight D. Eisenhower and was known on Capitol Hill for practical, conservative politics consistent with his background as a banker.

Before and after his years in the Senate, Mr. Bush was a full partner in Brown Brothers Harriman & Co., a leading Wall Street investment firm.

In the Senate, where he served on the Banking and Currency, Public Works and Armed Services Committees as well as the Joint Economic Committee of Congress, Mr. Bush received national attention as an authority on government finance and the national economy.

He was a major advocate of measures to curb inflation, to foster slum clearance, urban renewal and redevelopment programs, and to develop flood control and hurricane protection works. He helped draft the Federal Aid Highway Act of 1956, which authorized the construction of the national system of interstate highways, and many other bills in the areas of inflation, economic growth and employment.

SHAPED PARTY POSITIONS

Mr. Bush was chairman of the Republican National Convention's platform committee in 1956, and chairman of the 1960 convention subcommittee that drafted the Republican planks on the economy, business and labor.

Prescott Sheldon Bush, a rangy, 6-foot 4-inch athletic figure, who in his undergraduate days at Yale had been a stalwart of the baseball team, was as much at home on a golf course as he was behind a banker's desk or in the Senate.

He was a confidant and frequent companion of President Eisenhower on the links, mixing putts with politics. A reporter who once asked the Senator about his golfing experiences with the President was told: "Nobody who plays golf with the President ever talks about it. Any other questions?"

Mr. Bush, in fact, was an excellent golfer. He was the national senior golf champion in 1951, when, at the age of 56, he shot an 18-hole score of 66. He was president of the United States Golf Association in 1935 and eight times the champion of the Round Hill Club in Greenwich.

Once the president of the Yale Glee Club and second bass Whiffenpoof, he had voice better than most heard in 19th-hole quarters. He was a good tennis player and swimmer, as a World War I artillery captain under fire in the Meuse-Argonne offensive, he could swap tales with any soldier.

Mr. Bush was moderator of the Greenwich Town Meeting for 15 years, but was virtually a political unknown when he entered statewide politics in 1950.

FAILED IN FIRST BID

With contacts built up over the years with Republican leaders in his state and with service as finance chairman of the state's Republican Committee in the late 1940's to his credit, Mr. Bush failed by 1,000 votes in his first effort to win election to the Senate in 1950. William Benton, a Democrat, defeated him for the two-year interim term of Senator Raymond E. Baldwin, who had resigned to take a seat on the Connecticut Supreme Court.

Two years later, Senator Brien McMahon, a Democrat, died. Mr. Bush was nominated for the final four years of his term, defeating a big Republican party convention field, which included former Representative Clare Boothe Luce, then Ambassador to Italy. He then defeated Abraham A. Ribicoff in the general election.

Mr. Bush was re-elected to a full six-year term in 1956, but chose not to run again in 1962, attributing his decision to ill health. His term expired Jan. 3, 1963.

Mr. Bush was born May 15, 1895 in Columbus, Ohio, the son of Samuel Prescott, a steel manufacturer, and Flora Sheldon Bush. He attended public schools in Columbus and St. George's School in Newport, R.I. After graduating from Yale in 1917, Mr. Bush served with the 158th Field Artillery Brigade in France and with occupation forces in Germany after the Armistice.

Returning home in 1919, Mr. Bush worked for a hardware company in St. Louis and with the United States Rubber Company, then, in 1926, become vice president of the New York banking firm of W. A. Harriman & Co. When a merger created Brown Brothers Harriman & Co. in 1930, he became a partner.

At various times, Mr. Bush was a director of the Columbia Broadcasting System, the Prudential Insurance Company, the Simmons Company and Dresser Industries, Inc. He was also a trustee of Yale University and the Episcopal Church Foundation of the United States.

During World War II, he served as national campaign chairman of both the United Service Organizations and the National War Fund. The U.S.O. raised more than $33-million for recreation services for the armed forces in the war. The fund was an amalgamation of some 600 war relief agencies.

It was his success in fund-raising that brought him the chairmanship of the Connecticut Republican Finance Committee in 1947.

Mr. Bush and Dorothy Walker of St. Louis were married in 1921. In addition to his widow, Mr. Bush is survived by four sons, William of Greenwich, and Prescott, Jr., George and Jonathan, all of New York; a daughter, Mrs. Alexander Ellis, Jr. of Boston and nine grandchildren.

A NEW PARTNERSHIP IN CORRECTIONS

Mr. HRUSKA. Mr. President, the outgoing president of the American Correctional Association, the Honorable Maurice H. Sigler of Nebraska, recently gave an excellent valedictory address at the association's annual meeting in Pittsburgh.

In his speech, entitled "A New Partnership in Corrections," Mr. Sigler indicated that "it is time to clear away traditional habits" with regard to corrections, including a new look at "courts, lawyers, news media, the public, and toward the correctional field itself." Each of these fields must be drawn into the corrections arena because each one is concerned with its problems and they cannot be solved without assistance from all quarters.

As director of corrections for Nebraska, Mr. Sigler did an outstanding job to make the Nebraska prison system one of the best in the Nation. In recognition of the very useful work he did in Nebraska, President Nixon appointed Mr. Sigler to the U.S. Board of Parole; this year he was elevated to the chairmanship of that body.

Because of the constructive thoughts contained in this speech I think it would be of interest to my colleagues. For that reason I ask unanimous consent that the text of Mr. Sigler's remarks be printed in the RECORD.

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

A NEW PARTNERSHIP IN CORRECTIONS

(By Maurice H. Sigler, president, American Correction Association, and chairman, U.S. Board of Parole)

I need not remind this distinguished audience that the year since we last met has been one of the most tempestuous in the history of American corrections. The uproar really didn't start with Attica. It's been brewing for a long time. But Attica touched it off. Since then, we have had recurrent disorders and unrest, accompanied by wide public debate. Newspapers and periodicals nowadays often include articles and editorials on the shortcomings of corrections. The courts, legislative committees, church groups, chambers of commerce, and similar community organizations have joined in to have their say. Instant penologists have come out of the woodwork.

I am somewhat constrained to ask them: Where have you been?

Last December at the National Conference on Corrections called by President Nixon, the message was loud and clear. The country expects change, and it expects action to bring about that change.

To put it bluntly, the field of corrections is experiencing a crisis in public confidence, and the crisis shows no sign of abating. Unlike times past, we can't expect to handle the problem by letting it wear itself out.

The question we have to face is: What are we going to do ourselves to restore confidence in our corrections system?

Pittsburgh is an appropriate place for us to consider this question. It was here in 1891 that the American Prison Association met for its annual congress. The president that year was Rutherford B. Hayes of Ohio, who had also been the 19th President of the United States. Among other things he observed:

"The young and the thoughtless—the beginners in law breaking, and the accidental criminals suspected of guilt, are arrested and lodged in city prisons or county jails, and there detained for trial, huddled together with old and hardened offenders to be educated and trained in the whole art and mystery of criminal life."

Thirty-five years later, in 1926, the Association again met in Pittsburgh, this time under the presidency of Sanford Bates, the dean of past presidents of the American Correctional Association and the first director of the Federal Bureau of Prisons. He said this:

"Surely no more outstanding need exists today than an increase of cooperation among all city, state and national agencies seeking a reduction in the volume of crime . . . The outstanding problem of today is how to bring a more united intelligence on the whole matter and a greater tolerance and confidence. . . ."

Their comments are as relevant today as they were then.

As most of you know, I have been in corrections for a long time. I suppose if anyone can be called a traditional correctional worker, I fit the description. I started as a guard at Leavenworth, and I think I had

to do every nasty job a new guard is called upon to do. There were, and are, plenty of such assignments—the guard towers, yard patrol, the isolation building, and of course, the morning watch, the bane of every officer's existence.

I, for one, reject the image of the line officer as a coarse and unreasoning brute who depends on a club or his fists. In all of the uproar about corrections during the past year, I have noted little recognition of the fact that the guard has a tough and extremely difficult job. He has to take a lot from his charges. It has always been a mystery to me that so many guards stick it out. In my days, the "depression" brought them into the work and made them put up with it. But those days long since have gone.

It would be easy for me to react defensively to all the criticism we hear these days about corrections, but it would be a mistake. It would be a mistake for corrections generally to react in this manner.

The fact is: It is time, long past time, for change in corrections. Our critics may have some of the facts wrong, and some of their assumptions certainly are wrong. But the thrust of what they are saying is correct. We know—all of us know—that corrections has not kept up with the times. We know that no matter how hard we have worked at it, our programs are not always what we have claimed them to be, and we are not doing the job of rehabilitation that the times demand and the public expects.

We cannot and should not accept the entire blame, not by a long shot. But it is useless to console ourselves with this excuse. We must forget about the past—and the many bruises and disappointments we have encountered as advocates for improvements within our respective agencies—and take the leadership in moving out and moving ahead.

Time is going a lot faster than it used to. I recall in my penitentiary days that nothing much changed from one day to another, from one year to another, or even one decade to another. But we are living in a time of accelerating change, and we in corrections have to take the ball and start running fast just to keep up and maybe pull a little ahead.

Let me suggest some directions.

First, we must change our attitudes toward the courts. The courts have not necessarily singled out corrections for attention and interference. In fact, for many years under the "hands-off" doctrine, the courts left us alone entirely. Perhaps we failed to take advantage of it.

What has happened more recently is only a sign of the times. The decisions of the courts are being felt in many facets of American life—in race relations, the environment, taxation, voting apportionment, and so on. It would be unrealistic for us to expect that we would continue to be exempted forever. Corrections is a public function and the attention of the courts is overdue. Frankly, judicial review will be with us from here on out.

In committing offenders to us, the courts have assigned us the responsibility for their care and welfare. All of us have acknowledged that responsibility. It is inconsistent and ill-advised for us to fight every case that comes along involving the rights of our clients. After all, who is supposed to be most concerned about their welfare? Yet we have fought these cases repeatedly, all the way to the Supreme Court of the United States if possible.

There have been enough cases now that we know the general direction and trend that further cases will follow. In the future, instead of resisting these cases—except perhaps for those which may be too absurd—we ought to anticipate them and take action to make litigation unnecessary.

So far, we have been able to live with the rulings of the courts. They haven't brought about the disastrous consequences some of us have predicted. Instead, the effect of the courts' new interest in corrections has been beneficial.

For my own part, I must admit that in my day as a line officer, I did not question the regulations and the restrictions on mail, visiting, access to the press, the courts, and attorneys. Those of you who have been in corrections for some time know, as I did, that you did not hold on to your job very long if you questioned the policies and orders that were formulated in the front office and handed down from one level of command to another. Or if you held on to your job you might find yourself buried for years on the morning watch or in a tower. We were trained to do our job unquestioningly, and we had no choice.

Today we are living in a different time. There are few facets of American life that are not undergoing reexamination and criticism. It is time to clear away traditional habits in corrections and take a hard second look at everything that we do. We are being weighed by a tough measure, and we must evaluate our policies and practices by harder and tougher standards of our own.

Second, we must change our attitudes toward lawyers. Like the courts, they are more active these days in many areas of American life. Young lawyers particularly are not as interested in representing corporate clients as they once were. They are more concerned with public issues and human rights. They are looking for new challenge, and many of them have found it in corrections.

As a warden, I became irritated from time to time by lawyers who were too persistent and perhaps even downright unsympathetic with my point of view. They can be pretty vigorous in behalf of their clients.

But they are not really threatening us, and we should not consider them adversaries. Their job is to look out aggressively for the interest of their clients. But ultimately, they are guided by the same rules of law that we are, and perhaps that is why some of us are somewhat apprehensive in dealing with them—they know more about the law than we do. And we sense we are on shaky ground.

That is why we should take a different tack. We should have lawyers help us plan our policies and programs. We ought to have them take a look at what we are doing and advise us as to the legal problems they perceive. Not only would it save us a lot of time in court, but it would enable us to anticipate difficulties and take action to resolve them before they become full-blown headaches.

In my last position, as Director of Corrections for Nebraska, I found lawyers to be extremely helpful rather than annoying. For 10 straight Sundays, four lawyers met with me at my house and helped draft legislation that the corrections system badly needed. Their services were worth many thousands of dollars if they had charged me at their regular rates; however, my department didn't have a budget for such services and I wasn't charged a cent. As a result, Nebraska passed model legislation which provides for a progressive correctional system.

Every correctional agency ought to enlist legal advisers, preferably not on the payroll to preserve their independent viewpoint. I am sure that the American Bar Association's Commission on Correctional Facilities and Services would be willing to assist in making such arrangements. The benefits would be many, including a feeling on the part of our clients—that we must concede many of them do not have now—that we intend to govern ourselves by the law.

Third, we have to change our attitude toward the media—the press, radio and television. It has become a cliche in corrections to say this and to claim we are cooperating fully. Yet there still are too many restrictions, all too often under various excuses supposedly related to good order, discipline, and protection of reporters.

But let's face it. The main reason these restrictions are imposed is because we're afraid of the exposure and the resulting criticism.

The media often gets facts wrong. It may not give equal time to all sides in an issue. And we hate to see ourselves misquoted in print. But these are all problems which other organizations and citizens must deal with in our society, and corrections cannot be immune in this respect.

The media can be an enormous asset to corrections, and it often has been. It is for the most part committed to correctional improvement, and it has been most vocal in this respect during the past year. Reporters should be invited to look over our programs, our activities, and our facilities. They ought to be able to talk to any of our clients. Sometimes they won't be told the truth. Sometimes they will be misled. But in time, as they gain understanding, they will be able to do a better job of separating fact from fiction.

One thing is certain. The more we try to keep them away from our clients, the more we try to keep them out of our institutions and away from our programs, the more intense will be their desire to gain access. Also, it would be only natural for them to react with criticism, often not supported by fact, the very result we were trying to avoid.

We do not have to be afraid of criticism. No one else in our society is immune from it. If we really believe in what we are doing, and if we are doing the very best we can, we should be able to stand up to criticism. To be a correctional administrator today takes real guts, and criticism is one of the least of his problems.

Fourth, we must take a different attitude toward the public. You've heard that said before. For too long we have kept our facilities and our programs screened off from public view. The same walls and fences that have been used to keep our charges in secure custody have been used effectively to keep the public out and, by and large, ignorant.

We have been forced to pay the price. The public has not accepted its responsibility in the correction of criminals. Since we have declined to share responsibility for our clients with other elements of society, we have had to accept sole blame when they have not been rehabilitated—which of course is frequently the case.

Rehabilitation should not be our sole responsibility. If I have learned anything in the past 30 years in corrections, it is that we cannot do the job alone. It is in the community that crime is generated and flourishes, and it is in the community and by citizens that efforts must be made to reduce crime and reform criminals.

After the events of the past year—when so much public criticism has been directed our way—I think it is appropriate for us today to take the opportunity to invite the public into partnership with corrections. We must tell the public that rehabilitation is not our problem alone—it is their responsibility too and we welcome their help.

In a recent paper entitled "Illinois Jails," Hans Mattick described the disgraceful conditions that are typical of our American jails.

He concluded his analysis with the observation that they are this way because "nobody gives a dam!" He is right. This has been the psychology of too many of our citizens as far as corrections is concerned. And in resignation, it has become the psychology of too many persons in corrections.

We must take the leadership in changing this situation. We can do it by involving the public as fully as possible in our work—as visitors, as volunteers, as advisers—as participants in a variety of roles in policy development and program operation.

A good example involving the public and industrial community is the joint project with the U.S. Chamber of Commerce. It published a pamphlet, entitled "Marshaling Citizen Power to Modernize Corrections," and LEAA funds were granted to print a million copies. In the first six weeks after printing, over a half million copies were distributed to individuals, business, trade, civic and religious groups. Requests for the pamphlet have been received so far from over 150 radio and television stations throughout the country. This joint venture provides a tool for corrections to inform citizens of new developments and how they can help modernize correctional services.

Fifth, we must take a different attitude toward our own field. It is not our private preserve. It is a public undertaking. We must admit publicly what we privately admit to ourselves: that it can stand a lot of improvement. In this respect, I do not intend to single out the prisons and jails. More recently, I have been associated with probation and parole, and I have learned that they have their shortcomings also. Too many probation and parole officers work on the 9 to 5 principle, and close down completely on weekends and holidays. But the lives and problems of their clients do not conform to this schedule. There is also a lack of coordination with the rest of the corrections system. There is a suspicion of volunteers and of new ways of bringing services to clients. The right to a hearing in probation and parole revocations, a fundamental issue in due process that was ignored by the field for years, finally had to be imposed by the courts.

One reason why it has been very difficult to bring about correctional improvement is that the field has not yet achieved professional status. It is not a science or even an art. There are no commonly accepted standards in the field, no commonly accepted goals, no commonly accepted criteria for measuring the effectiveness of what we do.

Most of us are in corrections by accident or force of circumstance, as I am. We learned our trade and arrived at our individual opinions and judgments largely on the basis of the training we got or did not get, and our experiences, fortunate or unfortunate. The natural result is that none of us agree on every issue in corrections. We very seldom can achieve a substantial consensus on a single issue.

This Association's Manual of Correctional Standards was an attempt to make a start at professionalization. It was a good start. Whatever defects the Manual has were the result of attempting to achieve a consensus on correctional issues. Too often a consensus of this kind must represent a compromise on the level of the lowest common denominator. A different kind of approach is needed, one that will set standards at the highest level that is realistically possible even though we as practitioners may not agree totally on the level that ought to be set.

Where possible a price tag should be placed on the cost of achieving the new standards so that the media and public will be informed of the cost and the importance of their support.

In February 1973, the National Advisory Commission on Criminal Justice Standards and Goals will issue its standards in the fields of community crime prevention, courts, police and corrections. The Commission has had four operational task forces working on these standards for the past year, with the assistance of eight advisory task forces.

Not all of us will agree with everything in the report of the Corrections Task Force. I don't agree with some of the conclusions myself. But with the crisis in public confidence facing corrections today, I do not believe we can do other than take the report very seriously. I therefore am hopeful that the field of corrections will try to achieve the broad standards set forth in the report. If we are ever to reach the professionalism we have been searching for, we must make a sincere and active effort—and make it now!

Obviously, the Corrections Task Force Report is not intended to be the last word. It will provide the contour of standards. The American Correctional Association has the experience and the members have the ability to provide the contents. But standards appearing on paper have little value if they are not followed in practice. I agree with many of you, therefore, that we ought to have a system of accreditation, and it ought to be based on the standards. A method of self-policing is essential to the professionalization of any field. While I have not yet been able to secure funding for an accreditation program, I am hopeful that it will yet be forthcoming.

The Task Force on Corrections was composed of a number of correctional practitioners, and the evaluation and revision effort will continue to involve practitioners. The American Correctional Association has participated in the production of the initial standards, and I have participated in some of the meetings myself. Much hard work, discussion, and soul-searching has gone into this project.

My recommendation to you is: Let's take the Task Force Report as a working document, and test the recommendations. If the standards are too low, we can elevate them. If the standards are too high—and it should be difficult for us to admit that standards for corrections can be too high—we can help to bring them down to earth, or at least to a point where we can reach them.

A final word. Let's take a different attitude toward our own organization, the American Correctional Association. Let's admit that from time to time each of us have expressed some dissatisfaction with it. Some say it has been hidebound. Some say it has been controlled by prison administrators. Others say it has been run by the old-timers, the mossbacks. Others say it has not been representative of the entire corrections field. And few of us ever have been entirely satisfied with the annual program, for one reason or another. No national organization can ever hope to be letter perfect.

At this point, we need not go into the merits of any of these complaints. We have at this meeting presented a plan for the ACA's reorganization that would eliminate much of the ground for these complaints. The committee on reorganization has worked diligently for 18 months in preparing the suggested new constitutions and by-laws. They have contacted hundreds of members, all affiliates and many state and regional associations. The new constitution provides a blueprint for retooling the ACA to meet the needs and challenges of the 1970's. It is up to all of us from this point on to make the American Correctional Association the powerful force in correctional improvement that it can and should be.

I am confident that with my successor, Martha Wheeler, and through your support, the American Correctional Association can bring about correctional change. I see great prospects for a new partnership. The ACA in conjunction with the courts, the bar, the media and the public can make corrections the effective public service that it should be. In so doing, this partnership will also make corrections a profession of high status that will have the respect of the American community.

I most earnestly ask your support and cooperation.

NO. 1 NUCLEAR CRITIC WINS ANOTHER HIGH SCIENTIFIC HONOR

Mr. GRAVEL. Mr. President, I am pleased to learn that another high honor has been awarded to Dr. John W. Gofman, who is the distinguished cochairman of the Committee for Nuclear Responsibility in New York, and former associate director of the AEC's Lawrence Livermore Laboratory in California.

The Stouffer Prize Committee in Cleveland has recently announced that Dr. Gofman will share this year's Stouffer Prize for heart disease research with Dr. Vincent P. Dole, Dr. Robert S. Gordon, and Dr. John L. Oncley in a ceremony on October 20.

The $50,000 Stouffer Prize is among the highest existing honors in the field of heart research, and is awarded annually to the persons who, in the opinion of the Stouffer Prize Committee, have made the greatest contribution to discovering the cause, prevention, or treatment of arteriosclerosis or hypertension. The selection committee for the award is chaired by the former chairman of the Nobel Prize Committee for Physiology and Medicine, Prof. U. S. von Euler of the Caroline Institute in Stockholm.

PROFOUNDLY IMPORTANT METHODS AND CONCEPTS

During the 1950's, Dr. Gofman and his colleagues at the University of California's Donner Laboratory performed pioneer research in the role of lipoproteins, cholesterol, and triglycerides in heart disease. The work is widely acknowledged to be the basis for one of the major branches of heart research today.

In announcing the award, the Stouffer Prize Committee made the following citation:

The 1972 Stouffer Prize is awarded to Dr. John W. Gofman for pioneering work on the isolation, characterization, and measurement of plasma lipoproteins, and on their relationship to arteriosclerosis. His methods and concepts have profoundly stimulated and influenced further research on the cause, treatment, and prevention of arteriosclerosis.

In 1965, Dr. Gofman was awarded the Lyman Duff Lectureship, another of the great honors in heart research.

AT THE CENTER OF CONTROVERSY

I find it particularly interesting that Dr. Gofman's heart research, like his more recent calculations on the harmfulness of low-dose radiation and his "laws" about the radiation-induction of cancer, raised a tumult at the time, and funding for his heart research was terminated.

Dr. Gofman expected trouble again, when he and Dr. Arthur Tamplin presented their low-dose radiation work in October 1969. One of their most comprehensive papers appears in the CONGRESSIONAL RECORD, volume 118, part 1, pages 1167–1178.

Their work indicates that the presently permissible dose of manmade radiation for the general population is high enough to trigger up to 100,000 extra cancer deaths per year in this country, as well as 100,000 to 1 million genetic deaths annually in future generations.

This finding alerted them to the urgency of preventing further nuclear pollution, and of keeping levels of manmade radiation from ever approaching the permissible dose.

After 3 years of often vicious attack from the nuclear energy establishment,

their work stands intact. Dr. Gofman is confident that their calculations will be accepted eventually as conservative estimates.

CIVILIZED TREATMENT FOR EXCEPTIONAL MEN?

Meanwhile, I feel particular pleasure to learn about the Stouffer Prize award, since the AEC and the nuclear industry have even tried at times to discredit Dr. Gofman's entire scientific reputation, including his heart research. There is something particularly nauseating when people try to destroy a person who has spent a lifetime not only trying but also succeeding in making major contributions to human welfare.

Dr. Gofman is leaving the AEC's Lawrence Livermore Laboratory as of January 1, 1973.

CHEMICAL/BIOLOGICAL WARFARE

Mr. GRAVEL. Mr. President, in 1969 President Nixon renounced biological warfare, as well as "first use" of chemical weapons. But it is one thing to renounce a weapon in principle and still another to give it up in practice. Disturbed by indications that the CBW program is continuing much as before, several of us have taken the floor in the past in an effort to pierce the reality behind the President's rhetoric concerning chemical and biological warfare.

Two recent articles lay the groundwork for an informed critique of the CBW program. In the August 15 edition of World magazine, Daniel S. Greenberg concludes:

> If there is ever an inspection agreement with the Soviets on CBW, it will have an ironic benefit: The American public will have reason to believe government accounts of what is going on in military laboratories.

Mr. Greenberg's critical analysis is shared by Richard A. Fineberg, writing in the fall issue of Lithopinion magazine, who characterizes the President's CBW policy as "a classic in Nixonian double-talk." Both articles point out that the so-called defensive biological research program continues to be shrouded in secrecy, while the President's pronouncement has failed to reduce significantly the funding level for chemical weapons research and development.

Mr. President, I believe the facts and questions raised in these two articles deserve our careful review, and I ask unanimous consent that they be inserted at this point in the RECORD.

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

[From the Lithopinion magazine, fall 1972]

SETTING THE RECORD STRAIGHT: AMERICA'S CHEMICAL AND BIOLOGICAL WARFARE PROGRAM

(By Richard A. Fineberg)

("The article that follows is a kind of scientific detective story. Not only are the details of the crime shrouded by secrecy, but also there's an attempt to deny its very existence by means of official double-talk. Yet the clues are uncovered and the shreds of evidence are pieced together so that the dimensions of the crime are revealed and the assignment of guilt is made."—The Editors)

"To the man in the street it must look like the U.S. Army is abandoning its chemical warfare capability. He reads of the ban on open-air testing, the disposal of chemical munitions at sea and the demilitarization (neutralization) of chemical agents. Also he recalls that in November 1969, President Nixon announced something about not using chemical and biological weapons. Even among soldiers, who read also of studies on managing officers' careers, the inactivation of the Chemical Corps may seem to be imminent. Nothing could be further from the truth, and it is time to set the record straight."

These words were not written by a hungry journalist looking for a story or by an archfoe of the military-industrial complex; they were penned by Colonel Stanley D. Fair for the April 1972 issue of Army, the monthly journal of the Association of the United States Army. Col. Fair should know what he is talking about; he is the commandant of the Army's Ft. McClellan (Ala.) Chemical Center and School, where soldiers are trained to use and defend against chemical and biological warfare (CBW).

Col. Fair isn't just whistling in the wind. The U.S. still deploys lethal nerve gas on a global scale. Spending on chemical weapons development is holding steady and the Army says funds for the procurement of chemical weapons are expected to increase as soon as a new form of nerve gas, already in the advanced stages of development, is ready for mass production and stockpiling. In the field of germ warfare infectious agents such as anthrax, Venezuelan equine encephalitis and tularemia, secretly stockpiled for military use during the 1960s, are being destroyed, but the army has not retired altogether from the grisly business of biological warfare despite the impression given by official pronouncements. (Although some people do not make a distinction between "chemical weapons" and "biological weapons," this article—accepting the Army's own terminology—treats them as separate entities.)

Although some facilities built by the Army for developing biological weaponry are being turned over to other Federal agencies for benign research projects, the U.S. military still conducts a multimillion-dollar biological research program. On the international front, the Nixon Administration, arguing that the U.S. should not yield to constraints against chemical weapons this country euphemistically describes as "defoliants" and "riot-control agents," stalls ratification of a treaty limiting all forms of chemical and biological warfare.

The CBW program is very much "alive, well and visible," as Col. Fair asserts, and it has been a matter of public concern and controversy ever since the afternoon of March 13, 1968. On that day an Air Force jet roared low over the desert floor at the Army's vast Dugway (Utah) Proving Grounds and released its nerve gas payload over a test target. (Nerve gas causes uncontrollable muscle action by inhibiting cholinesterase, a key body enzyme.) A valve on the plane's high-pressure dispenser failed to shut properly, allowing a small quantity of the highly lethal gas to dribble out as the jet climbed from the test area. As a result, more than 6,000 sheep died less than 100 miles from Salt Lake City, a metropolitan community of over half a million people. Although the military command at Dugway possessed film footage of the entire incident, the Army itself denied that any such test had even taken place (much less gone awry) for more than a week, while Utah public health officials and ranchers tried to figure out how and why so many animals had perished. It wasn't until months later that the Army acknowledged its responsibility for the sheep kill (some Army spokesmen to this day still mumble about "other factors") and paid the ranchers nearly half a million dollars in damages.

Prior to the slaughter of the sheep, cold war developments in the military science of CBW had been lost in the long shadow of thermonuclear rocketry. But the Dugway disaster turned out to be only the beginning of the military's public problems with CBW. In the spring of 1969 the Army's ecologically oafish habit of dumping obsolete and defective chemical weapons into the ocean aroused a storm of nationwide protests. The clamor had barely subsided when, in June of that same year, a minor nerve gas accident occurred—this time on the Pacific island of Okinawa. (This incident was the first indication that the U.S. was deploying nerve gas overseas.) Meanwhile, the Army was quietly draining a lake in Alaska to recover 200 rockets and artillery shells filled with nerve gas; the weapons had been "misplaced" on the ice covering the lake in midwinter several years before and, apparently forgotten, had sunk to the bottom during a spring thaw. The mistakes and mishaps involving CBW were beginning to assume global proportions.

Mounting Congressional and public criticism, triggered by the Dugway sheep kill and the Army's shabby attempt to conceal its mistake, prompted President Nixon to call for an executive review of the CBW program and practices. This review culminated in the "important decisions" announced by the President in a policy statement issued on Nov. 25, 1969. Although the Presidential directive was made with a great deal of fanfare, the actual package held far less than the wrappings promised. Because it is a classic in Nixonian double-talk, as well as the focal point for current U.S. CBW policy, that statement deserves careful consideration and analysis.

CHEMICAL WARFARE OFFICIAL AND UNOFFICIAL GAS

First let's look at the practical effect that the President's pronouncement has had upon the chemical part of the CBW program. It has had no appreciable impact on chemical weapons development or research. The U.S. continues to stockpile nerve gas around the world, from Johnston Island (a tiny atoll in the mid-Pacific) to West Germany. The widely-heralded destruction of chemical weapons, as Col. Fair further explains in his article, has been concerned primarily with obsolete mustard gas and defective or obsolete nerve gas weapons.

Figures provided by the Defense Department's Office of the Comptroller place chemical weapons research, development, test and evaluation spending for fiscal year 1972 at $32.9 million, compared to $33.5 million in fiscal year 1970. Hardly a drastic curtailment. While $32.9 million may seem insignificant in an $80-billion defense budget, you should remember that the kingpin of the U.S. chemical arsenal, VX nerve gas, a drop of which on your skin will quickly reduce you to convulsions and probably kill you in less time than it would take to finish this article, was developed by the British 15 years ago on a research budget of less than a million dollars a year.

So where is this $32.9 million going? It seems evident that the most important development in chemical weaponry is a new method of delivery, called the binary system, in which the payload is carried in two separate compartments. By itself neither component is dangerous, but they combine to form a lethal nerve agent; the binary system is designed to mix the two compounds only after the weapon has been fired toward its target. It requires about 5,000 times the force of gravity to rupture the wall between the two canisters, and, for this reason, it is unlikely that a shipping accident would activate the lethal gas. A 1971 *Market Intelligence Report* published by DMS, a private firm that charts trends and provides information for defense contractors, says that the binary system "is expected to replace existing chemical stockpiles, since it eliminates almost all of the presently-feared handling and storage hazards."

A December 1971 Defense Department fact sheet reports that the Army "will not procure or request funds to procure any more chemical munitions until binary weapons are available." That time may not be far off. According to the Salt Lake City Tribune, Brigadier General Max Etkin, commanding officer of the Desert Test Center, the administrative headquarters for Dugway, told reporters at a press briefing on June 14 of this year that the Army had begun preparing environmental studies prerequisite to resumed open-air testing. "We'll do everything we can short of field tests to get what we need," Gen. Etkin said, "but there will come a time when we'll have to fire the agent" (to insure that the binary system works).

BIOLOGICAL WARFARE—THE GERMS OF TRUTH

The decision to renounce biological warfare—another of the eye-catching gimmicks in the President's 1969 package—was predicated on his conclusion that "biological weapons have massive unpredictable and potentially uncontrollable consequences. They may produce global epidemics that impair the health of future generations." In other words, as British CBW expert Steven Rose observes in a recent article, "The U.S. and British governments have not been convinced of the immorality of BW, but of its inutility. Everything else is public relations." Biological warfare, Rose explains, ". . . is not a sensible weapon, its use makes neither tactical nor strategic sense. Its risks are enormous, and above all its effects are unpredictable. Could it be swift-acting enough to knock out enemy population without running the risk of an epidemic sweeping the globe and affecting one's own? Or will it be so slow-acting that the enemy will have time to unleash full-scale conventional or nuclear war? In any circumstances in which BW might be feasible, it is a safe bet that the military would prefer nuclear weapons."

The riskiness and unpredictability of biological weapons were in the forefront of the mind of a Chemical Corps officer with a Ph. D. in biology when, shortly after Nixon's November 1969 pronunciamento, he admitted to the writer of this present article, "I'm glad we got rid of them [biological agents]. We said that pandemics were most unlikely, but in fact we really didn't know."

Along with the decision to renounce biological weapons, the President declared that "The DOD [Department of Defense] has been asked to make recommendations as to the disposal of existing stocks of bacteriological weapons." The neutralization of germ warfare agents at four installations was begun in 1971 and is scheduled for completion this year.

Citing this destruction of biological agents, Pentagon spokesmen constantly maintain that the U.S. no longer has the capability to wage biological warfare. But when one looks at the facts that have been uncovered, this does not appear to be the case. It is true that the large germ-reproduction facilities at the Pine Bluff (Ark.) Arsenal have been shut down, but they have not been dismantled. Furthermore, the Army still maintains unspecified quantities of disease-producing germs for research purposes, and many germs reproduce with astonishing rapidity (with some bacteria, for example, a few seed microbes in a culture medium may proliferate billions of germs in less than 24 hours). Finally, the Pentagon admits that the delivery vehicles for germ warfare were ordinary munitions that were not destroyed along with the agent stockpiles. Thus this country still has 1) unspecified quantities of deadly microbes, 2) facilities to produce large quantities of germs and 3) ways to deliver them. It is evident, then, that the U.S. military establishment still has the capacity to wage biological warfare.

Is the Defense Department hoodwinking the press and the general public when it maintains it's no longer engaged in biological warfare research? If so, it won't be the first time. As far as this writer is aware, the first official admission that this nation did in fact even possess germ warfare weapons came in the President's pledge that the U.S. would destroy its germ warfare stockpiles. One reason why the existence of biological weapons remained a secret for so long was the too-ready acceptance by press and public of official statements on the subject. In February 1969—just nine months before the President's announcement—an NBC–TV documentary on CBW concluded on this false note: "Despite all the mystery about biological warfare and all the secrecy, there is one simple fact: The United States today does not have germ weapons ready to go at the push of a button. We know how to build them; we have tested the stuff, but so far at least there has been no order to go into mass production. And until there is an order, the U.S. biological warfare capability will remain only a paper tiger. Of course we don't know about Russia or Red China."

At the time of the telecast the army was still denying that it had ever conducted open-air tests with germ warfare agents. When confronted with an Air Force map of the Dugway area bearing the designations "BW Plots" and "Permanently Contaminated Bio Area" at a Congressional hearing in May 1969 on the test program in Utah, military spokesmen lamely acknowledged that the map referred to a small-scale experiment with anthrax spores released 15 years earlier. The Army now admits that open-air germ warfare tests were conducted at Dugway—as well as Ft. Greely, Alaska—up until 1967.

In renouncing biological warfare, the President also promised that "the U.S. will confine its biological research to defensive measures such as immunization and safety measures." In keeping with the President's statement, biological research is now labeled "defensive." In military matters, however, the line between offensive and defensive is blurred at best. It has been pointed out that the term defensive might be applied to the intentions of policymakers, but it has little to do with research categories; for in order to devise and test improved ways to defend against possible attack, biological warfare offensive techniques—such as producing, stabilizing and disseminating disease agents—must be explored.

Many of the so-called defensive projects the Army continues to finance could have offensive applications. For example, at Dugway work continues on developing a sealed, germ-proof mobile command post—and other "sanitary" units—to be used in case of an enemy CBW attack. These items are classified as "defensive protective" equipment, but they could be used equally well by an attacking U.S. force.

The description of defensive biological research categories still funded by the Army points out the ambiguity of the offense-defense distinction. A November 1971 report by DMS, for example, describes the Army's exploratory development program in general biological investigations in this way: "This program carries the aerobiological investigations project for which the service request $2.1 million; the biological systems-potential project, for which $600,000 was requested; and the biological-agent-threat investigations project for which $1.4 million was requested. Work impacts on development of alarms by determining propagation techniques of various micro-organisms." In other words, this $4-million program—styled "defensive" by the Defense Department—focuses on how to spread germs.

According to the Defense Department, funds allocated for biological research have dropped appreciably, from $22.1 million in fiscal year 1970 to a projected $11.8 million for the current year. But some observers fear that these statistics do not provide an accurate indication of the biological research program's status. Funding for continued biological weapons research, they point out, could be easily shifted to other categories within the military budget.

The semantic distinction between offense and defense is not the only loophole in the President's stated policy on biological weapons research. According to the directors of the expanding U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), at Ft. Detrick, Md., "Medical aspects of defense against biological attack must of necessity be directed against the same basic problems" that confront any physician seeking to manage infectious diseases. From this perspective it is difficult to distinguish positive research on disease prevention from questionable research on biological warfare.

While the Army has turned over a large portion of the former biological warfare facilities at Ft. Detrick to the National Cancer Institute, USAMRIID's commanding officer, Colonel Dan Crozier, says his mission—development of medical defensive measures against biological warfare—was not affected by the President's statement. Under the aegis of the Army Medical Research and Development Command, which took over the defensive biological program following Nixon's announcement, USAMRIID requested a 50 per cent across-the-board increase in funding for fiscal year 1973 as it moved into new facilities at Ft. Detrick.

Further facts and figures on the continuing biological warfare program are difficult to come by, but the little information available indicates that U.S. activity in this sphere may be continuing, stated policy notwithstanding:

Since June 1971 the Medical Research and Development Command has spent more than $17 million on a new facility, known as the Western Medical Institute of Research and located at the Presidio of San Francisco. (It is interesting to note that the construction costs for the new facility are not included in the command's $50-million budget.) According to the Army, the institute will conduct "medical research on infectious diseases which affect U.S. fighting forces," specializing in "the area of tropical diseases." Critics have charged, however, that the institute may be used in a continued search for more powerful and more effective methods of waging germ warfare.

An 18-man biological threat-assessment group was transferred from Ft. Detrick to the Dugway Proving Grounds in August 1971, the Defense Department says, "to conduct studies concerned with assessing our vulnerability to biological attack." The new arrivals from Ft. Detrick are described by the Dugway command as "math types" who work with computers and remain under Ft. Detrick's aegis. Why did the Army move a group of theoretical researchers concerned with strategic assessment to an isolated desert test facility larger than the State of Rhode Island? To carry out their calculations in undisturbed solitude? The answer, as usual, is obscured by the national security smokescreen.

Portions of Ft. Detrick's operation have been shifted to the Edgewood (Md.) Arsenal, the Army's chemical warfare headquarters since World War I. Edgewood's research and development budget increased by nearly 50 per cent last year. The arsenal's activities are shrouded in secrecy. When I drove up to Edgewood recently in an attempt to learn about what was going on there, I was turned away. "Are you kidding? You must be cotton-pickin' crazy!" the guard at the gate commented when I showed him my press card and told him why I was there. He finally allowed me to speak on the telephone with the arsenal's public information officer who told me that he could not answer questions or host reporters without prior Pentagon clearance.

From the diverse information available about the arcane world of military biological research, it is possible to surmise that biological warfare programs are continuing under different titles and auspices. The Army, of course, hotly denies this. But the Army's reputation for candor when it comes to CBW is none to reassuring.

Republicans and Democrats alike lauded the President's November 1969 decision to submit the Geneva protocol of 1925 to the Senate for ratification. More than 90 nations—including every major power except the U.S.—have ratified the 37-year-old agreement prohibiting first use in combat of "asphyxiating, poisonous or other gases and of bacteriological methods of warfare." The President solemnly declared, "We take this step toward formal ratification to reinforce our continuing advocacy of international constraints on the use of these weapons."

ACTIONS SPEAK LOUDER THAN AGREEMENTS

But actions speak louder than words, and when the Administration finally forwarded the protocol to the Senate nine months later, it attached an informal understanding saying that the ban does not apply to tear gas and herbicides. Writing in the authoritative, six-volume Stockholm International Peace Research Institute study *The Problem of Chemical and Biological Warfare*, Jozef Goldblat notes that no other nation has entered reservations limiting the types of gas weapons to which the protocol applies.

In attaching this statement of exemption to the Geneva agreement, the Administration was attempting to strike a compromise between the Joint Chiefs of Staff and the State Department. The military planners were not willing to give up the herbicides and "riot-control agents" used in Southeast Asia, and this posed a problem for the State Department: the text of the protocol prohibits the first use of "asphyxiating, poisonous or other gases and all analogous liquids, materials or devices." Whether the Pentagon liked it or not, the phrasing of the international agreement would seem to include a prohibition of use of the chemical agents employed by the U.S. and its allies in Vietnam.

Because of the Administration's Rider, the Senate Foreign Relations Committee has had second thoughts about ratification of the protocol. After holding hearings on the question early in 1971 (the hearings have yet to be published), Foreign Relations Committee Chairman J. W. Fulbright sent a letter to President Nixon asking him to reconsider his position. The Administration's statement of understanding, Fulbright noted in his letter, rests on the opinion that the protocol's wording may not have been intended to prohibit use of riot control and herbicidal chemicals. "Having heard the legal testimony on both sides of the issue," Fulbright observed, "many committee members feel that an adequate legal argument can be made either for or against that interpretation."

To Fulbright, the overriding consideration was that the Administration's rider "cannot help but weaken the effect of the protocol." He asked the President to reconsider "whether the need to hold open the option to use tear gas and herbicides is indeed so great that it outweighs the long-term advantages to the United States of strengthening existing barriers against chemical warfare by means of ratification . . . without restrictive interpretations."

More than a year later, the White House has yet to respond to this letter. Administration spokesmen say that the questions raised by Fulbright's committee are being considered by the State Department. When questioned, however, State Department officials say that any decision to modify the Government's position on the Geneva Protocol must be made by the White House.

The Administration contends that riot-control gases "cause less suffering than the use of other weapons." Assistant Secretary of Defense for International Security Affairs G. Warren Nutter told the Foreign Relations Committee that riot-control agents can be used against enemy troops as an alternative to napalm or artillery, thereby "reducing the barbarity of war." (This position is rejected by many observers, this writer included. See box, "Riot Control: A Euphemism for Chemical Warfare.")

In December 1969 the United Nations General Assembly declared that the Geneva Protocol prohibits "all biological and chemical methods of warfare, regardless of any technical developments." In spite of an intensive U.S. drive to defeat this resolution, it was adopted by a resounding 83-to-3 margin. U.S. lobbying efforts did produce some abstentions, but the campaign was unable to drum up much positive support for Nixon's restrictive interpretation of the protocol. In the fact of overwhelming international opinion, the Administration still clings to its position and the protocol hangs in limbo. (The protocol was shelved once before—in 1926—because of opposition from the chemical industry and Army officers.)

A U.N.-sponsored disarmament commission has negotiated a ban on biological weapons that is narrower in scope than the protocol. A draft proposal on biological weapons was put forward by the Soviet Union in 1971 after the U.S. announced detailed plans for the unilateral destruction of its biological weapons stockpile. The resulting agreement, signed by Secretary of State William Rogers in Washington on April 10 of this year, is limited to the development, production and stockpiling of biological weapons. White House staffers expect the President to forward the new ban to the Senate for ratification in the near future.

MEANWHILE, BACK AT THE FORT . . .

While Government has been wrangling about international agreements limiting CBW, the Army continues to instruct foreign military personnel in CBW strategy, tactics and techniques as part of the training program headed by Col. Fair at Ft. McClellan. Exhibiting its well-developed skills in semantic gymnastics, the Army says it sees no contradiction between this aspect of its program and the stated U.S. policy objective of strengthening international restraints on CBW. "Of course, it got a little tricky a few years back when we had both Arab and Israeli students here at the same time," a former officer at Ft. McClellan recalls with a wry grin.

If the man in the street believes that the military use of poisonous chemical and germ vapors is a thing of the past, he should look again. He could look to the Utah desert, where the Army is anticipating renewed open-air testing of nerve gas; or to the rolling hills of northern Alabama, where the Army is training soldiers in a broad range of CBW-related skills at its Ft. McClellan training school; or to Ft. Detrick, Md., where the Army is expanding its defensive biological warfare research programs, or to the chemical headquarters at the Edgewood Arsenal on the Chesapeake Bay, where the public information officer refuses to see reporters without prior Pentagon approval.

As Col. Fair asserts in his recent Army article, the CBW program is still very much alive. And Col. Fair is right about another thing: it is time to set the record straight on CBW.

"RIOT CONTROL"—A EUPHEMISM FOR CHEMICAL WARFARE

(The use of "riot-control agents" by U.S. forces in Southeast Asia dramatically demonstrates the fallacy of the Administration's contention that the employment of these weapons does not constitute chemical warfare. The following description of gas warfare in Southeast Asia is condensed from testimony berore the Senate Foreign Relations Committee in March 1971 given by Arthur Kanegis, a researcher with NARMIC (National Action Research on the Military-Industrial Complex), a project of the American Friends Service Committee.)

When the U.S. began its gas warfare campaign in Southeast Asia, the Administration said that this was being done "to save lives." But even though the most widely used tear and lung gas, code-named CS, does not kill directly (except in very heavy concentrations or when directed against young or sick persons), these so-called riot-control agents are used to drive their victims into the open, where they can be killed by aircraft or gunfire. According to the October 1969 issue of Army magazine, "CS has proved particularly effective in Vietnam in flushing the enemy out of bunkers preceding high-explosive fire of infantry assaults."

In 1965, then-Secretary of State Dean Rusk said that gas would be used in Vietnam only for humanitarian purposes "in ordinary military operations." Pentagon statements—also made in 1965—that CS was used only "to save lives" were subsequently amended to read "save U.S. and allied lives." The escalatory nature of the U.S. gas campaign in Southeast Asia is clearly illustrated by a 1969 Pentagon 10-point description of the uses of CS in Vietnam. According to the Pentagon, "CS has been most effective in the following roles:

(1) "Restricting the use of terrain and preventing the reuse of field fortifications. This has caused the enemy to alter infiltration routes and has canalized enemy assaults."

One of the weapons employed for this purpose is the BLU–52 chemical bomb, a firebomb case filled with 270 pounds of CS–1 or CS–2 riot-control agent. "Its operation is quite simple," Major Raymond Anderson explained in recent Senate testimony. "After the bomb is released, the thin-skinned bomb case breaks open on impact with the ground, spreading its contents over a wide area. The persistency of the agent varies, depending on weather conditions. CS–1 will last for days and CS–2 will last for thirty to forty-five days."

The use of a similar persistent gas device was described in the *Congressional Record* by Robert Connelly, who served with the Army's air cavalry in Vietnam from April 1969 to April 1970. Connelly said every person in his unit, which was typical of the cavalry, carried three gas grenades. "Plus we had the grenade launchers which also carried ten rounds of CS. And then we had this new thing that came out, which was a tube about this long, about three feet, and it was called persistent CS, and any time we came across any kind of village-bunker complex or anything else, we popped a fuse on it and left it there. This stuff we were told was supposed to last from six to nine months, depending on the weather and when the monsoons came."

(2) "Assisting in the assault of point targets such as bunkers and automatic weapons emplacements."

Veteran Connelly recalls, "If we'd get a contact, like in a bunker complex—this happened four or five times—the first thing we would do when we opened up, we'd fire CS into this, and start calling in artillery and then just lay on a barrage of small-arms fire with the machine guns and weapons, and as we did this, as they came out of the bunkers from the CS, we just cut them down. Every now and then one would come out firing, but the majority of the time they'd come out there, they were holding their eyes, they couldn't see what they were doing. They were coughing, gagging, screaming and we got them."

(3) "Assisting in the assault of area targets."

Such an assault is described by Seymour Hersh, the Pulitzer-prize winning Pentagon reporter, in his book Chemical and Biological

Warfare: "On February 21, 1966 helicopters dropped hundreds of tear gas grenades on a small patch of jungle two hundred and sixty-five miles northeast of Saigon that was believed to be a Viet Cong stronghold. Shortly thereafter, huge B-52 bombers rolled over the jungle area and saturated about eighty-five per cent of the jungle patch with bombs. Officials estimated up to four hundred guerrillas were trapped in the tiny area, only about four hundred yards at its widest. After the bombing raids, two battalions of airmobile troops, equipped with gas masks, were shuttled in to search for the enemy." The New York Times of Feb. 22, 1966 quoted Washington officials as explaining that the new tactics of helicopter-borne tear gas attack "was designed to flush Viet Cong troops out of bunkers and tunnels before the attack by B-52 bombers." "The purpose of the gas attack," the Times noted, "was to force the Viet Cong troops to the surface where they would be vulnerable to the fragmentation effects of the bomb bursts."

(4) "Flushing bunkers and caves."

(5) "Suppressing small-arms fire around helicopter landing zones."

(6) "Impeding approaches to defense perimeters."

(7) "Assisting in withdrawal operations to include extractions, landing zones, downed aircraft crews and long-range patrols in contact."

(8) "Assisting in counterambush operations."

(9) "Reconnaissance by fire."

As described to me by several Vietnam veterans, this operation works as follows: In order to find out if the enemy is in an area, CS is dispersed throughout, and if the enemy comes out coughing and choking and armed, he can then be wiped out by artillery, airstrikes or gunships.

(10) "Rescuing downed airmen."

It is apparent from this 10-point Defense Department list of the uses of CS in Vietnam that gas has become a full-combat weapon employed customarily in situations not at all analogous to riot-control or the rescue of civilian hostages. Yet the U.S. continues to speak of "riot-control agents," insisting that it would be "unreasonable to contend that any rule of international law prohibits the use in combat against an enemy, for humanitarian purposes, of agents that governments around the world commonly used to control riots by their own people."

[From the World Magazine, Aug. 15, 1972]

TEST-TUBE WARFARE: THE FAKE RENUNCIATION

(By Daniel S. Greenberg)

It will be three years in November since President Nixon officially renounced the use of biological weapons, directed the destruction of stockpiles, and ordered the discontinuance of further research into germ warfare. Yet, despite these Presidential directives, there has been an increase in Defense Department spending on research and development of chemical and biological weapons.

The Army is readying ranges for open-air testing of nerve gases—the same poisons that accidentally killed 6,400 sheep in Utah. The Defense Department remains amply endowed with government-owned facilities for chemical and biological warfare research. "In addition," says a study by James M. McCullough, Life Science Specialist at the Congressional Reference Service in the U.S. Library of Congress, "there have been university, private, and industrial laboratories working under Defense Department contracts on chemical and biological weapons."

The study cites a governmental inventory of facilities that includes: the Edgewood (Maryland) Arsenal for "research and development on chemical agents and weapons and chemical warfare defense equipment and techniques"; the Chemical School at Fort McClellan, Arkansas, which conducts "some limited testing of agents"; the Rocky Mountain arsenal in Denver for the "production of chemical munition"; the Newport (Indiana) Chemical Plant "for the production of chemical agents"; the Dugway Proving Grounds in Utah for "field tests of chemical and biological agents"; the Naval Biological Laboratory in Oakland, California, for "biological warfare defense-related research"; the Air Force Proving Ground in Eglin, Florida, for "chemical and biological warfare research, development and test"; and the Naval Weapons Laboratory in Dahlgren, Virginia, for "chemical and biological warfare defense and safety research."

The quest for what is really happening in CBW must start with recognition of a fact that has been publicly stated but often overlooked in the euphoria produced by Mr. Nixon's assorted renunciations of CBW: The U.S. has not disavowed *chemical* warfare. It has disavowed only "first use" of it, which means that the Army—which is the principal custodian of CBW activities—is free to proceed with the development of gases and delivery systems. The U.S. acknowledges that it is doing this at budgetary levels little different from the spending that preceded Mr. Nixon's applause-winning announcements. Thus, if the publicly stated budgetary figures are to believed, the total "chemical program" spending for research, development, test, and evaluation (RDT&E) is projected at $32.9-million for the current fiscal year; in 1970, the figures was $33.5-million.

Although some items within the total annual CBW budgets have decreased over the 1970–73 span, it is worth noting that the yearly RDT&E figure for "lethal chemicals" has risen from $4.3 million to $8 million, following sizable increases in previous years. In heavily censored testimony before the Senate Armed Services Committee last February, Lt. Gen. William C. Gribble, Jr., Army chief of research and development, made clear that the Army's interest in CBW is as strong as ever. "I think the scientists and the laboratory facilities that are engaged in this work are a national asset in terms of providing an emergency response should that ever be required," he said. "We must keep up with the state of the art. . . ."

The same hearing brought out the fact that the Army plans to spend "a large part" of a $9.5 million budgetary item for improvements in the Dugway testing grounds. And recently, as part of the effort to promote public faith in the President's disavowals of CBW, Dugway was opened to newsmen for the first time in fifteen years. The most interesting product of the guided tour, however, was the commanding general's announcement that, as UPI reported it, "We are doing all we can short of atmospheric testing to find out what we need" concerning nerve gas.

Open-air testing, the general added, was certainly "possible" at a later date. Despite efforts to portray it as a relatively humane form of warfare, CBW has a decidedly negative public image, and the Army tends to be uncommunicative on the subject. But it has acknowledged that one goal of current research is to develop less risky packaging for the incredibly lethal nerve gases that are the centerpiece of the CBW arsenal. Last year the Army found itself under assault from many directions when it dumped some 12,000 leaky nerve gas rockets into the Atlantic off Cape Kennedy. Research is now aimed at a so-called binary system, in which the projectile contains two nontoxic substances in its own tight compartment. Once in flight, however, substances are automatically brought together to produce the lethal gas.

As for herbicides and tear gases, years of research and operational use have brought them to an advanced state of development, and military commanders are pressing only for selective improvements. Thus, the Army's herbicide research program is budgeted for $900,000 this year, compared with $1.2-million four years ago. One of the main objects of the research will be to develop techniques for spraying from jet aircraft; the slow tankers that were used in Vietnam are vulnerable to improved anti-aircraft fire. In addition, with the U.S. reaping abuse for the ecological mutilation of an estimated five million acres in Vietnam, another object of research is a herbicide that can wilt both foliage and political criticism. In this regard, according to an official of Defense Research and Engineering, the Army is looking for "something that can take off the leaves without killing the plant."

Incidentally, while the conversion of Fort Detrick to cancer research has been well publicized and widely praised, it is not widely known that the reservation there remains home base for the Army's Vegetation Control Division, which is responsible for herbicide research. Eventually the work will be shifted elsewhere, and the Department of Agriculture will take over the Army's facilities.

The Presidential ban on biological weapons was followed by the destruction of large stocks of a variety of grisly materials for producing disease in humans, livestock, and crops, all of which helped further the impression that the U.S. is getting out of the BW business, Actually, however, the Army retains authority for conducting "defensive" research; and while the President is being praised for ordering the old germ warfare labs converted to peaceful purposes, the Army has been shifting some of its staff operations to the Dugway Proving Grounds.

Budgetary figures, as well as gripes by laid-off workers at the old Fort Detrick laboratories, clearly indicate that the BW effort has been sharply scaled down. Nevertheless, within the category of "defensive" research, the spending plans are far from paltry. "Biological" research this year is projected at $4.2-million, compared with $7.7-million in 1970, while in the category of "defensive equipment" the current sum is $7.6-million. $7.6-million represents a drop of only $7-million over the four-year period.

The crucial question, of course, is whether the "defensive" role allows for experimentation on storage and delivery of biological organisms, as well as for the development of new biological agents. The Defense Department says that such work has been discontinued and that activities at Dugway are confined to "threat analysis"—the development of detection techniques, protective systems, and health countermeasures. The fact is, however, that the Army is the sole interpreter of the term "defensive," and its activities are conducted out of public scrutiny.

The Defense Department's own figures for procurement of chemical and biological systems, as distinct from the separate category of research, provide grounds for skepticism concerning the U.S. disavowal of these weapons. In 1970, the total for procurement was publicly stated to be $149.3-million, of which a substantial portion was for the purchase of herbicides for Vietnam. The exact figure for herbicides on an annual basis is obscured in the bookkeeping; but in response to an inquiry from Senator Gaylord Nelson (D-Wis.), the Air Force—which was responsible for buying the stuff and spraying it in Vietnam—reported overall expenditures of $134,049,005 for the purchase of the so-called Orange, White, and Blue herbicides.

The Defense Department says it is no longer purchasing herbicides, except for minor quantities to kill weeds at military posts. Nevertheless, the total cost of procurement for chemical and biological systems is projected this year at $58.3-million. What are the objects of this vast expenditure? The largest single item, $28.7 million, is simply described as "Smoke"—smoke screens, flares to mark positions, and so on. Second is $14-million under the heading of "Flame and In-

cendiary," presumably including napalm-type weapons which the U.S. has defined as being outside the 1925 Geneva Protocol. Then there is $7.3-million for "Miscellaneous Defensive Equipment," a category that received only $900,000 in 1970. Obviously, these vague categories can conceal a multitude of materials.

(Anyone who doubts the military capacity for blatant evasion of Presidential directives might refer to an official government history, *Science and the Air Force,* published in 1966. At one time, the book points out, the Bureau of the Budget decreed that the Air Force could no longer spend money on basic research. Research spending was continued nonetheless—by charging the costs off to development of a new bomber. "For all the Budget Bureau knew," the book gloats, "the $4.7-million it approved was for research connected with the development of this aircraft, clearly within the realm of applied research. But in reality, this money was handed over to OSR [Office of Scientific Research] to use, as originally planned, for basic research.")

While Mr. Nixon may well be credited with cautious good intentions concerning CBW, the military apparently is having trouble kicking the habit. It is puzzling that the administration itself chooses to interpret the 1925 Geneva Protocol as exempting tear gases and herbicides; in this regard McGeorge Bundy, in the course of his continuing descent from the hawkish role that he occupied as President Johnson's national security adviser, told the Senate Foreign Relations Committee in March 1971:

"Useful as herbicides and tear gas have been in particular situations in Southeast Asia, I know of no senior military commander who would claim that in the wide perspective of the course of the war as a whole their value has been at all critical. In General Westmoreland's authoritative book-length report on his military operations between January 1964 and June 1968, there is only the briefest reference to herbicides and riot control agents. Seen in perspective, they are clearly marginal instruments."

As far as herbicides are concerned, Bundy's point is supported by a still-unreleased study of herbicide usage in Vietnam, conducted by the Army Corps of Engineers. The three-volume work, one volume of which is classified secret while the others are in the "official use only" category, indicates that commanders in Vietnam place little military value on the use of herbicides. Although the battlefield use of tear gas may figure in War College scenarios, experience in Vietnam has demonstrated that the enemy can easily equip his troops with, or train them to improvise, breathing apparatus that renders the gas ineffective. Why, then, does the military persist in retaining the option for herbicides and tear gas, continue to reinforce its capability for chemical warfare, and though the matter is uncertain, to dabble further with biological agents?

The answer is twofold: As Soviet-American arms agreements tend toward effective restrictions on the development of ultimate weapons, the military value of other weapons systems rises commensurately, just as the banning of firearms would elevate the military value of bows and arrows. And, as is clear from public indifference to the savage air offensive that has replaced American ground operations in Vietnam, the problem is not to avoid war; rather, it is to avoid shedding any great amount of American blood. Hence, in the age of the nuclear standoff, the Pentagon is looking hard for highly lethal, non-nuclear, low-manpower systems that satisfy both military necessity and public opinion. And CBW, Presidential protestations notwithstanding, fits in nicely with that quest.

Negotiations for arms-control agreements with the Soviets have frequently foundered on the issue of inspection, with the U.S. insisting that its own inspectors, or perhaps an international group, have the right to conduct on-the-spot checks of compliance. Yet back home, the U.S. government seems unconcerned about verifying whether its army is in fact abiding by Presidential directives to engage only in "defensive" research. The Executive's disregard for Congress in military and foreign affairs has been so thoroughly demonstrated as to eliminate any realistic prospect for defective Congressional scrutiny. When Congress has questioned the military use of weather, modification in Southeast Asia, for example, Defense's long-standing reply has been, in effect, that it is none of your business.

If there is ever an inspection agreement with the Soviets on CBW, it will have an ironic benefit: The American public will have reason to believe government accounts of what is going on in U.S. military laboratories.

AID TO THIEU

Mr. GRAVEL. Mr. President, there has been a great deal of controversy over whether or not the United States should continue its programs of military and economic aid to the South Vietnamese Government of President Nguyen Van Thieu. It is a question of central importance to the peace negotiations in Paris, and the answer finally given will be crucial to the direction U.S. foreign policy follows in the future.

In spite of the great importance the resolution of this issue one way or the other will have, very few Americans are actually aware of the extent of this aid or the purposes it serves. Recognizing this lack of information, Le Anh Tu and Marilyn McNabb of National Action/Research on the Military-Industrial Complex have prepared a special report entitled "Aid to Thieu", which traces the history of U.S. aid to South Vietnam as well as the ongoing day-to-day programs in that country which U.S. dollars finance. I think members of the Senate and their constituents will find this report of interest, and I ask unanimous consent that it be printed in the RECORD at this point.

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

AID TO THIEU

1. DEADLOCK ON AID

The Paris peace talks often ridiculed as "propaganda forums," have actually revealed many areas of agreement. The United States, the Saigon government, the Provisional Revolutionary Government of South Vietnam[1] (called the "Vietcong" in the American press) and the Democratic Republic of Vietnam ("Hanoi") all agree in principle to the withdrawal of U.S. forces, the release of war prisoners, internationally supervised free elections, and even to a coalition government.

Yet the talks are deadlocked. One question remains unresolved: should the U.S. continue its aid to Thieu? The PRG insists that this aid must be stopped. The U.S. is equally stubborn. Both parties feel that their vital interests are involved on what might appear to be a minor issue.

To clarify the dispute over aid to Thieu, this paper will review U.S. assistance programs in South Vietnam. Special attention will be paid to projects that are considered to be of high priority by the U.S. We will attempt to describe the effects of these programs on the Vietnamese people for whom they are designed, and to determine how much the U.S. has spent on these projects. The U.S.-sponsored programs are well known to Vietnamese but not so familiar to American citizens who pay for them.

Our main source of information is the hearings held each year in Congress to examine how American taxpayers' dollars are spent in Vietnam. Supplementary sources include U.S. government publications and news reports from Saigon and Western newspapers.

2. THE SPRING ROUND-UPS

Most news reports on the spring 1972 offensive told of dramatic military clashes. Less mention was made of certain actions taken by the Thieu government which were made possible only by U.S. aid.

While U.S. bombers were pounding the contested and "enemy"-controlled areas of Vietnam, Thieu's police, accompanied by American advisers,[2] were rounding up thousands of suspected "Communist sympathizers" in the so-called "secure" areas.[3] The spring offensive increased the regime's fear of trouble from internal dissenters. On May 26, 1972 the Buddhist Student Association in Saigon announced the arrest and imprisonment of the entire leadership of many student organizations and civil rights groups in South Vietnam.[4] Relatives of known political activists have also been taken into custody, and held as hostages.[5]

A former New York Times Saigon correspondent and veteran observer of the war, Tom Fox, describes the far-reaching effects of this crackdown:

"Nearly everyone known to have been an outspoken critic of the Thieu government—and not protected by international recognition—has suffered at the hands of the powerful National Police in recent weeks.

"In Hue alone, more than 1500 have been arrested and most have been taken to Con Son prison island, an island which for decades has confined critics of French and American supported governments. Women and children have been rounded up among the 'political suspicious'—and taken by police to Con Son.

"We've arrested the entire student body of Hue," Hoang Duc Nha, President Thieu's press secretary recently stated flatly...

"In many cases people have been arrested solely because they have relatives in the NLF or in North Vietnam ...

"A lower house Deputy from a Delta province said the police have come into villages and picked up men in their eighties who have not left their home for years, forcing them into small prison cells. 'Even village and hamlet chiefs and officers in the Saigon army are being arrested and interrogated,' he added."[6]

The ground for these arrests, having "Communist sympathies," are broadly interpreted. They extend to all political opponents of the Thieu regime, especially those having credibility and influence with the general populace. Those arrested include student organizers, religious leaders, and newspaper editors.

"In Longxuyen Province, an area dominated by the Hoa Hao religious sect, several hundred university students held a rally to protest a decree under which most of them would be drafted. Although anti-American banners were displayed—"The students and people will not die for the interests of the imperialists"—the police did not intervene. Later, however, leaders of the rally were reportedly arrested.

"Other arrests of student leaders appear to have had little to do with public demonstrations.

"A Roman Catholic priest in Saigon said he conservatively estimated that nine local leaders of the Catholic Labor Youth Movement had been arrested and that half a

Footnotes at end of article.

dozen others had disappeared. In such cases the police rarely give any information or even identification." [7]

3. OPERATION PHOENIX

A Washington Post account of the "tight grip of police authority" in Danang in mid-June mentions a surveillance program called Operation Phoenix which has facilitated many of the spring arrests:

"There have been hundreds of arrests (no one seems to know precisely how many) of suspected terrorists and political dissidents under the Phoenix program for "neutralization" of the Vietcong and the broadened police powers of the martial law decree.

"But when the police come, even tea girls in the bar of the Grand Hotel . . . become frightened and take cover." [8]

Phoenix was set up to "neutralize the Viet Cong infrastructure," that is, to kill or jail members of the National Liberation Front (NLF).

An early report about this controversial program was written in February 1970 by Washington Post correspondent Robert Kaiser. The Chairman of the Senate Foreign Relations Committee asked the deputy head of the Phoenix program, U.S. Ambassador William Colby, if Kaiser's article was "reasonably accurate." The following is Colby's response:

"I would have a few problems with minor aspects of it, but I think, in general, it states the fact that we have a difficult problem of making the Phoenix program work . . ." [9]

Colby did not dispute correspondent Kaiser's account that

"Phoenix was the idea of the CIA [Central Intelligence Agency], and until last July it was run by the agency. Phoenix operations conducted by Provincial Reconnaissance Units have involved assassinations. These units, another CIA organization composed of Vietnamese troops and U.S. advisers, were organized primarily as a counter-terror group to operate behind enemy lines. Assassination of Vietcong officials was one of their assignments." [10]

Like other American-initiated programs, Phoenix has also been "Vietnamized." As early as December 1967,

Phoenix was adopted by the Vietnamese government, at American urging (or perhaps insistence) . . .

"Phoenix offices in the 44 provinces and most of the 242 districts of South Vietnam (all with U.S. advisers) are supposed to maintain dossiers on Vietcong officials in their area and a "blacklist" of wanted men and women." [11]

Phoenix operating procedures are oftentimes imaginative. Don Luce, former head of International Voluntary Service in South Vietnam, reported to a Congressional committee what he had been told by a schoolteacher in Quang Tri province about Phoenix there:

"Well, this is how Phoenix works in my village. Two men came in black pyjamas and carried AK-47s. They then—they were there for a while, and then the police force came in, and then the government officials, and so on. And then they arrested all of those people that these two men pointed out as having been kind and providing food, and so on, to these two people who had been posing as NLF soldiers." [12]

Another way to identify and corner NLF suspects is through the use of "village profile books." There is a profile book for almost all the villages in South Vietnam. In it are the names, ages and addresses of NLF sympathizers living in a particular village and the names of VC Infrastructure (VCI) who once operated in the villages and are now in hiding. A present project is attempting to complete this book with photographs of the VCI secured from family photo albums, etc." [13]

These profile books are being compiled by the Rural Development (RD) cadre, special teams of armed Vietnamese civilian operatives currently numbering over 30,000.[14] The RD cadre wear black pyjamas resembling those worn by local people to help them blend more easily into village life.

Originally conceived of as a bridge between the Saigon regime and the rural population, the RD found itself losing in political competition with the NLF. The American design has been to offer the Vietnamese a "political, economic and social revolution far superior to anything the Communists can offer." [15] Despite efforts such as the RD cadre program, however, "the social revolution underway in South Vietnam is primarily identified with the National Liberation Front," [16] in the words of an experienced American adviser to Vietnam.

RD cadre have increasingly taken on the duties of being Phoenix agents, tracking down and assassinating their NLF rivals. The transition has been easy for the RD, since they are directly salaried by CORDS (Civil Operations and Rural Development), which is run by the U.S. military. According to the General Accounting Office,

"The RD cadre is supported solely by the United States, and about $120.5 million [1968–1971] was converted to piasters to pay the cadre's salaries and allowances." [17]

This procedure is considered to be highly unusual, for other employees of the regime, such as the regular and para-military soldiers are paid by the regime, albeit with American funds. But the RD cadre, the political representatives of the Saigon regime to the people, are directly salaried by the United States.

Ambassador William Colby [18] admitted to Congress that over 20,000 people have been killed under the Phoenix program.[19]

Some Phoenix people are constantly discovering new ways to spend U.S. money. A pilot program has been set up offering cash rewards of up to $11,000 for the capture of key NLF members. A dead NLF person goes for half price,[20] since Phoenix is more interested in live prisoners who can be grilled for more information.

Other Phoenix officials have not shown much initiative. Much of their apathy is due to the fact that:

"Some local officials have made private accommodations with the Vietcong, the U.S. and Vietnamese officials say. They are unwilling to upset these arrangements by chasing VCI." [21]

In an effort to activate slow-moving Phoenix operatives, quotas were set "to prod recalcitrant local officials" [22] into arresting more NLF members:

"Thus a province chief has to report neutralization of a certain number of VCI every month to stay in good. 'They will meet every quota that's established for them,' one American adviser noted." [23]

Greatly increased quotas as of July [24] may only have contributed to more indiscriminate arrests. At the same time, standards of evidence have been lowered nearly out of existence. When previously the testimony of three neighbors or acquaintances was necessary, now a single bad word is enough for a Phoenix arrest.[25]

Although Vietnamese do the actual work of capturing and killing people "targeted" by Phoenix, the American contribution is by no means insignificant. According to Ambassador Colby,

"The United States through CORDS has provided advice and assistance to the Phoenix program. This currently includes approximately 637 U.S. military personnel working with the Phoenix centers." [26]

As of May, 1971, the U.S. had spent almost $4 million just to build Phoenix centers and buy office equipment.[27] One estimate of U.S. aid to Phoenix from 1968 to May 1971 came to $732 million.[28]

This is the figure given to Congress, but it may not even be close to the real amount. Here is as much information as staff member of the House Committee on Government Operations, William Copenhaver, could pull out of James Duff, an Associate Director of the International Division of the General Accounting Office:

Mr. COPENHAVER. Take Phoenix, for example: for all we know then, Phoenix may be actually funded to a far greater extent than even AID or DOD say they are; isn't that possible?

Mr. DUFF. We wouldn't know.

Mr. COPENHAVER. You wouldn't know, but would DOD know?

Mr. DUFF. I can't answer that. I don't know.

Mr. COPENHAVER. Certainly, it would be the minimum, but it could be, say, double or triple what they claim, couldn't it?

Mr. DUFF. I don't know.[29]

Nor did Copenhaver learn much from Duff's bòss at the GAO, Oye Stovall:

Mr. COPENHAVER. May I conclude by asking this? Is it correct, then, that GAO doesn't know and that probably no one in the Government actually does know how much has been expended on a program like Phoenix?

Mr. STOVALL. Yes. We have said we don't know.

We don't know of anyone else who knows.[30]

Earlier in the hearings, Stovall testified that his office does not audit the Central Intelligence Agency's spending, very likely another source of Phoenix funding. "Does anyone?" he was asked. Came the predictable reply, "I don't know, sir." [31]

4. INTERROGATION CENTERS

Phoenix prisoners are sent to Province Interrogation Centers (PIC). A former CORDS employee, Theodore Jacqueney, told Congress that:

"PICs have a reputation for using torture to interrogate people accused of Vietcong affiliations . . .

One wealthy old man I knew in Saigon was arrested and accused of being a Communist spy. Two American officials who knew this man intimately later told me that they believed that the man had actually been a VC. Both of them on separate occasions told me that, once arrested, the old man had wanted to confess, but had been tortured horribly anyway, simply because it was standard operating procedure to torture prisoners.[32]

According to an August 1972 report published by *New York Times* correspondent Sydney Schanberg,

"Documents smuggled out of South Vietnamese prisons and extensive interviews with former prisoners paint a picture of widespread torture of people jailed by the Saigon Government." [33]

The report gave a "sampling of the prisoners' accounts:"

"Nguyen Thi Yen was beaten unconscious with a wooden rod. Later, when she revived, she was forced to stand naked before about 10 torturers, who burned her breasts with lighted cigarettes.

Trinh Dinh Ban was beaten so badly in the face that the swelling shut and infected his eyes. The police drove needles through his fingertips and battered him on the chest and soles of his feet until he was unable to move.

Vo Thi Bach Tuyet was beaten and hung by her feet under a blazing light. Later, they put her in a tiny room half flooded with water and let mice and insects run over her body." [34]

Nor were these isolated incidents, Schanberg asserted:

"The three accounts are typical of the stories told in the other documents and in the interviews about the treatment of the thousands of students, workers, peasants, women and children arrested by the national police and military authorities in the "preemptive sweeps" made in the search for Communist sympathizers and agents." [35]

Schanberg's findings have been corroborated by other sources. Dispatch News Serv-

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ice correspondent Tom Fox interviewed a thirty-year-old woman released in July 1972 from a police interrogation center in Saigon, who said that:

"More than 90 percent of those arrested faced violent interrogations, including clubbings, electric shock treatments, the pulling of fingernails, and the forceful drinking of soapy water." [36]

These reports, however shocking, are not new. Earlier accounts have described the use of torture by Saigon officials. Congress was informed about such practices several years ago by Dr. Marjorie Nelson, a Quaker hospital worker in Quang Ngai province. Testifying to a House subcommittee hearing in July 1970, Dr. Nelson described her own experiences in working with tortured prisoners:

"I also regularly examined and treated prisoners who have been tortured. This seems not to have occurred in the prison itself but in the Province Interrogation Center. I saw dozens of patients with bruises of varying severity. I also examined patients who had coughed up, vomited, or urinated blood after being beaten about the chest, back, and stomach. On at least two occasions I was able to document by X-rays fractures of bones following beatings. Prisoners also told me of being tortured by electricity with wires attached to ears, nipples and genitalia; by being forced to drink concoctions containing powdered lime and other noxious substances, and by being tied up and suspended by ropes often upside down from the rafters for hours. On at least three occasions, patients seriously ill or injured and under my care were removed to the Province Interrogation Center without my knowledge for further investigation." [36A]

Subsequent Quaker field reports, even to this day, confirm Dr. Nelson's testimony and assert that the use of torture is even more widespread.

These are considered standard operating procedures for the interrogation centers. The well known are not exempt from such treatment. The President of the National Student Union of South Vietnam, Huynh Tan Mam, is now crippled, partially deaf and partially blind as a result of police torture. Le Van Nuoi, Chairman of the Federation of High School Students in South Vietnam, lost both legs from severe beatings. A woman lawyer active in civil rights who had studied at Columbia University, Mrs. Ngo Ba Thanh, has undergone water torture.[37-39]

Water torture is a very popular method used by the National Police. It consists of forcing large amounts of water into the stomach of the victim and then stamping on the person's stomach, which causes great pain and induces vomiting.

One reason for the use of torture is that it is a way to justify the wholesale arrests that have taken place. These people must be guilty of something, so they are sent to the interrogation centers and

"are pressured by the police to confess their 'political crimes.' Since statements gained by police during interrogation, under the French legal system, can be used as evidence during subsequent trials, police have been known to use torture when necessary." [40]

This report was corroborated by Sydney Schanberg's interviews with former prisoners:

"Several of the informants said they had discovered, while in prison, a sardonic saying favored by the police—'Khong, danh cho co'—'If they are innocent, beat them until they become guilty.'" [41]

Again, the Saigon government is not alone in this venture. Although there are no available figures for the cost to the American taxpayer of maintaining these interrogation centers, U.S. Ambassador Colby admits that they are funded directly by the United States.[42]

Americans also participate in PIC activities. According to Theodore Jacqueney,

"These PICs have a CIA counterpart relationship, and in some cases also have a relationship with the AID police advisor. Not in all cases, however—last year the senior AID police advisor of the Da Nang City Advisory Group told me he refused, after one visit, to ever set foot in a PIC again, because 'war crimes are going on in there.'" [43]

5. NATIONAL POLICE

The National Police have other duties besides manning the interrogation centers. They are also employed to break up strikes, such as the October 1971 strike at the Eagle Battery Factory (owned by Mrs. Thieu) [44] where workers demanded a pay raise to keep up with rising inflation. Wages had ranged between 45 and 80 cents a day. The police were called in and arrested workers, union officials and three Catholic priests who had been actively supporting the strikers.[45]

Thousands of policemen have been assigned to guard some 650 checkpoints "at key locations on roadways and waterways, and operate mobile checkpoints on remote roads and trails," [46] in order to, as U.S. police adviser E. H. Adkins put it, "regulate the movement of selected resources, both human and material." [47] At these checkpoints travellers are stopped and asked to show their identification cards. If the police do not feel satisfied, they can send a "suspect" down to an interrogation center for further examination. Sometimes, when they are feeling especially nervous, such as during the 1968 Tet offensive, a "suspect" can be shot on the spot.[48]

In the cities there are other ways to control the movement of people:

"The police make a practice of cordoning off residential areas and searching each dwelling. In such sweeps, which take a day or more, even a person with valid identification faces arrest if he is found after curfew at the home of a family whose official family list does not show his name." [49]

Another important task of the National Police, besides arresting the "politically suspicious," is to hunt down thousands of draft dodgers and deserters . . . Many tired soldiers have left their units to seek refuge in back alley houses and shacks. It is the job of the National Police . . . to find the boys, arrest them, and return them to their units.[50]

There seems no end in sight for police work.

One high ranking American police advisor said 14,000 Vietnamese—including draft dodgers and deserters—are being arrested monthly.[51]

Consequently, the size of the National Police has increased drastically. In 1960 the National Police numbered only 16,000. Today it is over 120,000, with a projected goal of 147,000.[52] By comparison, New York City, which has the nation's highest crime rate,[53] has between 30,000 to 40,000 policemen for a population of about 9 million people. South Vietnam has four times the number of policemen to monitor less than twice the number of people.[54]

Police work has been an essential part of the U.S. assistance programs since the formation of a government in Saigon. A spokesman for the Agency for International Development (AID) told Congress that

"AID and its predecessor agencies have supported public safety programs [police] in Vietnam since 1955 . . . AID's task has been to assist the National Police in recruiting, training and organizing a force for the maintenance of law and order . . ." [55]

AID has supplied over 200 police specialists to help "train and organize the National Police forces at all levels." [56] Altogether there are over 7,000 U.S. personnel working in South Vietnam's "Public Safety" programs.[57]

An estimate of U.S. aid to maintain the National Police is difficult to compute, since it is funneled through several agencies. The police program (called "Public Safety") was originally under AID, but is now under CORDS with part of the bill paid by DOD. The reason is that AID's appropriations had been reduced, so "in 1967 DOD agreed to finance those AID civil-type programs which DOD considered had military import." [58] Over $100 million was spent on "Public Safety in Vietnam from 1968 to 1971—two thirds of the funds came from AID, one third from DOD.[59]

6. THIEU'S LAWS

To legitimize the arrest of Thieu's political opposition, a number of laws have been enacted. One such is article 19 of Decree Law 004/66, or the "an tri" law, stating that

"Those persons considered dangerous to the national defense and public security may be interned in a prison . . . for a maximum period of two years, which is renewable." [60]

Another law used against political prisoners is article 2 of Decree Law No. 93/SL/CT:

"By this Decree are outlawed private persons, parties, leagues, associations that commit acts of any form which are directly or indirectly aimed at practicing Communism or Pro-Communist Neutralism. . . . Shall be considered Pro-Communist Neutralist any person who commits acts of propaganda for and incitement of Neutralism: these acts are assimilated to acts of jeopardizing public safety." [61]

Under questioning Ambassador Colby admitted that these laws were invoked to detain people when there is insufficient evidence to convict. The great bulk of people arrested under Phoenix are never tried by court, nor are they allowed legal counsel or any right to a hearing under the present legislation.[62]

Of course there are always exceptions to the rule, and some people are brought to trial before military court, in spite of the fact that this court was declared unconstitutional by Thieu's Supreme Court. Sometimes even the unconstitutional court arrives at a non-guilty verdict, but it "is irrelevant anyway, for even the acquitted are seldom released." [63]

In order to keep up with the increased "Spring arrests," Thieu requested on May 9 emergency power to rule by decree in order to supplement the already arbitrary laws of detention. However, even Thieu's Senate balked at ratifying laws further suspending civil liberties, despite government "inducements" of bribes ranging between 1 million and 10 million piasters.[64] U.S. Senate investigators were surprised to learn that the U.S. Embassy had supplemented Thieu's own efforts by actively lobbying leading South Vietnamese Senators in order to "obtain their support for the Emergency Powers bill." [65]

On July 15, 1972 a new presidential decree on public safety was issued making possible the arrest of virtually every citizen in South Vietnam. The decree speaks for itself, and we will quote it extensively.[66] Article 1 reads, in part:

"Those caught wandering during the hours of curfew without a written authorization, or a valid excuse such as birth-giving, an unexpected illness requiring emergency treatment, etc. will be subject to a prison sentence ranging from 6 days to 2 months, or fined from 1,000 to 10,000 piasters." [67]

Article 2:

"Those presently detained or placed under house arrest by government decision who attempt, or are planning an attempt to escape, will be severely punished." [68]

Article 3:

"All forms of labor strikes and disputes, even those that have gone through a process of mediation, and even if its only purpose is to provide mutual support to resolve a labor conflict, will be strictly forbidden." [69]

Footnotes at end of article.

Article 4:

"Striking workers will be jailed from 6 days to 6 months, and will be fined from 5,000 to 100,000 piasters . . .

If the strike is in a field affecting public services . . . the punishment will be doubled. If the strike has another motive than to settle a labor dispute, and furthermore has the potential or the intention of placing the public in difficulties for many days and as a consequence forces the government from its desired path, the striking workers will be jailed from 6 months to 2 years and will be fined from 5,000 to 500,000 piasters . . .

". . . those encouraging or leading a labor strike will be severely punished." [70]

Article 7:

"If there is a dispute between the employer and employees, both must follow a process of mediation . . . All rulings by the mediator to resolve the dispute . . . will be considered binding and enforceable after 15 days . . ." [71]

Article 8:

"Those wrecking the public market or plotting to wreck the public market, preventing or plotting to prevent the people from shopping, with the purpose of sabotaging public order, will be severely punished." [72]

Article 9:

"Those who organize demonstrations or gatherings considered detrimental to national security will be severely punished; those who attend [such meetings] will be jailed from 1 to 6 months." [73]

Article 10:

"Those who popularize, possess or circulate those publications, leaflets, information, news or photographs deemed harmful to national security, will be severely punished.

Printing presses and vehicles to distribute [these materials] will also be confiscated." [74]

Article 11:

"Those caught with munitions, weapons, bullets and flammable materials in their possession without a valid authorization will be severely punished." [75]

Article 12:

"Concerning those captured because they are deemed dangerous to public safety and national security . . . if the authorities find any information regarding these dangerous activities, then they have every right to confiscate them following orders from the chief of state." [76]

In addition, the decree legitimized the active use of weapons by government personnel in the line of "self-defense" or to hunt down the "suspects." The new law also declared invalid all past laws that were in conflict with this present decree.[77]

Should the Saigon press object to the July decree, the Thieu regime issued new guidelines to ensure responsible news coverage. Under an edict announced on August 5, 1972, every daily newspaper is required to deposit in the government treasury within 30 days the amount of 20 million piasters, or about $47,000. This money, according to the decree, will be a guarantee to cover possible future fines and court charges arising from the government's already strict press code on "national security" matters.[78]

The guidelines for proper press reportage are vaguely worded. As Saigon Minister of Information Truong Buu Dien phrased it,

"We hope the national press will put on an entirely new face which will be more progressive as well as more responsive to the needs of national security and public order." [79]

Newspaper publishers will have a hard time figuring out whether their articles violate the new press codes, however, since the Minister of Information declined to give definitions of "more progressive" or "more responsive to the needs of national security and public order," insisting that those were matters for the courts to decide.[80]

There are 46 daily newspapers in South Vietnam. Many of them will go out of business simply because they cannot raise the bond money required by the Government.[81] In addition there is a clause stating that when the daily issue of a newspaper is confiscated by the Government for the second time for carrying "articles detrimental to the national security and public order," the Interior Ministry can shut down the paper pending a decision in the courts.[82]

For non-governmental publications, the impact of that second-offense clause could be even more severe than the financial requirement in the decree. Hardly a day passes in Saigon without a few dailies having their editions confiscated on grounds of their having violated the security provisions of the press code. Last week, the Government took 44 such alleged violations to court and won vedicts of guilty in 39.[83]

The grounds for violating national security codes have been stretched to include any news considered unflattering to the regime:

"Examples of the kinds of articles considered offensive were printed early in July when Nguyen Thai Binh, a South Vietnamese student whose American-funded scholarship had been terminated by the Saigon government because of his anti-war activities in the United States, tried to hijack a Pan American jetliner on his way home and divert it to Hanoi. The issues of more than two dozen newspapers were seized, in most cases merely for reporting that the student had wanted to go to North Vietnam." [84]

Six newspapers were confiscated in the first week of August, 1972 for reproducing a BBC report quoting a South Vietnamese general as saying that "Communist regiments" were trying to cut the highway between Saigon and the Delta region. As the Washington Post noted,

"The information is perfectly true, but only war news authorized by the psychological warfare authorities in Saigon is allowed to be printed." [85]

A military court, composed exclusively of Thieu appointees, rules on cases of press violations. Its decision is final, and there can be no appeals.[86] The punishment for press violations can be as much as 5 years imprisonment and a 5 million piaster fine, equivalent to $12,000.[87]

South Vietnamese newsmen contend that the new press laws have been issued because Thieu "wants to reduce the number of newspapers to five, all supporting him." [88] A more delicate expression of Thieu's desires was made by his Minister of Information, who stated that the government "intended to promote the merging of small newspapers into big ones." [89]

7. PRISONS

By conservative estimates there are over 100,000 political prisoners in the South,[90] where the number of jails exceeds the combined total of schools, churches and pagodas. In 1970, 80 women inmates from Con Son Prison Island, who were transferred to another jail, managed to smuggle out a letter protesting prison conditions. This 25-page letter was then made public by Mrs. Ngo Ba Thanh's civil rights organization.[91]

The women inmates described how the prisoners in Con Son were fed:

"Their food consists of a handful of rice with rotten dried fish or fish sauce mixed with sand and pebble. The rations of 5 are not enough for only one. They are given 3 meals in 7 hours and nothing for the rest of the day, that is 17 straight hours. In nearly 8 months, only 4 meals with uneatable raw vegetables were served . . . Sometimes the prisoners ask for more rice or water . . . Instead the guards give them rice mixed with kerosene and dried fish with soap. No different diet for sick prisoners." [92]

They also spoke of conditions in the tiger cages, which are jail cells under ground level, with iron bars at the ceiling instead of on the sides. The ceilings are constructed so low that the prisoners do not have any standing room, so many lose the ability to use their legs. The guards are able to walk on the iron frames above the heads of the prisoners.

"In the tiger cages, due to lack of room, two of the five inmates lie on the cement floor and the other three on the lower part close to each other in the hot atmosphere like canned sardines. One of them has to lie close to the toilet bucket in each cage. Buckets of quick lime and sticks are always kept handy on the iron frame on top of the cell for the guards to use at will . . . Opposite to the tiger cages is a dump of excrement which gives out an intolerable stink . . . At night the prisoners cannot sleep due to the bitter cold, mosquitoes, bugs and thirst.[93]

The prisoners also have difficulty keeping themselves clean. A 5 minute bath is permitted three times a month. So the prisoners have just enough time to undress, pour a tin of water on their bodies, then to dress . . .[94]

Consequently, they suffer many diseases:

"Intestinal diseases, stomach ache, diarrhea, fever, chlorea, tuberculosis, paludism, beriberi, paralysis, trachoma, vulvitis. Particularly some prisoners vomit excrement." [95]

Political prisoners are also subject to regular beatings, called "repressions," where tear gas rockets, acid and quick lime are employed. On these occasions even American rock music serves a useful function, as two prisoners described:

"At 10 a.m., the loudspeakers of the central tower are blaring out American music at full power. No doubt about what is going to happen: we recognize the "pop" tunes that are delivered at each repression; the music covers the cries of the prisoners who are being beaten." [96]

In 1969 a U.S. Study Team of distinguished Americans, including a retired Rear Admiral from the U.S. Navy, a bishop from the United Methodist Church, and the Dean of Boston College Law School, visited a number of prisons in South Vietnam. They described conditions in the Thu Duc Women's Prison in the suburbs of Saigon:

"There was overcrowding of the cells. This was especially hard on nursing mothers and those with small children. In the cell where babies were shown to the Team, it was confirmed that fifty people lived in a room 40' x 30'. Primitive sanitation was severely inadequate. The medical provisions of the camp, if used as it was claimed, could ameliorate the situation, but there was evidence that some prisoners had not had recent medical attention, and skin ailments among little children pointed to low standards. Of particular concern are: the length of sentences; the youth of some classified as Communists; the large numbers of unconvicted prisoners; and the looseness and generality of charges and classifications. Governor Minh told us that there were 50 children from birth to 14 years in the prison; 40 were classified as young offenders (13–17 years); presumably the remainder were in prison solely because one or both parents were there." [97]

In 1971, after the tiger cages in Con Son prison island were discovered by two American Congressmen, the Saigon government embarked on a plan to build new tiger cages (or isolation cells, as they are officially called) using prison labor. However the prisoners refused to participate in this "self-help project" and AID was forced to award a $400,000 contract to RMK–BRJ, an American company, to build these tiger cages.[98]

In response to Congressional inquiry, U.S. Ambassador William Colby gave a brief history of the American contribution in maintaining the regime's penal system:

"In 1963, a U.S. program of advice and assistance to the GVN prison system was initiated, which was taken over by CORDS in 1967 . . . In 1967, the problems of overcrowding because of the war and loss of

Footnotes at end of article.

prisoners to VC attacks became serious. Thus, a substantial program of fortification and expansion of prison facilities was undertaken . . . Advisory attention to these centers has been increased over the years, using both civilian and military personnel, *including six members of the United States Federal Bureau of Prisons now in Vietnam*," [99] (emphasis ours).

While the program has been "taken over by CORDS," AID continues to be responsible for providing "technical advisers to help supervise relocations and to train new recruits." AID also furnishes "supplies for prison security." [100]

Funding for Thieu's prisons comes from both AID and DOD. The following chart (provided by Ambassador Colby) [101] lists the annual costs since 1967:

Fiscal year:	*Amount*
1967	$78,000
1968	1,199,700
1969	951,500
1970	315,300
1971	267,000
1972	627,400

8. PACIFICATION

Only a decade ago nine out of every ten Vietnamese lived in the countryside.[102] Consequently a basic goal of the American war effort has been to bring the rural population under the control of the Saigon government. According to U.S. Ambassador Robert Komer, the chief architect of this program, this attempt has had many names; the most widely known (though hardly the most apt) is pacification.[103]

Summarizing his work, Ambassador Komer said:

"Conceptually, all Vietnam pacification efforts have been designed essentially to serve two constructive aims: (1) sustained protection of the rural population from the insurgents, which also helps to deprive the insurgency of its rural popular base; and (2) generating rural support for the Saigon regime via programs meeting rural needs and cementing the rural areas politically and administratively to the center. A secondary purpose has been to help neutralize the active insurgent forces and apparatus in the countryside. In essence, then, it is a civil as well as military process." [104]

These objectives are to be accomplished in two distinct stages. The first stage is to gain physical control of bodies, either by occupying a village militarily or by moving villagers to a secure area. The second stage is to win over the peasant's political loyalty. The strategy here is to interest the peasant in American technology by introducing new rice strains, fertilizer and farm machinery, in the hope that he will prefer the American brand of "social revolution" to what the insurgents have to offer.

Expressions of optimism by U.S. officials about the success of the first stage are by now routine. However, in response to a Congressman's query about a July 1971 Washington Post article headlined "Vietnam, a Fragile Security: Population Still Up For Grabs," U.S. Ambassador Colby (Ambassador Komer's successor) explained the difficulties of the second stage:

"I think the thrust of that article, Mr. Chairman, was that the security situation is really quite a bit better than it was, and is quite substantially in hand, but that *the political problem is yet to be faced* . . . I would be inclined to agree that certainly the political identification of the people with the Government has not proceeded as fast as the security situation has, but this is a sequential development. This is the design of the plan . . . The process is building a new political base of this government from the bottom up." [105]

The first stage

Even before 1960, whole villages had been uprooted and settled in Agrovilles, armed camps surrounded by barbed wire and under strict government control. Since then, these concentration camps (as they are widely called in Vietnam) [106] have assumed different names: Strategic Hamlets, New Life Hamlets, etc. Yet they were, in the words of Ambassador Komer, "promising though regrettably modest experiments." [107]

The "New Model" Pacification Program from 1967 to 1970 was more effective, he claimed:

"The 1967–1970 program differs from its predecessors less in concept than in the *comprehensive nature and massive scale of the effort undertaken*, and in the unified management which pulled together a great variety of subprograms for the first time on a fully countrywide scale." (emphasis ours) [108]

The results were indeed staggering. According to one Senate report, by 1970 over a third of South Vietnam's estimated population of 18 million have become refugees since 1964, with the vast majority still crowded into urban areas or into refugee centers near provincial and district towns.[109]

At the start of the "New Model" Pacification Program, the U.S. military was directly involved in the process of depriving "the insurgency of its popular base." This was done by relocating the peasants into refugee camps, where the task of "rebuilding" was taken over by the U.S. civilian apparatus.

Jonathan Schell, a journalist who accompanied the American military in its operations in the Central Provinces of Vietnam during this first stage, noticed that many officers and civilians saw the war as consisting of two more or less equal "sides" or "halves"—the "military half," which destroys, and the "civilian half," which builds again. . [110]

One standard operating procedure for driving peasants out of "insecure areas" was to saturate the countryside with bombs.[111] In an eyewitness account, Schell described how U.S. ground troops rounded up villagers at gunpoint, transported them to refugee camps under the Saigon government's control, and razed their ancestral homes to the ground to discourage the peasants from returning.[112]

Former Deputy Director of AID in Saigon, Wells Klein, complained to Congress that villagers were not allowed to return to their former homes, or were warned that "if they do so, they would be bombed and mortared as before." [113] This threat was backed up by "the persistence of 'free fire zones' in which anything that moves is fair game." [114] The "free fire zones" are now officially renamed "specified strike zones," presumably because the former name held offensive connotations, but the effects have remained the same.[115]

There are also other methods to keep people in government camps, as Hugh Manke, Director of International Voluntary Services in Vietnam, told Congress:

"An ARVN major exhorted the people at De Groi to remain in the camp. He held in his hand an antipersonnel mine and explained that these mines would be placed between the camp and the forest to prevent the people from returning." [116]

Once removed from their homes and farmland, the refugees find themselves without any means of support. The Saigon government is then in a position to bestow the food, shelter and work necessary for their survival. Such aid, made more meager by U.S. budget cuts in health and social welfare,[117] is contingent on the peasant's political cooperation with the Thieu regime.

Both American and Saigon authorities soon learned, however, that there were disadvantages to generating refugees on a large scale. First, the regime was obliged to look after these refugees "at a cost of $100,000 a day," according to Saigon Minister of Economy Pham Kim Ngoc. "And even for that, those people are living barely at a subsistence level," he added.[118] Second, refugees dissatisfied with the substandard living conditions of the government camps [119] could be a political eyesore in the pacification campaign.

In an effort to divest itself of its responsibilities, and to create an impression of greater "security" in the countryside, the Saigon regime initiated a "Return to Village" program.

Despite the program's auspicious title, villagers were not returned to their ancestral homes but were instead dumped into fortified camps near their former homes.[120] Their official allowance from the government consists of 10 sheets of corrugated tin, 10 bags of cement, 5,000 piasters (. . . less than $15 in actual purchasing power), and a small food allowance to last 3 months.[121]

By making the allowance pitifully small, the pacification strategists were able to perpetuate the villagers' economic dependence on the government. At the same time the Saigon government had a good excuse to remove the villagers' names from the refugee lists and to take credit for their "resettlement."

Another rationale for sending refugees back to the countryside was outlined by Brandeis University professor Milton Sacks, a Defense Department consultant. He called it a "leopard spot" theory, which would set up fortified camps throughout the rural areas like spots on a leopard. Professor Sack's thesis was that in the event of a cease-fire, the Saigon government could claim jurisdiction over large areas of the countryside by virtue of these armed camps. In addition they would provide a base for attacks into the NFL-controlled regions.

Political lapses have been dealt with severely. One brutal example concerns the inhabitants of the Batangan Peninsula in Quang Ngai province, who took part in the "Return to Village" program. When Saigon intelligence sources revealed that the NLF mobile health team had been operating openly in the area, and NLF schools had been set up with the villagers' assistance, the reprisals began. Dykes were bombed, and paddylands submerged under saltwater. Rice could not be grown. The Saigon army set up checkpoints and roadblocks to prevent any food from going into the area. Whole families were forced to subsist on roots and bitter plants. "They are slowly being starved to death out there," a former Quaker hospital worker in Quang Ngai province commented.[122]

Reporting on the aid program to "resettled" and "Return to Village" refugees, a 1972 GAO field study noted a number of "deficiencies." A summary made by the Senate Refugee Subcommittee follows:

a. "Payments of resettlement and return-to-village benefits are not promptly made." Payments "were at much slower rates during the first 6 months of 1971 than during the same period in 1970. Moreover, fewer refugees were paid in 1971, even though the actual active caseload increased." In the 1970 period 183,000 out of 342,000 were paid. In the 1971 period 156,000 out of 409,000 were paid.

b. Commodities, such as roofing are not provided when needed. Moreover, no emergency stocks are provided to the provinces, "although sufficient stocks for normal and emergency requirements" are on hand in Saigon.

c. Site development (wells, latrines, teachers and classrooms, medical facilities, water pumps, etc.) falls far below "development project criteria established by GVN to satisfy the needs of refugees in resettlement and return-to-village."

2. In 1971, about 539 million piasters were budgeted for resettlement and return-to-village site development. As of August 31, 1971 about 491 million had been allocated. But less than 26% of the allocation—about 127 million piasters—had been expended.[123]

Footnotes at end of article.

Senator Edward Kennedy, Chairman of the Refugee Subcommittee, concurred with recent GAO findings "that U.S. humanitarian assistance to war victims is given low priority," pointing out that in 1969 $16 million was appropriated for the refugee program in Vietnam. In 1970 it was down to $6.6 million. In 1972 it will be $3.2 million.[124]

While U.S. dollar assistance to war victims is winding down, to be "phased out by fiscal year 1974,"[125] there is no concurrent decline in the number of refugees. In fact, recent GAO statistics show an *increase* in civilian war casualties in Vietnam. Summarizing these findings to Congress in May 1972, Senator Kennedy stated:

That by the end of 1971 the Vietnam war had produced more than 6,000,000 refugees, more than a third of Vietnam's population;

That only about half of these refugees have ever received relief assistance;

That the monthly average of new refugees "generated" in 1971 "exceeded the average monthly level of the 2 previous years;"

That top U.S. officials have continued to support "forced relocations," despite very strong opposition to this discredited practice by their colleagues at the "working level;"

That "future relocation plans" includes the movement of 300,000 persons in 2 provinces of military region 1 during 1972 . . .[126]

The second stage

Efforts to gain the peasants' political loyalty usually fall under the category of "development." According to pacification chief Ambassador Colby:

"It means a lot of national programs like land reform, miracle rice seeds, schools, health units and roads . . .[127]

The assumption here is that buying off the rural population can be an effective substitute for "winning hearts and minds." The plan, which is based on RAND analyst Guy Pauker's vision of a "partnership between the military and rural masses," is to give preference to the farmers at the expense of the city dwellers.[128] This is done by changing the terms of trade between urban and rural sectors by increasing prices paid to the crop producers, large-scale introduction of new IR–5 and IR–8 rice strains, accelerating import and distribution of fertilizer, expanding protein and free grain output, and not least, reopening and upgrading of key roads and waterways utilizing military engineers and U.S. contractors . . . Water pumps and tractors were introduced in large numbers.[129]

Once the farmer is interested in miracle rice and American fertilizer, he will have to depend on the United States for future supplies. It is hoped that he will become addicted to the products of American technology. His dependency works as a substitute for political loyalty.

In 1969 a new program was initiated called "Village Self-Development," where a "development fund" averaging $8,100 per village was set up to encourage community projects. This program is expected to drive a wedge between the peasant and the NLF[130] because, it is hoped, if the peasant participates, say, in an irrigation scheme sponsored by the government, he will seem to have committed himself in some sense to the GVN side and, therefore, be in bad odor with the local NLF. If a village becomes associated with a government program, runs the theory, it would thus be vulnerable to NLF reprisal which, if it occurred, would further push its inhabitants into the GVN camp.[131]

No pacification program is complete without some kind of land reform. On March 26, 1971 the "Land to the Tiller" Bill was enacted to distribute land to the peasants. U.S. Ambassador Ellsworth Bunker eulogized the bill as the most perfect of its kind; President Thieu declared the day to be the happiest of his life.[132]

Ambassador Bunker was pleased for he had gotten a "reform" out of the Saigon ruling circles. Once peasants became property owners, the logic ran, they would have new reason for gratitude to the Thieu government and loyalty to the status quo. Moreover, it would be an added boost to the pacification program's goal of gaining political support for the regime from South Vietnam's rural population, the traditional seat of Thieu's opposition.

Yet the reaction of the beneficiaries was contrary to Ambassador Bunker's expectations. Many of the peasants were reluctant to reclaim the land offered to them. The overriding reason was that the bulk of the land earmarked for peasant distribution was in the "insecure" parts of the countryside.[133] Much of it had been designated as "specified strike zones" and subject to American and ARVN air and artillery strikes. Land mines and booby traps permeated the countryside.[134] The peasant did not care to risk getting blown up while clearing this land.

Moreover, a good part of the available land had been left fallow for years. In a rice culture this is no asset for the land is only renewed and made productive through constant irrigation and care. Much effort and capital would be required to restore the abandoned land. The peasant would have to borrow the needed money from his former landlord, and he would fall again into the usurious cycle of debt, more debt and serfdom.

Despite its promising name, the "Land to the Tiller" Bill did not give first priority to the landless peasant. As one prominent Saigon journalist, Duong Son Quan, pointed out, military men and civil servants are higher in the order of priority for land distribution. The landless agricultural laborer, to whom the bill was dedicated, was fifth, or last, on the list. He would get the least desirable land.[135]

The large landowners, Thieu's chief supporters, gained the most out of this bill. The Saigon government allotted a budget of 161.22 billion piasters (equivalent to $1.2 billion on the official exchange rate) to compensate the landlords for essentially worthless land.[136]

The U.S. is contributing $40 million to help pay for land reform.[137] This "highly successful program," in the words of an AID Deputy Administrator, "will ultimately involve over 2.5 million acres and provide ownership to nearly three quarters of a million former tenants."[138] Each acre will cost American taxpayers $16.

CORDS

No meaningful distinction exists between civilian and military pacification programs, and this is deliberate. In 1967, the administration of U.S. civilian and military programs was "integrated" with the creation of Civil Operations and Rural Development Support (CORDS). In the words of a former director, "CORDS has been a unique experiment in our foreign operations."[139]

CORDS is under the authority of the Military Assistance Command, Vietnam (MACV). Programs to aid civilians such as health care, rural development or refugee aid are planned as an aspect of military strategy, that is, as tools of the pacification program. They are useful to "conduct a people's war on the Government side."[140]

And since "the basic aim of the effort has been to form a new political base for the GVN [the Saigon government] in the Vietnamese people and their local communities,"[141] the Saigon government had to be taught to adopt the American-initiated pacification program.[142] An American shadow government was set up paralleling the existing bureaucracies.[143]

Congress was told about the rather unique manner in which CORDS promoted U.S. policies through a combination of advice, support and inspection at various levels of the Vietnamese Government from the national through regional, provincial, district, and even the village.

The organizational structure of CORDS permitted this kind of multilivel operation and input. At the national level, CORDS has an overall planning staff and provides advice, liaison and support to certain of the GVN's ministries. Its planning staff deals particularly with the GVN's Central Pacification and Development Council, an inter-ministerial body, whose chairman is the president, with a special staff to coordinate the work of the various ministries in support of the annual plan. CORDS' national staff also works with the Ministry of Social Welfare, the Ministry of Justice, the Joint General Staff, and the National Police Command on their programs.

In each of the four regions into which deals with the GVN Regional Pacification Vietnam is divided, CORDS has a staff which and Development Council and supervises the work of the provincial CORDS teams. At each of the 44 provinces, CORDS has a team under a Province Senior Adviser, who deals with the Vietnamese Province Chief. . . . Below the province, small teams have existed at the district level. And, on a mobile basis, certain smaller teams have been operated in village security planning on a temporary basis.[144]

As of May, 1972, CORDS was still running "advisory activities" in rural development, ethnic minorities, Phung Hoang (successor to the Phoenix program), public safety (police), refugees, etc. Additionally, "all U.S. Province Advisers (most of them military officers) are part of the CORDS advisory structure, and advisers to the territorial forces (Regional and Popular Forces) and Peoples Self Defense Forces (See "Para-Military Forces") also come under CORDS."[145] In summary, "CORDS functions still cover almost the same range of activities as was the case four years ago."[146] The number of CORDS staff in Saigon has been reduced, though by late May there were still 1,945 CORDS advisers, of whom 595 were civilians and 1,350 were military. CORDS advisers remain in every one of Vietnam's 44 provinces.[147]

In the ground fighting during the spring offensive Congressional investigators report, U.S. advisers "played a critical role" and "in some combat situations, they had assumed virtual command."[148] And in the sky, "U.S. advisers" are flying combat missions in South Vietnamese fighter-bombers almost daily,[149] the press reported in June.

CORDS, the unique experiment, has produced unique bureaucratic obstacles to pinning down accountability of expenditures and program. Much of the CORDS budget comes from the military services budgets. For example, CORDS advisers at headquarters are funded from the Navy's Operations and Maintenance Budget, while its field advisers are paid by the Army's Operations and Maintenance Budget, which also funds the Rural Development cadre and part of Air America's expenses.[150] In July 1972, the General Accounting Office reported to Congress on the CORDS program and its funding. Concluding that the financial controls and program accountability have been inadequate, the GAO suggested a different funding system.[151] "The real question," GAO wrote, "was whether DOD was providing a meaningful and reliable financial accounting to Congress for these programs. We believe it was not."[152]

A July, 1972 GAO estimate puts U.S. spending on CORDS at $3.2 billion from 1968 through 1971.[153] But this estimate rests on the assumption that the U.S. paid 74% of the pacification costs for these years directly or indirectly, (and the Saigon government, the rest), while Ambassador Colby's figures put the U.S. share as follows: 82% for 1969,

Footnotes at end of article.

1970 and 1971, 78% for 1968. GAO estimates total costs, 1968–1971 at $4.3 billion; Colby's figure was $5.2 billion.[154]

The U.S. has spent about $4 billion for 5 years of pacification in Vietnam—that's the low estimate. Colby's figures would point to $5 billion.

The chart shows how U.S. funds channeled into the integrated civilian/military unique experiment from July 1, 1971 to June 30, 1972.[155]

(Chart referred to not printed in the RECORD.)

9. ARMED FORCES

Thieu has the largest standing army in the world. Over 1.1 million men have been drafted into the regular army (ARVN).[156]

Ironically, the reason for drafting many of the young men is because they are potential enemies of the regime. This is the rationale offered by an ARVN officer in the Political Warfare Section, Trinh Pho, who argued that it was an effective means to keep dissenters under government control.[157]

Reports in the Western press confirm that the plan has already gone into effect and has helped to paralyze other potential opposition forces. It is one way of dealing with dissident students short of actual arrest. Students are sent out of Saigon for a period of four to five weeks of military training each year. They complain that the training course is unnecessarily grueling and intentionally dangerous . . . There were demonstrations last year after several Saigon students died in training.[158]

A group of Vietnamese Catholics in Saigon recently published some documents showing that the policy of drafting political opponents of the regime has been deliberate. The documents describe how Thieu arrests the dissident young, and sends them from the prisons and interrogation centers directly to the military training camps. These conscripts are then ordered to go to the front lines, particularly where it is most dangerous such as in I Corps. There they are not only stripped of any means to oppose the government, but find themselves serving Thieu as well![159]

Under the June 1972 mobilization order, more people will be drafted since the minimum conscription age has been reduced from 18 to 17, and the upper limit increased from 39 to 43.[160] All universities have been closed and school deferments cancelled. According to Senate investigators, these measures are presumably in preparation for the subsequent mobilization of the students.[161]

Many ARVN soldiers desert. While a May 1972 Senate report asserts that the "desertion rate . . . has continued to be high,"[162] the U.S. government has classified the actual percentage rate of these desertions. A *Washington Post* estimate put the AWOL rate at 12,000 to 14,000 a month.[163]

To gain replacements for dwindling ARVN forces, the regime has ordered mass roundups of male adults.[164] More over, the government has established higher quotas for draftees which many officials find impossible to fulfill:

"Each province had been given new mobilization quotas to be filled which local officials were reportedly experiencing difficulties in meeting. Even before the new quotas had been set, some provinces were badly behind in meeting their previous goals. In Binh Duong Province, for example, we were told that there had been only 20 enlistments thus far this year, although the mobilization quota was 993."[165]

As pressure from the regime increases to gain more conscripts for the armed forces, the art of draft dodging has become refined and widespread. In July 1972 Time magazine ran an article surveying the practice of draft dodging in South Vietnam:

"Draft evasion is most widespread among the middle and upper classes, who have the money to buy phony papers or grease the palms of corrupt officials. Rich families simply send their children out of the country, frequently buying a certificate from a doctor stating that they need medical treatment only offered abroad. Some wealthy families even bribe South Vietnamese army helicopter pilots to fly their draft-eligible sons to Cambodia, where a laissez-passer for travel outside Southeast Asia can be purchased easily."[166]

False identification papers can be bought that will entitle the bearer to a legitimate deferment. The government frowns especially on that practice as it also tends to confuse the Phoenix dossiers.

Draft evasion takes many forms, ranging from the simple to the drastic, as Time recounts:

"An X-ray film showing someone else's debilitating growth of tuberculosis often does the trick. The only catch is that a medical examination is required for three years in a row before a permanent medical exemption is granted—all of which can cost up to 500,000 piasters ($1,200). For a time it was not uncommon for boys to chop off the first two fingers of their gun hand: that practice ended when the military decided to conscript the fingerless youths for porters. Today, some desperate draftees dig a shallow hole, toss in a fragmentation grenade, and cover the hole with a foot. If done properly, the practice brings an instant medical discharge."[167]

As a final resort, the dodger can join the military and still shirk his duties:

"One man paid an officer 100,000 piasters for the privilege of joining the Regional Force. Each month he goes down to headquarters to sign the pay book; he gives the officer his entire salary plus a cut of the wage he makes at his regular job. The thousands of soldiers who do nothing more than sign pay books have become known as the "Linh Ma"—the phantom troops."[168]

The paramilitary organizations

To make military life more attractive, the regime is offering a variety of local militia type organizations for the reluctant soldier to join. The Regional Forces (RF) are under provincial supervision, and the Popular Forces (PF), under district supervision. In 1967 the RF/PF was placed under the command of CORDS, the American military-civilian agency set up to oversee the pacification program in South Vietnam. The RF/PF was to play a major role in keeping "pacified" areas safe and to provide "full time sustained protection at the key village/hamlet level."[169] U.S. Ambassador Robert Komer, a CORDS Director, praised this as "the beginning of a truly integrated civil-military pacification program on a major scale."[170]

According to Komer, the U.S. has already begun to beef up the RF/PF:

"The RF/PF were re-equipped and upgraded, their command clearly placed under province and district chiefs, and their numbers greatly increased. They expanded by more than 100,000 in 1968 alone, and now number some 510,000 men in over 1500 RF companies and 6000 PF platoons."[171]

About $1.3 billion has been budgeted by the Defense Department to provide military hardware and other commodities to the regular and popular forces (RF/PF) under the military assistance service funded program (MASF).[172]

For those who have managed to avoid full time military service, there is a part time militia for people over and under draft age called the Popular Self-Defense Forces (PSDF). U.S. Ambassador Colby told Congress that participation in the PSDF is compulsory,[173] and the regime has found the means to discourage shirkers:

"A man without PSDF papers is likely to be picked off the street in one of the constant police spot-checks and thrown into jail or drafted."[174]

Colby's predecessor, Ambassador Robert Komer, told a gathering of political scientists that Saigon recruitment practices have been proven successful since the PSDF have "grown to over three million."[175]

Their function is more political than it is military. In Ambassador Komer's words, their most useful role is probably less in local defense than as a means of engaging the population politically in anti-VC activity.[176]

"Anti-VC activity" includes helping Thieu's political machine and roughing up dissident students and religious groups. Reports in the Western press state that the PSDF have been used for intimidation, election campaigning or 'bringing out the vote.'[177]

In the cities, where the PSDF are made up of street urchins in their early teens, the government has found them very useful as bully squads to break up opposition meetings or do precinct work during elections.[178]

The PSDF are not considered to be particularly effective, however, as they are known for their truancy. One American District Senior Adviser gave examples of the PSDF bribing the district chief to avoid guard duty. The District Adviser was troubled because this enabled members of the NLF to wander through the hamlet freely on several occasions.[179]

Even more serious, the PSDF is thought to be a security hazard. *Time* magazine reports:

"They are assumed to be so infiltrated by the VC that many . . . outposts will not allow PSDF troops in after dark."[180]

There are disadvantages in keeping one-third of the South Vietnamese population under military discipline. Soldiers and veterans, like the uprooted and homeless peasants sent to refugee camps, must rely on the regime for their livelihood. Disabled war veterans who cannot even work are especially dependent on government benefits to keep from starving.

When these benefits have not been forthcoming, mobs of disabled war veterans have rampaged through Saigon streets, sometimes beating up government officials.[181]

Even for active duty soldiers, the pay is not enough to live on. The basic *monthly* pay of a private is 4700 piasters, or the equivalent in the black market of $10. This buys very little at the current rate of inflation. A Saigon newspaper, *Duoc Nha Nam*, reports that a dozen native oranges cost 4000 piasters.[183] Even R–8 "miracle" rice, which most Vietnamese find inedible, cost 8000 piasters per 100 kilos.

In order to feed his family, the soldier is often forced to resort to armed robbery. As of June 1972, the *New York Times* reported that pillaging is rife, and the population terrorized:

"In many towns, including Saigon, restaurants lock their doors at night, admitting only known or manifest customers. Gangs of uniformed veterans have charged into restaurants and exhorted money from diners, who generally pay rather than face the possibility of a grenade being thrown through the door. The police do not intervene."[183]

The situation is so alarming that the Commander of II Corps, Major General Pham Van Phu, has ordered his military police to shoot to kill any robber even if the alleged robber is wearing an army uniform and belongs to another branch of the army.[184]

When the demilitarization process begins, high Saigon officials see inevitable problems of heavy unemployment unless the troops can be quickly sent back to the rice-fields. Even then, the soldier-farmer will find the task of making his land productive almost insurmountable.

"Since they have been away, their homes, in many cases, have been destroyed. Their lands have been destroyed. Their lands have been occupied by Government troops, Ameri-

Footnotes at end of article.

cans or Vietcong, and often the war has uprooted and scattered their families.

"Even ancestral graveyards, important to most Vietnamese and traditionally providing a sense of continuity in family life, have been obliterated." [185]

Faced with this explosive situation, Saigon officials see only two alternatives:

"One would be to leave the entire Vietnamese economy, including the payment of staggering sums to veterans, in the lap of the United States Treasury, just to keep the country from blowing up.

"The other would be to continue maintaining the Vietnamese Army at somewhere near its present size, also at American expense, if only to keep mobs of veterans off the streets." [186]

Mercenary forces

U.S. aid has included paying Vietnamese to fight, sending our own troops to fight, and sending and paying for Thai and Korean troops to fight. Most of the Thais have left Vietnam, but about 40,000 Korean troops remain—a substantial force. Their reputation for treating all Vietnamese as the enemy was strengthened recently by the public airing of a study by the RAND Corporation for the Defense Department, kept secret since 1966.[187]

Following is an account of how the Korean troops operated, as told by a Vietnamese refugee to a RAND interviewer:

"The Korean troops walked into my hamlet at noon. The hamlet was emptied of people then. Seeing fire rising from the communication trenches, we knew that the soldiers were burning our paddy (rice).... An elderly man proposed that we select 10 or more old people to form a delegation to walk to the hamlet and ask for a stop to the burning of the paddy.

"The delegation of 11 old men walked toward the hamlet. When they were near, they found that the troops were Koreans. Knowing that the language barrier wouldn't let their request come through, the men turned on their heels and walked back to the field.

"A Korean soldier waved at them and signaled them to come back. They all did. The Koreans took them to the hamlet, lined them up on the edge of a communications trench, and without a word, shot them all. Ten men died instantly. Another one was wounded and fell down, but didn't die.

"It was this man who told me about the incident later on.

"From what I heard from the people, that very morning a similar incident had taken place in neighboring Thanh Phu Hamlet of the same village.

"Early that morning, the Korean troops came into Thanh Phu Hamlet. Most of the people had run into the field at the time. Only 50 villagers still lagged behind. Most of them were women, children, and elderly people.

"The Korean soldiers rounded them up in one place . . . [and] suddenly pointed their guns to the crowd and opened fire. Only two babies of two and three survived." [188]

Other, similar stories were collected, printed, and then classified by RAND and DOD.

The Defense Department reports that "cumulative costs related to deployment of Korean forces to South Vietnam for FY 1966–1972 funded from the DOD budget total $1,627.8 million for subsistence, travel, overseas allowances, training, supplies, air support, ordnance, ammunition and equipment." [189]

This year the Administration is asking for another $134 million (because the Korean forces "protect an imporant geographical segment of South Vietnam," [190] which is less than the $189 million for 1972.[191]

However, Senate investigators in Vietnam in May were told that the Korean forces have refused to expand their operating area unless given several millions of dollars worth of additional support and were of little help during the spring offensive. Perhaps they are pushing up their price.[192]

But the real costs of the Korean troops is well beyond the $1.6 billion total for 1966–72 and involve U.S. subsidies directly to the South Korean military-industrial complex. Benefits include:

1. Suspension of "the gradual assumption by the Koreans of the operations and maintenance costs of their army under the Korean national budget." The U.S. still pays these basic Korean budget costs.[193]

2. Equipment to expand Korean ammunition production.

3. A promise to "procure in Korea, in competition only with United States supplies" goods for the Vietnam war.

4. Promises of construction jobs for Koreans in Vietnam, assistance in export promotion, and more AID loans.

5. A five-year "modernization" program for the Korean Army. Cost to the U.S.: $1.5 billion.[194]

Points 2 to 5 were among the promises made by the U.S. Ambassador in a letter to a Korean official in March, 1966; they were made explicitly in exchange for sending Korean troops to Vietnam.[195]

So the expense is high, but expense is relative. As the Department of Defense told a Senator, it's part of the Nixon Doctrine:

"Korea is a case in point: The difference between what would have been supplied under MAP [Military Assistance Program, which gives military goods to U.S. allies] and the cost of the $1.5 billion Five Year Modernization Program for that ally will be more than compensated for by the savings resulting from the FY 1971 withdrawal from South Korean and deactivation of one U.S. infantry division." [196]

For Nixon doctrine planners, the matter of sending Koreans to Vietnam is a question of putting out the right rewards to Seoul. (If there is confusion about the morality of asking Korean men to kill and die for a government in Saigon, or worries about their habitual brutality toward Vietnamese, these are well concealed.) The policy is governed by simple arithmetic:

Costs to U.S.—$150: 1 Korean soldier, 1 year in Korea; $12 to 15,000: 1 U.S. soldier, 1 year in Korea.[197]

10. SAIGON'S ECONOMY

By June 1972 the economy of South Vietnam had fallen into a state of extreme crisis. A *New York Times* article reported that:

"South Vietnam is in the throes of its worst recession in memory, and its Minister of the Economy, among others, believes that there may be street rioting and political upheavals if quick solutions are not found for the problem of urban unemployment." [198]

The large scale unemployment has been further aggravated by business shutdowns. Light industries are in deep financial trouble and many have been forced to close.[199]

The effect of this recession is visible even to the casual observer:

"Never have the streets of Saigon seemed more crowded with beggars, thieves, prostitutes and people merely hanging around for want of something to do." [200]

These economic problems are partially due to the fact that Saigon's annual imports of $700 million far exceed its total exports of $15 million.[201] To pay for this the government has been printing a great deal of money. According to the Saigon Office of Statistics, there were 12 billion piasters in circulation in 1960. By 1971 161 billion piasters were being circulated, an increase of 1300 percent.[202] The result is inflation.

Duoc Nha Nam, a Saigon newspaper, reports that prices of all food commodities have increased by an average of 800 percent since 1961.[203] Yet there has been little change in the salaries of government employees and soldiers.

To stem the inflation, the regime has instituted an "Autumn 1971 Economic and Financial Revolution." As a result taxes on luxury goods have been lowered by 50 percent, while taxes on basic goods, such as food and cloth, have increased.[204] A very conservative priest, Father Nguyen Quang Lam, could not refrain from commenting on the impact of these measures:

"In all fairness, the government's 'Autumn Revolution' deserves a few cheers. The hope is that it will succeed as soon as possible so that most of our stupid citizens with soiled behinds' will fast become starving ghosts . . .

"We citizens should not eat rice anymore; we should beautify ourselves with cosmetics and get drunk." [205]

Another serious problem for the regime has been a steady flow of Vietnamese capital leaving the country. A good number of wealthy Vietnamese are not confident that a pro-American regime will remain in power for long, and they are not taking any chances. One Saigon senator estimated that around $500 million has been sent abroad for safekeeping.[206]

This has been of special concern for the United States. Speaking to the American Chamber of Commerce in early 1972, U.S. Ambassador Ellsworth Bunker warned that:

" 'Special attention should be paid to attracting Vietnamese capital back from abroad . . .' before attempting to induce foreign investment in the country.

"Recently the U.S. Economic Counsellor also voiced the hope that 'a resurgent Vietnamese economy will attract back to Vietnam savings held by Vietnamese abroad.' " [207]

The only way the failing economy can be salvaged, however temporarily, is for the United States to continue providing large amounts of money to make up for the deficit in the Saigon budget. (Other outright gifts take other forms. For example, U.S. equipment and facilities have been turned over to Saigon as U.S. troops have departed and while "no records have been maintained in the headquarters of the Department of Defense," the DOD estimate (1965 to 1972) of their value is $940 million.) [208] According to a New York Times assessment of the Saigon economy:

"The impression emerges that if Vietnam is to stay afloat economically, it will have to remain essentially an American client state for the indefinite future." [209]

Should the American public disapprove of larger sums of money being poured in to shore up the Saigon economy, the U.S. has a way to provide more funds without going through Congress.

This is done by maintaining an inequitable exchange rate between dollars and piasters. Up until July 1972, the Official rate was 118 piasters to a dollar.[210] However, because of inflation and excessive piasters in circulation, the dollar was actually worth three times as much on the black market.[211]

Since the United States gets only one third the value in piasters for what it puts out in dollars by this unequal exchange rate, it is actually subsidizing the Saigon regime in a way that bypasses Congress.[212]

According to the General Accounting Office, this subsidy is quite substantial:

During the period January 1970 through December 1970 the United States purchased $278 million of piasters at [the official rate] . . . the computed subsidy to the Government of Vietnam amounted to $195 million." [213]

This $195 million in hidden subsidies, has not been subjected to the normal authorization and appropriation processes for other forms of economic assistance.[214]

It has, however, contributed to a budget deficit in the U.S. Treasury. The additional subsidy goes into the regime's free foreign exchange account which finances imports from U.S. competitors in Europe and Japan, while during calender years 1966 through 1970 only about 12 percent of free foreign

Footnotes at end of article.

exchange purchases came from the United States.[215]

11. U.S.C. AID—THE FUTURE

This year the Administration is asking for *more* economic assistance to Saigon than in any previous year.[216]

In March of 1972, an Administration spokesman attempted to convince skeptical Congressmen of the need to increase by $200 million U.S. aid to Thieu under the Foreign Assistance Act by explaining:

. . . that additional $200 million in Vietnam is necessary only because estimated Department of Defense spending in Vietnam in 1973 will decrease by $200 million.[217]

This would have been true for the Administration's earlier DOD request, but the spring offensive provided the reason (or the excuse) for an addition of about $400 million to the 1972 budget for South Vietnam (which ended June 30, 1972) and *over $1 billion more for South Vietnam in 1973*—beyond the more than $1½ billion already budgeted.[218]

The revised request for military appropriations for South Vietnam in fiscal 1973, $2.7 billion, is more than the military appropriations for fiscal 1972 for all of Southeast Asia combined—Korea, Laos, Thailand and South Vietnam. The key areas of increase are:

MILITARY APPROPRIATIONS TO SOUTH VIETNAM [219]

[In millions of dollars]

	Fiscal years		
	1971	1972	1973
By budget category:			
Operations and maintenance	717.1	750.5	964.7
Procurement	1,054.8	1,403.9	1,677.6
By service:			
Army	1,395.5	1,722.1	1,808.6
Air Force	351.8	420.1	815.8

The additional request for funds was supported with a DOD shopping list. The Air Force asked for 48 more F4 Phantom jets ($190 million) and 132 more UH–1 troop transport helicopters (which are in addition to the 120 already in the Air Force budget for 1973.[220] The Navy "needs" 33 more attack aircraft for $115 million and more missiles; the Army, more helicopters, tanks, and 37,000 more M16 rifles.[221] And so on.

The total current cost of the war in Indochina is treated as a state secret and is deleted from the U.S. budget and budget hearings printed for the American public. The Secretary of Defense and other DOD officials testifying in Congressional budget hearings early in 1972 generally used a figure of $7 billion for the estimated 1972 war costs; however, a table supplied by the Defense Department for these hearings showed the "full war costs" for 1972 to be $9.1 billion.[222]

Furthermore, by June, Secretary of Defense Melvin Laird was predicting that if the Vietnam war costs continued at the unexpectedly high current rate through December 31, they could add as much as $5 billion to the $83.4 billion Pentagon budget . . . Even if the North Vietnamese offensive were blunted by September 30, the additional budget cost would still total $3 billion.[223]

Administration requests even before the offensive for . . . economic *and* military aid to Laos are *both* greater for 1973 than 1972.

. . . economic and military aid to Cambodia are both greater for 1973 than 1972.

. . . military aid to Thailand in 1973 is greater than in 1972. (Economic aid was scheduled to be down a mere $6 million.) [224]

The figures for the combined economic and military aid to Cambodia, Laos and Thailand for 1972 and 1973 are:

	Total military and economic fiscal year 1972	Total military and economic fiscal year 1973
Cambodia	$246,437,000	$330,059,000
Laos	294,996,000	416,799,000
Thailand	105,599,000	[225] 110,424,000

Rising costs are said to be a necessary step to implementing the "Nixon Doctrine." A favorite theme of Administration spokesmen was Secretary Laird's catchy praise of the 1973 spending requests as "the only way for the United States to stop being the cop on every beat without copping out on the world." [226]

One Congressman answered that under the Nixon Doctrine, the U.S. is still trying to police the world, but in addition is trying to "bankroll the world, and going broke doing it." [227]

The suggestion is not fatuous. Hearing requests for new funds in April, Senator J. Fulbright summarized the war's current and future costs:

"It would appear that the more success we achieve for the Nixon doctrine the more it costs. . . .

The millions of American taxpayers who filed their individual tax returns yesterday should consider how much this war has already cost them and how much it will continue to cost them in future generations of Americans.

In June of 1971, the Library of Congress stated that the full budgetary cost of the war from fiscal year 1965 only through fiscal 1970 amounted to $104.4 billion. Since that time at least $20 billion in direct costs have been added. Not included in these figures, however, are the vast additional and continuing costs to the United States of borrowing the money with which to finance the Vietnam war debt or the cost of benefits to the millions of American servicemen who will have served in Indochina. We will be paying these costs far beyond the lifetime of anyone in this room. Indeed, one economist who has studied the question of the ultimate cost of the war estimates that the budgeted military cost of the Vietnam war will be doubled as these benefits are paid out over the next century. Taking all of these factors into consideration, I do not think it is at all unreasonable to assume that the cost of the war today already approaches $200 billion and will eventually exceed $500 billion." [228]

Curiously enough, the fact of having already poured hundreds of billions of dollars into the war is used as an argument for pouring in more. In answer to a Congressman's question as to "why we should provide funds in the manner that they will permit the perpetuation of this war," an Administration spokesman pointed to "the immense investment in blood and treasure that has been made in this part of the world." The Congressman persisted:

"This is the blood and treasure argument, and it is the one that has apparently been the rationale.

We are saying we don't want our blood spilled any more, rather Vietnamese blood. We will continue to provide the treasure part.

To me this is not the answer." [229]

It is, however, the answer of the Nixon Doctrine: the U.S. continues to provide billions of dollars; Asians continue to fight Asians. While the costs mount, the argument goes, our allies are becoming more self-reliant. Yet Administration spokesmen defending next year's spending on the war assert just the opposite—without U.S. aid, all would be lost throughout Southeast Asia. During the Nixon Administration years, the invasions of Cambodia and Laos have spread the struggle, and with it Administration rationales for increases in aid. This year, Congress was told that:

Aid to Thailand is up because "the situation on their borders is deteriorating." [230]

Aid to Laos is up, because "it has always been possible for the North Vietnamese in Laos [to take control] . . . if they decided they wanted to do it, they certainly have the means to do it." [231]

Aid to Cambodia is up, and without it, "Cambodia would collapse in the matter of a few months." Or, equally bad, they might compromise with other Cambodian forces and demand the U.S. stop bombing their country:

Any significant reduction in U.S. assistance to this country could well force the Government to seek an accommodation with the enemy to include limitations on the aerial interdiction of the Ho Chi Minh Trail with deleterious effects on Vietnamization.[232]

As for "the countries of Indochina, this aid is essential to their survival." [233] Even for Vietnam, that source of perennial optimism. Whether they can hack it at this point I don't know. I doubt it a little bit. I think there is just a bit more that is needed in the way of training and equipment and so forth, but they are very close to that point."

However, from the same speaker (Marshall Green, Assistant Secretary of State for East Asian and Pacific Affairs) we hear later:

If we pull out economic support, the ensuing economic collapse will squander all the efforts we have put into Vietnam . . .[234]

Aid from foreign countries to the other side is about 1/10th of U.S. war costs, by U.S. government estimates.[235] No foreign troops have fought for North Vietnam or the PRG. Yet all the American money, men, and sophisticated technology of war brought to the defense of the Saigon government have failed to crush the opposition.

Some of the reasons for failure are suggested in the nature of the programs the U.S. has financed, outlined earlier. In past years, justifications of the aid programs stressed winning Vietnamese hearts and minds and loyalties to whichever personality was then in power in Saigon. More recently, however, strategies of persuasion have given way to brute force. Another level of reasons for the failure concerns Vietnamese history. In the last section, only the last 25 years of that history is reviewed, yet even in this relatively short time, the persistence of the struggle for national independence is apparent.

12. U.S. AID—THE HISTORY

The first recipients of American aid in Indochina were the Vietminh led by Ho Chi Minh. The year was 1944. A Senate staff study explained what happened.

During that year the Viet Minh, a guerrilla army as well as a group of political parties, began small scale guerrilla attacks against the Japanese. In his capacity as leader of *the only significant guerrilla force in Indochina and a "provisional government,"* Ho went to Office of Strategic Service (O.S.S.) headquarters in Kunming, China. According to one source, he made four such trips in late 1944 and early 1945, "seeking arms and ammunition in return for intelligence, sabotage against the Japanese, and continued aid in rescuing shot-down Allied pilots." [236]

According to the above-mentioned study, Ho was first given a token six .38 caliber revolvers and twenty thousand rounds of ammunition.[237]

This aid was later increased. An O.S.S. team parachuted into Ho's jungle headquarters and gave the Viet Minh a small supply of rifles, mortars, machine guns, grenades and bazookas and held training sessions for Nguyen Vo Giap's elite guerrilla forces.[238]

At the end of World War II, when Japan was defeated, Ho Chi Minh's provisional government was formally established in Hanoi. It was not uncommon then to see open displays of friendships between American O.S.S. officers and "high ranking officials of the new Democratic Republic." [239] On August 23,

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1945 Bao Dai, the last emperor of Vietnam, abdicated in favor of the new republic and "handed over his imperial seal and other symbols of office to Ho Chi Minh." [240]

However, the French were reluctant to give up their former colony. With the help of the British, they staged a return. According to the *U.S. Army Area Handbook for Vietnam:*

The first British troops arrived in Saigon on September 12, 1945, and the first French troops landed about 10 days later. [241]

They were not well received.

Almost immediately Vietnamese of almost every political persuasion rose up in defense of their newly won independence. The British assisted the French and also ordered Japanese troops to help put down the resistance.[242]

The French and the British also promptly launched a propaganda campaign implying that "the Provisional Government had been incited, armed and trained by Japanese forces." [243] A United States Information Agency official, Arthur Hale, who was in Hanoi at that time, took note of "British news releases and statements by British and French officials" to "keep this impression alive." [244] Among these was a statement made by French High Commissioner D'Argenlieu in November 1945 that "conversations with the Annamites (Vietnamese) to settle differences are progressing favorably and we have promised not to prosecute Annamite leaders as war criminals." [245]

Investigating these charges, Hale concluded that—such a claim is untrue. Primarily, it is an established fact that the *only* genuine activity against the Japanese, during the war, was that of the Annamite guerillas led by Viet-Minh cadres in the country. Relative to their total population in Indo-China the number of Frenchmen active in any resistance movements was pathetically small. It is ironical that now the French build their propaganda claims upon Viet-Minh collaboration with the Japanese. Those Frenchmen who did say "no" to the Japanese, who acted against them, have nothing but praise for the anti-Japanese work of the Viet-Minh and its followers.[246]

Nevertheless the United States decided to shift its support to the French after a thorough review of American policy in Indochina by the State Department.[247] In May 1945 Secretary of State Stettinius told the French Foreign Minister that the United States in no way questioned "even by implication, French sovereignity over Indo-China." [248]

One reason for the change in American policy was that—Soviet-American relations had deteriorated rapidly since the end of the war and increasingly, throughout 1946, the Truman Administration came to view communism as a Russian phenomenon.[249]

And the State Department came to view Ho Chi Minh as an "agent of Russia." [250] However, as Secretary of State Marshall confessed in a memorandum,[251] such beliefs were without proof:

Dept. has no evidence of direct link between Ho and Moscow but assumes it exists, nor is it able evaluate amount pressure or guidance Moscow exerting. We have impression Ho must be given or is retaining large degree latitude . . . Furthermore, Ho seems quite capable of retaining and even strengthening his grip on Indochina with no outside assistance other than continuing procession of French puppet govts.[252]

The U.S. began to give aid to the French almost immediately. In late 1946,

U.S. military equipment had already been used by French forces against the Vietnamese, and the U.S. had arranged credit for France to purchase $160 million worth of vehicles and miscellaneous industrial equipment for use in Indochina.[253]

The American priority was to create a barrier in Europe against the Soviet Union.

Beginning in 1946 and 1947, France and Britain were moving toward an anti-Soviet alliance in Europe and the U.S. was reluctant to press a potentially divisive policy. The U.S. [considered] Vietnamese nationalism relatively insignificant compared with European economic recovery and collective security from communist domination.[254]

By 1954 the U.S. was financing 78 percent of the French costs of the Indochina war. This came to over $1 billion in fiscal year 1954.[255] Total U.S. aid to the French and to the "State of Vietnam" created by the French amounted to over $4 billion.[256]

The results of this aid was not decisive. The Viet Minh won a major victory in Dien Bien Phu, thus adding fuel to French anti-war sentiment. Against persistent American advice, the French opted for a negotiated settlement. As Secretary of State Dulles stated, "negotiations with no other alternative usually end in capitulation." [257]

The negotiations between the Viet-Minh and the French (who spoke for the "State of Vietnam") led to the 1954 Geneva Agreements. It provided for the gradual withdrawal of the French and general elections throughout Vietnam to decide on the composition of the Vietnamese government. The demarcation line at the 17th parallel "in no way constituted a political or territorial boundary," the Agreements stressed. The concept of a separate government in the South did not exist then, not even in the mind of Secretary of State Dulles who spoke of one Vietnam.

The U.S. National Security Council (NSC) considered these agreements a "disaster," [258] but publicly declared that the United States would abide by them.[259] The immediate task, outlined by the National Security Council, was to "maintain a friendly non-Communist South Vietnam. . . ." and "to prevent a Communist victory through all-Vietnam elections." [260]

According to the Pentagon Papers, the NSC meeting on August 3, 1954, just after the Geneva conference, ordered an urgent program of economic and military aid—substituting American advisers for French advisers. . . .[261]

As the American influence in the southern part of Vietnam became more pronounced, the pro-French native king was replaced by a little known Catholic mandarin named Ngo Dinh Diem. During his country's decade-old war against the French, Diem had been living in a Maryknoll seminary in New Jersey. He had spent his time making friends with high-ranking officials in the Truman and Eisenhower cabinets as well as influential Senators such as John F. Kennedy. So when the U.S. set out to create an alternative to the government of Ho Chi Minh, Diem was its first choice.[262]

John Kennedy took great pride in describing the American role in bringing Diem into office:

"If we are not the parents of little Vietnam, then surely we are the godparents. We presided at its birth, we have given assistance to its life, we have helped to shape its future." [263]

The new government of Ngo Dinh Diem refused to allow the general elections stipulated by the Geneva Agreements to take place. The compelling reason was that the Vietnamese people would have voted overwhelmingly for the government of Ho Chi Minh, wrote General Eisenhower in his memoirs.[264]

From its birth, the Saigon regime had difficulty controlling the people it claimed to represent. As the late senior adviser John Paul Vann noted:

"The existing government [in Saigon] is oriented toward the exploitation of the rural and lower class populations. It is, in fact, a continuation of the French." [265]

Taking a hard look at the situation, Vann declared that:

"GVN [Saigon government] has demonstrated that it cannot establish stability, let alone achieve a popular base among the people." [266]

In order to prevent the collapse of the Diem regime, U.S. aid was necessary. According to the *Army Area Handbook on Vietnam:*

"Expenditures for economic and military aid to South Vietnam through 1960 were reported by the United States International Cooperation Administration [now Agency for International Development, AID] to total over $1.5 billion . . . This did not include military aid given in kind which provided the Vietnamese armed forces with fuel, spare parts and many other supplies and equipment purchased by the United States Department of Defense from its direct military assistance funds." [267]

Gradually, American officials grew unhappy with Diem's rule and very unhappy with his unwillingness to be "advised" from Washington. According to the *New York Times* study of the Pentagon Papers,

"Even Washington felt exasperated with its chosen ally for failing to strive for greater popular allegiance through political, military and economic reforms. But the United States had become accustomed to having President Diem reject its advice and, early in 1963, found itself somewhat on the defensive before his complaint that there were too many prying Americans roaming his land." [268]

The straw that broke the camel's back was learning that Diem's powerful brother, Ngo Dinh Nhu, had begun secret negotiations with the NLF. The decision was made to dump Diem. When a coup d'etat took place, the CIA could not refrain from participating.

"So closely did the C.I.A. work with the generals, official documents reveal, that it provided them with vital intelligence about the arms and encampments of pro-Diem military forces after Mr. Lodge [then U.S. Ambassador to Saigon] had authorized C.I.A. participation in tactical planning of the coup.

"So intimately tied to the conspiracy did the Ambassador himself become that he offered refuge to the families of the generals if their plot failed—and he obtained Washington's approval. Near the end, he also sent a message to Washington seeking authority to put up the money for bribes to win over officers still loyal to President Diem." [269]

After Diem's overthrow, a succession of military regimes followed. In order to survive, each found itself looking to Washington for approval.

When asked if the government in South Vietnam was an "American pupet," General Khanh, one such military leader, replied:

"I have never told anyone how I became Chief of State. If I tell you now, it will indirectly answer your question. As commander of the 1st Army Corps . . . I had a U.S. adviser with me, Colonel Wilson. On 30 January 1964 Wilson told me a coup d'etat was planned in Saigon and that I was to become President . . . At 1400 hours Wilson gave the cue from Saigon. I arrived in Saigon at 1800 hours, with three men. The Americans had already arranged everything. The official junta under Duong Van Minh was declared deposed. On 8 February 1964 I took over as Premier." [270]

Khanh's rule was short-lived, however, because the U.S. did not care for his interest in coming to terms with the NLF.

"This is why I was only their 'good boy' for a few months . . . To the Americans, the people of the National Liberation Front were 'the communists,' nothing else. To me they were not communists, but revolutionaries. I wanted to make peace in 1965. I wanted to prevent the Americanization of the war. I said this time and again to Cabot Lodge and Maxwell Taylor. And this ultimately broke my neck. In mid-February of 1965 I was

Footnotes at end of article.

overthrown by the Americans and sent off as 'special envoy' abroad." [271]

It is not surprising then that unprincipled men are so numerous in the Saigon government. The late French Vice-Admiral, Rieunier, referring to his Vietnamese allies, complained that "we have only scoundrels on our side." It rings true for America's allies in Saigon today.

The bulk of high-ranking officials in the present regime had served in the French army and opposed the struggle of their countrymen for national independence. Both Thieu and Ky fought for the French before becoming allied with the Americans.

Besides the old French collaborators, the other natural allies of the United States were, as John Paul Vann discovered, "the affluent members of the urban areas who stand to lose the most if the Communists take over . . . these are the same people who inherited and are propagating a government which is intrinsically opposed to the social evolution in progress." [272]

Moreover, Vann noted:

"Assistance from the United States, both military and economic, is used to perpetuate a regime that, despite lip service to the contrary, has not demonstrated a sincere interest in bettering the lot of the rural population." [273]

Far from offering the Vietnamese a "political, economic and social revolution . . . superior to anything the Communists can offer," the U.S. found itself on the other side of the fence, fighting a war to put down national independence and social change.

When the U.S. shifted its aid from support for Ho Chi Minh's movement of resistance to the Japanese occupation to support for the failing efforts to sustain the French occupation, the way was prepared for the American occupation of Vietnam. From the Kennedy-Johnson era of American troops (and air war) to the Nixon Doctrine prescription of aid to Thieu (and more air war), only the form of domination changed. A quarter century of U.S. efforts to buy a stable client government in Saigon have resulted in an unstable tyranny—and suffering and death.

U.S. aid can train and equip more police, build more jails. It can continue to make impossible a reconciliation of political groupings of Vietnamese. Thieu insists he will never be a part of a coalition government with the PRG, and even if he were to be replaced, U.S. aid could guarantee that his successor could safely take the same stand. Thus the deadlock in Paris.

The demand that the U.S. cease its aid to Thieu is reasonable from the point of view of Vietnamese who want peace and national independence. It is imperative from the point of view of Americans who want to bring this country's expensive and bloody adventure in Indochina to an end.

FOOTNOTES

[1] The United States calls its opponents in the Vietnam war the "Vietcong," which is a derogatory name meaning "Viet communist." However, the opposition that has formed over the last decade to fight the United States and the Saigon regime includes not only communists, but also Buddhists, Catholics, and members of other religious sects and ethnic minorities. They call themselves the National Liberation Front (NLF). Several years ago the NLF formed a government which they claim is more representative of the Vietnamese people, called the Provisional Revolutionary Government of South Vietnam (PRG).

[2] "CBS Evening News With Walter Cronkite," July 28, 1972. The film showed Americans participating in the searchers, and an Air America (CIA-rented) plane used to fly suspects from the countryside, under guard of an American adviser, to prisons in Saigon. The report, from Bob Simon in Quang Nam Province, gave the following details: The National Police have been conducting house to house searches every night since the offensive began. The target of these searches are not common criminals, but members of the Viet Cong infrastructure, the Communist shadow government in Vietnam, and the fact that police are now doing this work reflects their growing power and the changing intensely political nature of their role.

The National Police strength has doubled over the past four years. It now stands at close to 120,000. Last year the police force was removed from the regular civil service; its chief was made directly responsible to President Thieu. Here police officers of Quang Nam Province are planning a raid on a village, the kind of operation which only a short time ago would have been handled by regular military forces. The police [are] accompanied by an American adviser . . .

Before leaving the village, police round up all of the women working in the paddies and lead them to the road for questioning. One report from one source is all it takes. This means that if anyone in this village claimed that any one of these women was involved in any way with the Viet Cong, she could be arrested and put in prison for two years. For one man there's no question. He's on the blacklist. Police say they have evidence he is the Communist finance officer for the village. He'll be taken to a detention center, interrogated, and brought to justice, Vietnamese style. His case will be reviewed by a body called the Province Security Committee, which is headed by the Province Chief, and meets once a week. The accused is represented only by his dossier. He has no lawyer, no witnesses are called in his behalf. The committee sits as an absolute tribunal; its decisions are not reviewed by any higher body. The maximum sentence is two years, but it can be renewed any number of times.

According to American officials, 14,000 Viet Cong suspects have been arrested since the offensive began. . . . What's certain is that people are disappearing, particularly students, including many Catholic students, leftists to be sure, but self-professed anti-Communists, not members of the Viet Cong.

[3] Malcolm Browne, "Thousands Arrested by Saigon For Suspected Vietcong Links." *New York Times*, 6/23/72.

[4] Letter reprinted in *Thoi Bao Ga*, No. 25. June 1972. *Thoi Bao Ga* is a magazine published by Vietnamese students living in the United States. It translates selected articles from the Saigon press that are not readily available in America. To obtain copies of *Thoi Bao Ga*, write to 76A Pleasant Street, Cambridge, Mass. 02139.

[5] *Far Eastern Economic Review*, 6/3/72.

[6] *Dispatch News Service International*, No. 376, 7/6/72.

[7] *New York Times*, 6/23/72.

[8] Lawrence Stern, "Danang: Litter Heap of Refugees." *Washington Post*, 6/13/72.

[9] *Vietnam: Policy and Prospects, 1970*. U.S. Senate Committee on Foreign Relations, Hearings on Civil Operations and Rural Development Support Program (CORDS). 91st Congress, 2nd Session. February and March, 1970. p. 25. Hereafter called *Hearings on CORDS*.

[10] Robert Kaiser, "U.S. Aides in Vietnam Scorn Phoenix Program." *Washington Post*, 2/17/70.

[11] *Ibid.*

[12] *U.S. Assistance Programs in Vietnam*. Hearings before the House Subcommittee on Government Operations. July and August 1971. 92nd Congress, 1st Session. p. 103. Hereafter called *Hearings on U.S. Assistance*.

[13] Gordon and Christine White, "A Report on South Vietnam." *Vietnam International*. Vol. VI, Nos. 4/5. April and May 1972. Gordon and Christine White are graduate students in Far Eastern affairs and correspondents for Pacific News Service. *Vietnam International* is a London-based newsletter published by the International Conference on Disarmament and Peace. Hereafter called *White Report*.

[14] *Hearings on U.S. Assistance*, p. 187.

[15] David Horowitz, *The Free World Colossus*, New York, Hill & Wang, 1965, p. 154. Quote from John F. Kennedy.

[16] Statement by John Paul Vann, a senior pacification adviser who spent many years in Vietnam. Taken from an internal paper written by Vann and circulated within the U.S. military in 1965. A mimeographed version, printed in April 1967, came from a copy Vann gave to Professor Alex Carey of the University of New South Wales, Australia. Our thanks to Professor Edward Herman of the University of Pennsylvania for making it available to NARMIC. Hereafter called *Vann Paper*.

[17] Government Accounting Office Report to the Congress. "Suggestions for Changes in U.S. Funding and Management of Pacification and Dvelopment Programs in Vietnam." B.159451. July 18, 1972. p. 36. Hereafter called *July 1972 GAO Report*.

The U.S. Army spent about $40 million on this program in 1972 alone.

The $120 million figure quoted for 1968–1971 is only for salaries. The GAO reported:

"During fiscal years 1968 through 1971, the United States provided about $175.6 million to pay the cost of CORDS' Rural Development Cadre program teams which had the primary mission of maintaining security in the villages . . . CORDS prepared the annual budgets and provided the field advisors and program direction.

"Neither the Army nor CORDS had established controls over the programming and use of U.S. Army funds in this program. During our interview we noted that—

"CORDS budget requests were inflated and did not represent reasonable estimates of anticipated costs.

"CORDS had not implemented controls over cadre payrolls."

The GAO reported further that as of June 30, 1971, there were about 36,000 personnel on the cadre's rolls. Salaries for 56,600 cadre personnel were budgeted for fiscal year 1971 because that was the "authorized" number. CORDS officials compute their budget requests on the basis of RD cadre authorized, but "cadre strengths had always been below the numbers authorized." Another example given of the "overstated" RD budget for 1972 is that "CORDS had already ordered supplies that were excess to cadre requirements throug' fiscal year 1974." (pp. 36 and 37.)

[18] Ambassador Colby, as Deputy of CORDS, has authority over the Phoenix program. Testifying to Congress, Colby admitted to having worked for the CIA before taking a job with CORDS. *Hearings on CORDS*, p. 27.

[19] *Hearings on U.S. Assistance*, p. 187.

[20] Alvin Schuster, "Rewards up to $11,000 Set for Captured Vietcong." *New York Times*, 8/2/71.

[21] *Washington Post*, 2/17/70.

[22] *Ibid.*

[23] *Ibid.*

[24] *Dispatch News Service International*, No. 376, 7/6/72.

[25] *New York Times*, 6/23/72.

[26] *Hearings on U.S. Assistance*, p. 189.

[27] *Ibid.*

[28] *New York Times*, 8/2/71.

[29] *Hearings on U.S. Assistance*, p. 164.

[30] *Op. cit.*, p. 173.

[31] *Op. cit.*, p. 140.

[32] *Hearings on U.S. Assistance*, p. 252.

[33] Sydney Schanberg, "Torture by Saigon in Jails Reported." *New York Times*, 8/13/72.

[34] *Ibid.*

[35] *Ibid.*

[36] *Dispatch News Service International*, No. 376, 7/6/72.

[37] Testimony before the House Subcommittee on Foreign Operations, July 17, 1970. Reported by Robert Smith, "Vietnam Prisoner Torture Described by U.S. Doctor," *New York Times*, 7/17/70.

[37-39] *Thoi Bao Ga*, No. 25, June, 1972.
[40] *Dispatch News Service International*, No. 376, 7/6/72.
[41] *New York Times*, 8/13/72.
[42] *Hearings on U.S. Assistance*, p. 197.
[43] *Op. Cit.*, p. 252.
[44] Thieu's wife owns sixty percent of the shares in the Eagle Battery Factory. This is a typical example of state employees being placed in the service of private interests. Christine White, "Strike-Breaking from the Presidential Palace." *Asian Reports*, 2/17/72.
[45] *Ibid.*
[46] Mike Klare, "Over There: Policing The Empire." *Police on the Homefront*. Published by NARMIC. p. 109.
[47] *Ibid.*
[48] Testimony by ex-serviceman Matthew Taffer. Second Winter Soldier Investigation, sponsored by Vietnam Veterans Against the War. Faneuil Hall, Boston. October 8, 1971.
[49] *New York Times*, 6/23/72.
[50] *Dispatch News Service International*, No. 376, 7/6/72.
[51] *Ibid.*
[52] Tom Fox, "South Vietnam's Police Force Gaining in Size and Status as U.S. Increases Aid." *New York Times*, 4/14/71.
[53] *Statistical Abstract of the United States*, U.S. Department of Commerce. Bureau of Census. p. 888.
[54] *Inequitable Currency Exchange Rates in Vietnam*. Hearings before the House Subcommittee on Government Operations. 92d Congress, 1st Session. July, 1971, p. 50. Hereafter called *Hearings on Currency Exchange*.
[55] *Hearings on U.S. Assistance*, p. 5.
[56] *Ibid.*
[57] *Op. cit.*, p. 68.
[58] *July 1972 GAO Report*, p. 42.
[59] *Ibid.*
[60] *Hearings on U.S. Assistance*, p. 99.
[61] *Op cit.*, p. 205.
[62] *Op. cit.*, pps. 188, 193.
[63] *Far Eastern Economic Review*, 6/3/72.
[64] *Vietnam: May 1972*. Staff Report to the Senate Committee on Foreign Relations. June 29, 1972, p. 22.
[65] *Ibid.*
[66] Law published in *Chinh Luan*, a Saigon newspaper. Translation from Vietnamese into English made by NARMIC.
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid.*
[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*
[75] *Ibid.*
[76] *Ibid.*
[77] *Ibid.*
[78] Sydney Schanberg, "Thieu Announces Harsh Rules For Newspapers." *New York Times*, 8/6/72.
[79] Thomas Lippman, "Saigon Puts New Curbs On Press." *Washington Post*, 8/6/72.
[80] *Ibid.*
[81] *New York Times*, 8/6/72.
[82] *Ibid.*
[83] *Ibid.*
[84] *Ibid.*
[85] *Washington Post*, 8/6/72.
[86] *New York Times*, 8/6/72.
[87] *Ibid.*
[88] *Ibid.*
[89] *Washington Post*, 8/6/72.
[90] *Hearings on U.S. Assistance*, p. 105.
[91] Mrs. Ngo Ba Thanh was described earlier as the famous woman lawyer who was herself arrested and forced to undergo water torture. A copy of this letter is on file at NARMIC.
[92] *Ibid.*
[93] *Ibid.*
[94] *Ibid.*
[95] *Ibid.*
[96] Letter smuggled out from jail by Jean-Pierre Debreis and Andre Menras, two Frenchmen arrested in Saigon for demonstrating against the Thieu regime in 1969. Our thanks to the Indochina Resource Center for providing us with the letter and accompanying translation.
[97] *Hearings on CORDS*, p. 396.
[98] *Hearings on U.S. Assistance*, p. 96.
[99] *Op. cit.*, p. 225.
[100] AID's *Program and Project Data Presentations to the Congress*. Quoted from Mike Klare, "Over There: Policing The Empire."
[101] *Hearing on U.S. Assistance*, p. 226.
[102] *U.S. Army Handbook for Vietnam*. Department of the Army Pamphlet, No. 550-40. September, 1962. Reprinted October, 1964. p. 47.
[103] *Hearings on U.S. Assistance*, p. 290. Ambassador Komer served as CORDS Deputy and chief pacification adviser to the Saigon government from 1967 through 1968. Speech delivered to the American Political Science Association, September, 1970. Reprinted in *Hearings on U.S. Assistance*, pp. 290-311.
[104] *Ibid.* p. 292.
[105] *Hearings on U.S. Assistance*, p. 185.
[106] Louis Kubicka, Director of Quang Ngai Rehabilitation Center for AFSC from 1967 to 1971, in an interview with NARMIC on April 5, 1972. According to Mr. Kubicka, even Saigon and American officials have been known to call these relocation centers "concentration camps."
[107] *Hearings on U.S. Assistance*, p. 290.
[108] *Op. cit.*, p. 292.
[109] Refugee and Civilian War Casualty Problems in Indochina. A Staff Report for the Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees. September 28, 1970. p. 3. Hereafter called *1970 Senate Refugee Report*.
[110] Jonathan Schell. *The Military Half*. Vintage Books. June 1968. Quote taken from jacket cover.
[111] According to Defense Department statistics, over 13 million tons of munitions have been used in Indochina during the Johnson and Nixon years. Even the weapons used by the United States are designed to render large areas uninhabitable. For example, over 27 million Wide Area Anti-Personnel mines have been produced:

When they land, springs pop out of each mine carrying fine wires several feet out from the mine, thus giving it the nickname "spider bomb." If at any time someone should walk through the area and disturb wire on any of the hundreds in the area, the mine detonates spreading tiny pellets of shrapnel over a 60-yard circle. (NARMIC Slide Show on the Automated Air War. Documentation 107.)

[112] Jonathan Schell. *The Village of Ben Suc*. Vintage Books. February 1968.
[113] Wells Klein, "Refuge and Social Welfare Problems in Vietnam." *1970 Senate Refugee Report*. p. 50.
[114] *Ibid.*
[115] *Hearings on U.S. Assistance*, p. 224.
[116] *War-Related Civilian Problems in Indochina*. Hearings before the Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees. April 22, 1971. p. 34. Hereafter called *1971 Refugee Hearings*.
[117] *The 1970 Senate Refugee Report*, p. 14, states that the new USAID budget for public health is being cut by 25%, while

An internal USAID memorandum dated July 31, 1970, states that "Last year the U.S. Mission made a policy determination to narrow our role in social welfare relief. We terminated the social welfare project (360) and continued to address in the refugee project (307) only those activities which would be associated with nonmilitary victims of the war."

[118] Malcolm Browne, "Deep Recession Grips Saigon." *New York Times*, 6/4/72.
[119] The Senate Subcommittee on Refugees summarized a 1972 GAO report on the Civilian Health and War-Related Casualty program in Vietnam. Describing conditions at refugee sites, the summary made the following points:

1. GAO visited 38 representative sites in the 4 Military Regions in Vietnam.
2. GAO states that "on the basis of criteria established by GVN, many refugee sites needed facilities such as housing, classrooms, wells, medical facilities, medical services, and sanitation facilities. The most serious problem found at most of the sites visited was the lack of opportunity for self-support and/or economic potential."
3. "Nowhere in Vietnam are the problems of assisting refugees more noticeable than in Military Region 1 that comprises the 5 northernmost province in Vietnam."

a. A March 1971 CORDS survey reported an unemployment rate of 40%, little education and medical services, and insufficient security.

b. According to GAO, over 90% of the 252 sites covered by the CORD Survey were officially "listed as being normalized, when, in fact, the survey showed that they did not meet GVN criteria."

c. GAO states that 450,000 refugees lived in the 252 sites surveyed. No one was being responsive to the needs of the refugees in these sites, "although the sites were in existence about 4 years."

Problems of War Victims in Indochina. Part I: Vietnam. Hearings before the Senate Subcommittee to Investigate Problems Connected with Refugees and Escapees. 92nd Congress, 2nd Session. May 8, 1972. p. 106. Hereafter called *1972 Refugee Hearings*.
[120] *1970 Senate Refugee Report*, p. 7.
[121] *Ibid.*
[122] Louis Kubicka, interview with NARMIC on April 5, 1972.
[123] *1972 Refuge Hearings*, p. 105.
[124] *Op. cit.*, p. 94.
[125] *Ibid.*
[126] *Ibid.*
[127] *Hearings on CORDS*, p. 710.
[128] Cited in the *White Report*.
[129] *Hearings on U.S. Assistance*, p. 296.
[130] *Hearings on CORDS*, p. 710.
[131] *White Report*.
[132] *Thoi Bao Ga*, No. 10. October 1970. This issue provides a thorough analysis of the 1970 Land Reform law, as well as a translation of an important article on this issue by Duong Son Quan, called "Is the Land to the Tiller Bill as Perfect as His Excellency Ambassador Bunker Claims?"
[133] According to Duong Son Quan:

The great majority of the lands to be taken away from the landlords lie in areas with no security or where security is limited, since lands in secure areas have already either been taken away by Decree 57 or the landlords have found ways of dividing them to their descendants. There are many areas such as some of the districts in Chuong Thien province where the limit of security is not more than 500 meters from the military garrisons in daylight and next to the garrisons' fences during nighttime. Many of the land distribution specialists who have tried to get into areas of paddy fields in order to measure them and make out papers for distribution were told by the district chiefs of the areas that they could not guarantee any security for them. *Thol Bao Ga*, No. 10. October 1970.

[134] In August 1971, Dr. E. W. Pfeiffer, a zoologist from the University of Montana, and Dr. Arthur H. Westing, a botanist from Windham College in Vermont, visited Vietnam to investigate the effects of the war on the land of Vietnam. They interviewed farmers who were trying to reclaim their land, and learned that:

. . . Their main problem was the presence of unexploded munitions in the areas. The Hoi Son people stated that within the last few weeks three women had been killed and one badly wounded when plows detonated unexploded weapons. We learned that mines in some resettled areas have been cleared, but the problem of locating and neutralizing unexploded ordnance before land is resettled is an urgent one. On several occasions we en-

countered the fear of unexploded munitions, which probably accounts for a phenomenon we often observed from the air: fields with craters were usually not being cultivated although nearby fields were. One farmer whom we interviewed stated that the people do not like to plow in the bombed areas because the shrapnel in the dirt cuts the buffalo's hoofs, resulting in infection. E. W. Pfeiffer and Arthur H. Westling, "Land War." *Environment*, Vol. 13, No. 9. November 1971.

[135] Duong Son Quan, *op. cit.*

[136] *Ibid.*

[137] Hearings on the Foreign Assistance Act of 1972. House Committee on Foreign Affairs. 92d Congress, second session. March 1972. Part I. p. 106. Hereafter called *1972 House Hearings on Foreign Aid.*

[138] *Ibid.*

[139] *Hearings on U.S. Assistance*, p. 181. The quotes in this section are from William Colby, a former CORDS director.

[140] *Op. cit.*, p. 176.

[141] *Op. cit.*, p. 178.

[142] Colby was straightforward about the primary U.S. role in Vietnamese pacification: "In considerable part, it was influenced by advice and support provided by the United States through the CORDS organization and its predecessors . . . The function of U.S. advice and support was *to initiate* and support a Vietnamese effort which can be taken up and maintained by the Vietnamese alone." (*Ibid.*, p. 177, emphasis ours.) And again, "a considerable degree of the advice and support of the GVN pacification program has come from the U.S. side over the years." (p. 179)

[143] The following outline of the "large American advisory infrastructure" is from 1969:

"There are American advisers at every military and civilian level both in Saigon and in the field. They are in the Prime Minister's Office, at the Vietnam Training Center and other training schools, in Government ministries, working with the police and with the Phoenix program, and in virtually every sphere of governmental activity. There are sizeable American staffs, virtually duplicating Vietnamese Corps commanders, with each of the ten South Vietnamese divisions, and at every lower military echelon, in some cases even down to the lower level of the Popular Force platoon in the hamlet. There are American advisers with large American staffs serving side by side with the 44 Province Chiefs (200 in Dinh Tuong Province alone) and with the 259 District Chiefs."

Vietnam: December 1969. Staff Report to the Senate Committee on Foreign Relations. 91st Congress, 2nd Session. p. 7.

[144] *Hearings on U.S. Assistance*, p. 179.

[145] *Vietnam: May, 1972*, p. 20.

[146] *Ibid.*

[147] *Ibid.* In addition to the CORDS advisors, as of late May, there were 5,093 U.S. military advisors in Vietnam—2,480 Army advisors, 1,779 Navy advisors, 781 Air Force advisors and 53 Marine Corps advisors. *Op cit.* p. 11.

[148] *Op. cit.* p. 11.

[149] *Philadelphia Bulletin*, 6/22/72.

[150] *Vietnam: May 1972*, p. 30.

[151] *July 1972 GAO Report*, p. 15.

"The funding method criticized by the GAO, called Military Assistance Service Funded (MASF), has spent over $11.5 billion in Vietnam from 1966 through 1973. Senate Committee on Armed Services. *Hearings on Military Procurement Authorizations*, Fiscal Year 1973. 92nd Congress, 2nd Session. Part 3. p. 1914."

[152] *July 1972 GAO Report*, p. 27.

[153] *Op. cit.*, p. 12.

[154] *Ibid.*, and *Hearings on U.S. Assistance*, p. 224.

[155] *Vietnam: May 1972*, p. 30:

"Of the 121.4 billion piasters used, it is reasonable to estimate that the U.S. supplied at least 56% or $57.7 million. (56% is the GAO estimate of the proportion of Saigon's contribution to CORDS which is actually from U.S. aid, directly or indirectly.")

[156] Ngo Vinh Long, "Making ARVN Fight." *Thoi Bao Ga*. March and April 1972.

[157] From the article "The Mobilization of Soldiers in a New Sweep," published in the Saigon magazine *Quan Chung*. September 5, 1969. Quoted in *Thoi Bao Ga*. March and April 1972.

[158] *White Report.*

[159] *Au Sud-Vietnam: Etudiants et Lycéens En Prison*. Mouvement des Catholiques Pour la Paix. Saigon 1972. A copy is in NARMIC files.

[160] *New York Times*, 6/2/72.

[161] *Vietnam: May 1972*, p. 17.

[162] *Op. cit.*, p. 10.

[163] Peter Braestrup, "How Thieu Met Crisis," *Washington Post*, 7/9/72.

[164] *Vietnam: May 1972*, p. 18.

[165] *Op. cit.*, p. 10.

[166] *Time*, 7/24/72.

[167] *Ibid.*

[168] *Ibid.*

[169] *Hearings on U.S. Assistance*, p. 294.

[170] *Op. cit.*, p. 295.

[171] *Ibid.*

[172] *Hearings on U.S. Assistance*, pp. 135, 164.

[173] *Hearings on CORDS*, p. 5.

[174] *White Report.*

[175] *Hearings on U.S. Assistance*, p. 295.

[176] *Ibid.*

[177] *White Report.*

[178] *Ibid.*

[179] *War-Related Civilian Problems in Indochina*, Part III, pp. 45–46.

[180] *Time*, 2/7/72.

[181] Malcolm Browne, "Saigon Fears Discord By Veterans After War." *New York Times*, 6/26/72.

[182] *Duoc Nha Nam*, 1/1/71. Cited in *Thoi Boa Ga*, March and April, 1972.

[183] *New York Times*, 6/26/72.

[184] *Thoi Boa Ga*, March and April 1972.

[185] *New York Times*, 6/26/72.

[186] *Ibid.*

[187] For Korea's role in U.S.-Asian strategy, see Virgina Brodine and Mark Selden, editors, *Open Secret, The Kissinger-Nixon Doctrine in Asia*, Harper & Row, 1972, especially p. 164.

[188] A copy of RAND's "Viet Cong Motivation and Morale Study" was obtained by the editor of Pacific News Service, Orville Schell. See "Classified RAND Corporation Report Reveals Eyewitness Accounts of Atrocities in Vietnam," *American Report*, 7/28/72, from which the quote was taken.

[189] U.S. Senate, Committee on Armed Services, *Military Procurement Authorizations, Fiscal Year 1973, Hearings*, 92nd Congress, 2nd Session, Part 3, p. 1917. Hereafter called *Senate Authorizations, 1973.*

[190] *Op. cit.*, p. 1576.

[191] *Op. cit.*, p. 1920.

[192] *Vietnam: May 1972*, pp. 5–6.

[193] *Senate Authorizations, 1973*, p. 1921.

[194] *Op. cit.*, p. 1919.

[195] *Op. cit.*, p. 1916.

[196] *Op. cit.*, p. 1938.

[197] U.S. House of Representatives, Committee on Foreign Affairs, *Foreign Assistance Act of 1972, Hearings*, 92nd Congress, 2nd Session, p. 175. Hereafter called *House Foreign Assistance, 1972.* Figures are from General George Seignious, testifying for DOD.

[198] *New York Times*, 6/4/72.

[199] *Ibid.*

[200] *Ibid.*

[201] *Hearings on Currency Exchange*, p. 45.

[202] Figures from the Saigon Government's Office of Statistics. *Thoi Bao Ga*, December 1971.

[203] *Duoc Nha Nam*, March 9, 1971. Cited in *Thoi Bao Ga*, December, 1971.

[204] *Dan Chu Moi* (a Saigon newspaper), November 17, 1971. Cited in *Thoi Bao Ga*, December 1971.

[205] This article was first published in a conservative Catholic newspaper, *Xay Dung*. Cited in *Thoi Bao Ga*. December, 1971.

[206] *Far Eastern Economic Review*, 7/1/72.

[207] *Ibid.*

[208] *Senate Authorizations, 1973*, p. 1914.

[209] *New York Times*, 6/4/72.

[210] In July 1972 the official exchange rate was changed to 410 piasters to the dollar, roughly the current equivalent to black market rates. The devaluation of the piaster from 118:1 to 410:1 is very sharp. Perhaps pressure from Congress and the GAO in an election year produced results.

[211] *Hearings on Currency Exchange*, p. 6.

[212] *Ibid.*

[213] *Ibid.*

[214] *Ibid.*

[215] *Ibid.*

[216] *Vietnam: May 1972*, p. 26.

[217] *House Foreign Assistance, 1972*, p. 235. (Since $200 million is not much on a Defense Department budget scale of costs, it is interesting to note that DOD's own estimate in March 1972 of Chinese assistance to North Vietnam is $150 to 200 million a year. *Senate Authorizations, 1973*, p. 1938.

[218] U.S. Senate, Committee on Armed Services, *Military Procurement Authorizations, Fiscal Year 1973, Report*, 92nd Congress, 2nd Session, pp. 172–173. Hereafter called *Senate Authorizations Report, 1973.*

[219] *Ibid.*

[220] *Senate Authorizations, 1973*, p. 1433.

[221] *Senate Authorizations Report, 1973*, pp. 173–174.

[222] U.S. Senate, Committee on Foreign Relations, *Foreign Assistance Act of 1972*, Hearings, 92nd Congress, 2nd Session, p. 139. Hereafter called *Senate Foreign Assistance 1972.*

[223] *Wall Street Journal*, June 6, 1972, p. 4. The $3 to $5 billion figure was also the estimate of ABC Evening News, August 24, 1972.

[224] Comparative Fiscal Year 1972/73 figures for Laos from *Senate Authorizations, 1973*, pp. 1588, 1589, and 1910; figures for Cambodia, *op. cit.*, p. 1588 and *House Foreign Assistance, 1972*, pp. 2, 179; for Thailand, *Senate Authorizations, 1973*, p. 1588.

[225] U.S. Senate, Committee on Foreign Relations, *The Foreign Assistance Act of 1972, Report*, May 31, 1972, 92nd Congress, 2nd Session, Table VI.

[226] *Senate Foreign Assistance, 1972*, p. 92.

[227] *House Foreign Assistance, 1972*, p. 79.

[228] *Senate Foreign Assistance, 1972*, p. 90. Senator Fulbright's estimate may be much too conservative. A study done in 1970 put eventual war costs at $750 billion. *Congressional Record*, 12/31/70, Vol. 116, Pt. 33, pp. 44379–44384.

[229] *House Foreign Assistance, 1972*, p. 143.

[230] *Op. cit.*, p. 235.

[231] U.S. House of Representatives, Committee on Armed Services, *Military Procurement Authorizations, Fiscal Year 1973*, Hearings, 92nd Congress, 2nd Session, Part 2, p. 10280. Hereafter *House Authorizations, 1973.*

[232] *House Foreign Assistance, 1972*, p. 180; *House Authorizations, 1973*, p. 58.

[233] *Op cit.*, p. 203.

[234] *Op cit.*, p. 233. All quotations in this series from Administration spokesmen presenting the Defense or Foreign Assistance bills for 1973.

[235] *New York Times*, 4/13/72, using statistics from U.S. intelligence estimates.

[236] U.S. Senate Committee on Foreign Relations, *The United States and Vietnam: 1944–1947*, Staff study No. 2, April 3, 1972, 92nd Congress, 2nd Session, p. 2. A staff study based on the Pentagon Papers. Hereafter called *U.S.-Vietnam Senate Study 2.*

[237] *Ibid.*

[238] *Op cit.*, p. 3.

[239] *Op. cit.*, p. 4.

[240] *U.S. Army Area Handbook for Vietnam*, p. 24.

[241] *Ibid.*

[242] *Ibid.*

[243] "Report by Arthur Hale of the U.S.I.S. Based on a Thirteen Day Stay in Hanoi in

October 1945." Gallagher Papers, Appendix I, *U.S.-Vitnam Senate Study* 2, p. 30.

[244] *Ibid.*

[245] *Ibid.*

[246] *Ibid.*

[247] *Op. cit.*, p. 15.

[248] *Ibid.*

[249] *Op. cit.*, p. 17.

[250] *Op. cit.*, p. 20.

[251] *Ibid.*

[252] Quoted in *The Pentagon Papers*, Beacon Press, 1971, p. 5.

[253] *Op. cit.*, p. 51.

[254] *Op. cit.*, p. 3.

[255] *Op. cit.*, p. 77.

[256] *U.S. Army Area Handbook for Vietnam*, p. 26.

[257] *The Pentagon Papers*, Beacon Press, p. 96.

[258] *The Pentagon Papers*, New York Times edition, Bantam Press, p. 3.

[259] *Op. cit.*, p. 52.

[260] *The Pentagon Papers*, Beacon Press, p. 177.

[261] *The Pentagon Papers*, New York Times edition, p. 1.

[262] See The Committee of Concerned Asian Scholars, *The Indochina Story*, Bantam, 1970, pp. 24–31.

[263] Speech at a convention of The American Friends of Vietnam, June 1, 1956.

[264] Dwight D. Eisenhower, *Mandate for Change*, p. 372.

[265] *Vann Paper.*

[266] *Ibid.*

[267] *U.S. Army Area Handbook in Vietnam*, p. 444.

[268] *The Pentagon Papers*, New York Times edition, p. 164.

[269] *Op. cit.*, p. 159. A carefully documented examination of the personalities and motivations, both Vietnamese and American, in the coup against Diem was presented in *NBC News Whitepaper: Vietnam Hindsight*, originally televised in December, 1971.

[270] Interview with German magazine, *Stern*. Reprinted in *Los Angeles New Advocate*, April 1–15, 1972.

[271] *Ibid.*

[272] *Vann Paper.*

[273] *Ibid.*

DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF VIET NAM

"All men are created equal. They are endowed by their Creator with certain unalienable Rights; among these are Life, Liberty and the pursuit of Happiness."

This immortal statement was made in the Declaration of Independence of the United States of America in 1776. In a broader sense, this means: All the peoples on the earth are equal from birth, all the peoples have a right to live and to be happy and free. . . .

Those are undeniable truths.

Nevertheless, for more than eighty years, the French imperialists, abusing the standard of Liberty, Equality and Fraternity, have violated our Fatherland and oppressed our fellow-citizens. They have acted contrary to the ideals of humanity and justice.

In the field of politics, they have deprived our people of every democratic liberty.

They have enforced inhuman laws; they have set up three distinct political regimes in the North, the Center, and the South of Viet Nam in order to wreck our national unity and prevent our people from being united.

They have built more prisons than schools. They have mercilessly slain our patriots; they have drowned our uprisings in rivers of blood. . . .

The whole Vietnamese people, animated by a common purpose, are determined to fight to the bitter end against any attempt by the French colonialists to reconquer our country.

We are convinced that the Allied nations, which at Teheran and San Francisco have acknowledged the principles of self-determination and equality of nations, will not refuse to recognize the independence of Viet Nam.

A people that has courageously opposed French domination for more than eight years, a people that has fought side by side with the Allies against the fascists during these last years, such a people must be free and independent.

For these reasons, we, members of the Provisional Government of the Democratic Republic of Viet Nam, solemnly declare to the world that Viet Nam has the right to be free and independent, and in fact it is so already. The entire Vietnamese people are determined to mobilize all their physical and mental strength, to sacrifice their lives and property in order to safeguard their freedom and independence.—Ho Chi Minh, President; Hanoi, September 2, 1945.

(This marks the end of the routine morning business transacted today.)

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. The Senator from Indiana (Mr. BAYH) is recognized.

Mr. BAYH. Mr. President, I yield to several Senators at this point with the understanding I do not lose my right to the floor and with the understanding that my remarks will not count as a second speech.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Louisiana is recognized.

PROHIBITION OF IMPORTATION OF CERTAIN SCULPTURE OR MURALS

Mr. LONG. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9463.

The PRESIDING OFFICER (Mr. BAYH) 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. 9463) to prohibit the importation into the United States of certain pre-Columbian monumental or architectural sculpture or murals exported contrary to the laws of the country of origin, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. LONG. I move that the Senate insist upon its amendments and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. LONG, Mr. ANDERSON, Mr. TALMADGE, Mr. BENNETT, and Mr. CURTIS conferees on the part of the Senate.

FISHERMEN'S PROTECTIVE ACT AMENDMENTS—CONFERENCE REPORT

Mr. STEVENS. Mr. President, I submit a report of the committee of conference on H.R. 7117, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The Assistant Legislative Clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7117) to amend the Fishermen's Protective Act of 1967 to expedite the reimbursement of U.S. vessel owners for charges paid by them for the release of vessels and crews illegally seized by foreign countries, to strengthen the provisions therein relating to the collection of claims against such foreign countries for amounts so reimbursed and for certain other amounts, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of October 4, 1972, at pp. H 9111.)

Mr. STEVENS. Mr. President, I ask unanimous consent that the printing of the conference report as a Senate report be waived.

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

Mr. STEVENS. Mr. President, I move the adoption of the conference report.

The report was agreed to.

TRIBUTE TO DR. LEON SULLIVAN

Mr. HUMPHREY. Mr. President, today I would like to pay special tribute to a man who is a good friend and a gifted leader. I speak of Rev. Leon H. Sullivan who as founder and chairman of the board of the Opportunities Industrialization Centers has been a dynamic force in giving thousands of needy Americans, hope, purpose, and dignity. He is a man of God committed to working for the spiritual and economic salvation of those in need.

Dr. Sullivan began the first OIC in an abandoned Philadelphia jailhouse in 1964. It was a courageous first step in what were to become more than 100 OIC centers all across America.

Since its inception, the Opportunities Industrialization Centers have trained and placed in jobs 125,000 men and women who now earn approximately $400 million a year. Dr. Sullivan has told me that their present 10-year goal is to train and place in jobs 1 million Americans in urban and rural America.

When I was Vice President, I took a special interest in Dr. Sullivan's work because I saw the great potential it held for giving communities all over the Nation a viable method for community economic self-development. I aided the OIC's in obtaining much needed Federal assistance from the Departments of Labor, and Health, Education, and Welfare so that they could carry out their innovative work. I am also proud of my efforts to interest the private business community in Dr. Sullivan's work.

Eight years ago when Dr. Sullivan began OIC he adopted the slogan "We help ourselves." Self-improvement was the motivating force behind the OIC's as it is today.

The first OIC in Philadelphia recruited men and women from every stratum of life—the average age was 27 and the average level of educational attainment was the 10th grade. Dr. Sullivan said that one-third of his initial group in the OIC were on relief and 80 percent were below the poverty line.

In Dr. Sullivan's words:

OIC "began to turn that hopelessness into hope. OIC began to teach that genius was color blind; and OIC began to teach that it was not important where a man came from, but where he was going that counted; OIC taught that man was like a balloon, it is not his color that makes him rise, but what he has inside of him."

Dr. Sullivan realized the shortcomings of Government job training programs when he launched the OIC. He saw that too often the Government's manpower training programs consisted of training and more training leading to dead end and stopgap jobs. He wanted to put an end to this practice and bring to his people the dignity and self-respect that are part of a good job.

The manpower programs he initiated have enabled two-thirds of OIC trainees to keep the jobs they were originally trained for and to increase their earnings by considerable amounts. It is no understatement to say that OIC is now a way out of poverty and off the welfare rolls for thousands of blacks, Mexican-Americans, Indians, and Appalachian whites.

Today, there are over 5 million Americans without jobs. Unemployment has hit the poor, the aged and the young, very hard. Self-help economic development programs are certainly one of the many solutions to this serious economic problem. Federal, State, and local governments should carefully scrutinize the work of the OIC's and aid them where they exist and help to establish them in areas where they have not been established.

There are lessons for us in the work of Dr. Leon Sullivan. He has shown that people can help themselves. He has demonstrated that Americans do not have to settle for the unending cycle of poverty, welfare and dead end jobs. And he has proven that people with few job skills can be trained to hold skilled jobs.

And most important of all, by giving men and women hope when all hope for them had seemed to vanish, he rekindled something which seems so difficult to find in today's work: Man's basic confidence in his fellow man. If nothing else, Dr. Leon Sullivan has told hundreds of thousands of down-trodden Americans of all races: I believe in you. I want to help you by allowing you to help yourselves.

So today, I pay personal tribute to one of the most unusual men I have met in my public career. This Nation is indebted to Dr. Leon Sullivan for what he has done and for his future goals.

I make this statement today, Mr. President, because this week there will be a testimonial to Dr. Sullivan that will be attended by thousands of people from all over this Nation. This good and dear man deserves the everlasting gratitude of this Nation, and indeed deserves, may I say, the compliments and gratitude of the Senate.

Dr. Leon Sullivan seeks economic emancipation not only for black Americans but, for people of all races. He realizes that the provision of economic and social justice is just as important today as the struggle for civil rights was in the 1960's. I endorse Dr. Sullivan's goals, I join in his struggle. I believe in his basic goal as he so eloquently stated:

For my people I want ham and eggs on earth instead of milk and honey in heaven.

What a remarkable man, and I hope some of my other colleagues will take a little time to review his work and to rise and to compliment this man and to encourage him in the remarkable work he is doing for this great country of ours.

Mr. BAYH. Mr. President, I want to compliment my colleague from Minnesota. I, too, have had a chance to see the good works of the good Dr. Sullivan, to be in the OIC headquarters in Philadelphia, to look at the training programs, to see the whole investment procedure, and the way in which, throughout this country, there is a great effort to make it possible for black citizens to have a piece of the action, to know that they, too, can own a part of America, and to see what comes from this kind of investment.

I want not only to associate myself with the very pertinent remarks made by the Senator from Minnesota but also to associate myself with the efforts Dr. Sullivan and those associated with him are making to make it possible for minority citizens to stand shoulder to shoulder with other Americans, to know that they have a piece of this country and what it stands for.

Mr. HUMPHREY. I thank the Senator.

Mr. JAVITS. Mr. President, if the Senator will yield, I, too, would like to join in tribute to Dr. Sullivan and also to pay tribute to those who have been indefatigable in the pursuit of the cause, in which persons like Senator HUMPHREY, Senator BOGGS, and Senator PEARSON have joined. In my capacity as a member of the Labor and Public Welfare Committee, I have seen his work and have marveled at the way in which, without paying stipends, the OIC's get more people helped and more for them than under the manpower training programs—which is dismaying and frustrating—for which they have to pay stipends, so attractive is the idea of business and trainees working together in order to have a place at the end of the road.

This is a very gifted program. I have seen it at work in Bedford-Stuyvesant, which program Robert Kennedy and I and Mayor Lindsay founded. I have seen it in parts of my old congressional district in Manhattan, and it is extraordinary. It enlists the enthusiasm of the trainee and the enthusiasm of the local business community with tremendous effect.

I can assure the Senator that the greatest tribute to the Rev. Leon Sullivan is that in the manpower training bill, if I have anything to do with it, we will see to it that adequate provision is made so that this great movement may exercise its full scope in training, and not be limited by the inadequacy of resources.

Mr. HUMPHREY. Mr. President, I thank the Senator from New York, and also my good friend the Senator from Indiana.

This one anecdote may be of interest to Senators. I remember that when I first met Dr. Sullivan, I was in the office of the Vice President, and he came to call. I had requested that when he come to Washington he stop by for a visit. As I visited with this remarkable man, I was deeply moved by what he had to say and by his deep courage, and received a sense of inspiration from his words and his works.

I was supposed to address, that evening, a group of industrialists and corporate directors who were involved in what we called Plans for Progress. The Plans for Progress organization was a voluntary effort on the part of American business concerns to open up their employment practices to provide fair employment without the necessity of legislation. By the way, it was an excellent organization, and some of the industrialists, corporate directors, and managers who participated in the Plans for Progress have been in the forefront of what I consider to be the more sensitive social actions of our corporations.

Well, anyway, after the visit, I looked at Dr. Sullivan and I said, "Reverend Sullivan, I know you are supposed to be the man who gives the prayer tonight at the dinner," because he had been invited to give the invocation, "and I am supposed to be the man who makes the address." I said, "I believe that the good Lord will forgive me for not being very good in prayer, but that audience needs to hear a real good speech. I suggest, therefore, that we change the program. Will you let me give the invocation in whatever inadequate manner I can express myself, in the hope that Divine Providence will receive that invocation with forgiveness and understanding, and will you then, Dr. Sullivan, make the speech? Because," I said, "you can speak to both the audience and the Lord, both will listen, and both will be moved and will act."

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

Mr. HUMPHREY. And may I add, that is what the program turned out to be, and the speech was much better than the invocation.

Mr. ERVIN. Will the Senator yield?

Mr. BAYH. Mr. President, I am glad to yield to the Senator from North Carolina without losing my right to the floor.

Mr. ERVIN. I would just like to warn my good friend from Minnesota that sometimes those people who undertake to pray wind up suffering disappointment. I have had that personal experience.

I remember when, a few years ago, Senator Dirksen introduced the so-called Dirksen school prayer amendment, which as I recall the Senator from Minnesota, the Senator from Indiana, and myself opposed. When the Senator from Illinois (Mr. Dirksen) introduced that proposed amendment, I realized it was highly controversial, and that anyone who inter-

jected himself into that field of endeavor was likely to be misunderstood.

So I got down on my knees and I prayed very fervently that the Dirksen amendment would go away off somewhere into outer space, and not come back to trouble the Senate.

I know I prayed earnestly and I prayed fervently, but my prayers were not answered, and that amendment came back here and I had to stand up and face it.

I had always believed in prayer, and I always believed that when you prayed fervently your prayers would be answered.

So I took down my Bible to find out why my prayers were not answered in that request, and I found that the Bible does not say simply that fervent prayers will be answered. It says that the fervent prayer of a righteous man availeth much. So I had to draw the conclusion that while I had prayed fervently, I was not righteous within the meaning of that verse of the Scripture.

So I just want to warn the Senator from Minnesota to tread very softly in that field, for fear he will suffer a disappointment such as mine.

Mr. HUMPHREY. May I say to the Senator that I have already suffered those disappointments. I thank the Senator from North Carolina, because I realize now, with his help, what my shortcoming was—a failure of righteousness.

Mr. BAYH. Mr. President, under the same ground rules with which I yielded to the Senator from North Carolina, I would like to address a question to the distinguished Senator from Minnesota.

Although the Senator merely stated that he gave the invocation and Dr. Sullivan gave the speech, is it true that the Senator from Minnesota not only gave the invocation, but also the benediction?

Mr. HUMPHREY. The Senator is almost correct. As I recall, the invocation was long enough for both.

(The remarks that Mr. HUMPHREY made at this point when he introduced S. 4084 are printed in the morning business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

Mr. BAYH. Mr. President, I yield to the distinguished Senator from West Virginia, with the understanding that I will not lose my right to the floor, and that my repossession of the floor will not count as a second speech on this bill.

ORDER FOR TIME TO BEGIN ON CLOTURE DEBATE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the 1 hour under rule XXII on the motion to invoke cloture tomorrow begin at 10 o'clock a.m.

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

Mr. HUMPHREY. Mr. President, can the Senator advise us at what time the vote on cloture will occur?

Mr. ROBERT C. BYRD. The vote on cloture will occur around 11:15 a.m.

ORDER FOR ADJOURNMENT UNTIL 8 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 8 a.m. tomorrow.

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

NOMINATION OF GEN. CREIGHTON W. ABRAMS

Mr. HUMPHREY. Mr. President, I shall be necessarily absent for a few hours this afternoon. I understand that there may be a call of the Executive Calendar, during which the nomination of General Abrams to be Chief of Staff of the U.S. Army will be brought before the Senate.

I want to be recorded now as being strongly in favor of this appointment. I know General Abrams. I have great respect for his professional competence. He has performed with honor and distinction in every assignment that he has been given.

During the time that I served as Vice President, I saw this man under difficult circumstances. He is a fine man, and I compliment the committee and the distinguished chairman for reporting the nomination favorably. I understand it has been reported unanimously.

Mr. STENNIS. That is correct, by 15 out of 16 members, and I understand that the 16th will vote for him.

Mr. HUMPHREY. I want Senators to know and I want the RECORD to show that I fully support General Abrams, and I am pleased that the committee has reported the nomination favorably.

Mr. STENNIS. I thank the Senator for his remarks. I feel strengthened by having his vote.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills of the Senate, each with an amendment, in which it requested the concurrence of the Senate:

S. 1973. An act to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes; and

S. 2674. An act to remove a cloud on the title to certain lands located in the State of New Mexico.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 8756. An act to provide for the establishment of the Hohokam Pima National Monument in the vicinity of the Snaketown archeological site, Arizona, and for other purposes;

H.R. 15597. An act to authorize additional funds for acquisition of interests in land within the area known as Piscataway Park in the State of Maryland; and

H.R. 16810. An act 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.

The message further announced that the House had agreed to a concurrent resolution (H. Con. Res. 717) authorizing the Clerk of the House to make a correction in the enrollment of the bill (H.R. 10420) to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following bill and joint resolution:

H.R. 16870. An act 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; and

H.J. Res. 984. Joint resolution to amend the joint resolution providing for United States participation in the International Bureau for the Protection of Industrial Property.

The enrolled bill and joint resolution were subsequently signed by the Acting President pro tempore (Mr. GRIFFIN).

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred, as indicated:

H.R. 15597. An act to authorize additional funds for acquisition of interests in land within the area known as Piscataway Park in the State of Maryland; to the Committee on Interior and Insular Affairs.

H.R. 16810. An act 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; to the Committee on Finance.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The Senate resumed the consideration of the bill (H.R. 13915) to further the achievement of equal educational opportunities.

Mr. BAYH. Mr. President, I ask unanimous consent that Peter Coogan and Gordon Alexander, two members from the staff of the Committee on the Judiciary, be permitted access to the floor during the debate of this issue.

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

Mr. BAYH. Mr. President, I rise to speak against H.R. 13915, the so-called Equal Educational Opportunities Act of 1972. I noticed in the colloquy with my friend from Minnesota and my friend from New York, relative to the power of prayer, that our friend the Senator from North Carolina (Mr. ERVIN) interjected some discussion of the so-called prayer amendment.

I think there is a great deal of similarity between the misnomer of the prayer amendment and the misnomer of the Equal Educational Opportunities Act. For some reason or other, there are those of our colleagues, well intentioned, I am sure, who, in their effort to try to ac-

complish what they feel are worthy goals, try to cloak those goals with some readily acceptable title instead of laying it on the line and describing the full conception of their legislation for all of us to see.

By using the name "prayer amendment," they implied that it was an amendment designed to give everybody the right to prayer. That is but one such example. As anybody who examined the Supreme Court doctrine on those cases well knows, so it is with the Equal Educational Opportunities Act. Anybody who examines this bill and examines what the Supreme Court has said and what it has not said will know that this bill really is not designed to provide, but to deny, equal educational opportunities.

Mr. President, the Equal Educational Opportunities Act is now before us. While that is its official title, it is generally referred to by both friends and foes alike as the antibusing bill. It talks about funding large-scale programs to aid education, but in fact it allocates not a penny of new money.

It talks about "equal educational opportunity," but it is not a source of new funds or new insight to help our troubled schools. It is simply a heavy-handed, misguided attempt to exploit the sensitive issue of pupil transportation.

Mr. President, as I will try to point out in my remarks, there is no single solution to the problem of obtaining quality education and equal educational opportunity. I do hope to be able to point out that the Supreme Court has only said that busing is one tool to be used in providing quality education for those who have been denied it for these many years because of unlawful State action. There are other ingredients, too. If we are really going to provide higher quality education, we must also invest a higher percentage of our national resources.

I think due mention should be made of the demagogic manner in which the President has tried to play on the fears and frustrations of the American people on this issue. On television earlier this year he was very eloquent in live and full color, and said his solution to our education problems was going to be an additional investment of about $2 billion.

Many of us who feel that additional investment in education is necessary took heart; but when we got to see the fine print, we found out that the additional money was not additional money at all. He was merely using funds that Congress had already voted and had already sent back to the local school corporation. He was taking these funds out of one pocket and holding them out as a carrot and putting them in another pocket and trying to make the American people feel that the Nixon administration was making a significant contribution to quality education.

I hope, Mr. President, to be able to document the disparity between what the President has said and what the facts are. One of the most unfortunate aspects about this type of practice on the part of the Nation's Chief Executive is that it tends to increase the movement toward distrust of the governmental process. He leads both white parents and black parents to believe that he is going to make an increased commitment. But when the people suddenly awaken to find out that it was just White House rhetoric, and that really there are no more funds coming back to local school corporations, they just do not know what to believe. When the President is not believable, then the democratic system and democratic process, are in deep trouble.

Mr. President, I do not have to tell any Member of this body what an emotional response the words "school busing" present in an election year. For that very reason, it is particularly important that we try, responsibly, to put this issue in its proper perspective.

Busing has been an integral part of our Nation's educational system for 20 years and more. Before anyone ever heard of "forced busing," close to 40 percent of the Nation's public school children were taking the bus to school. For two generations, busing has been the way to provide bigger, consolidated, more modern school facilities.

I might say that before we even got around to consolidating schools, the Senator from Indiana rode a bus about an hour in the morning and about an hour in the evening.

As I recall, the capacity of my school was about 150 when everybody was there. We used the school bus then to get to school to keep from having to walk many miles.

One of the ironies of the whole busing controversy is that the actual number of miles covered by school buses today is less than before the movement to strike down some of the de jure segregation barriers. It is ironic that those of our colleagues who stand on the floor of the Senate and beat their breasts with anguish about the suffering and hardship imposed on little children riding school buses were not so concerned about the children when they were busing white children past black schools and black children past white schools. That has been going on for generations, but some of those who cry the loudest now are saying there was nothing wrong with that process.

Now when children are bused to schools for better educational opportunity, for some reason or other that yellow school bus takes on the proportions of an ogre.

Court-ordered busing designed to facilitate desegregation of the schools has increased pre-existing busing by only about 3 or 4 percent. Nor is busing dangerous to children. It is the safest way for children to get to school, safer than walking. And I speak with just a bit of authority, if I might say, as a former chairman of the Senate Public Roads Committee. We looked into the question of highway safety, trying to make our highways safer for young and old alike, and trying to do something about the tragedy in America where we tolerate the slaughter of 55,000 persons on our highways every year.

National Safety Council figures show that bus transportation is more than twice as safe as walking and Pennsylvania Department of Education data show three times as many accidents for students who walk. And it could be even safer if Congress would pass adequate school bus safety legislation.

What, then, is all the fuss about? I believe that much of the trouble has stemmed from the fact that we have not yet had time for the Supreme Court to issue a series of decisions clarifying the law in this area.

We are talking about what is the law of the land. We are talking about the way in which the Supreme Court has interpreted legislation from this Congress and the Constitution as it applies to quality education. Frankly, I could not defend all the lower court decisions in this area because I think some of them miss the mark so far as quality education and how best it can be accomplished. It is not the purpose of our debate today to defend every lower court decision in busing.

It is not my purpose in speaking. But the question we face today is much more broad. This legislation is so drastic that it makes us ask whether we are going to sit idly by and let those who would destroy all the progress we have made to open doors to educational opportunity since Brown versus Board of Education and let that be destroyed? Are we going to turn back the clock of history for a quarter of a century? Are we going to destroy the hope that is in the minds and hearts of many who have really not known the blessings of America but hope for the future because of Brown against Board of Education and with the progress that has been made since then. Those who have lived in poverty and despair, those who have been discriminated against for years, see some hope for their children because of the educational opportunity now available for their children which was not available to the parents, or to the grandparents in previous generations.

Let us return to a discussion of what the Supreme Court really has done. Despite the various directions in which the lower courts have tended to go, the Supreme Court has, to date, given only very limited approval to school busing. I hope that will be forthcoming shortly.

In the leading case of Swann against Charlotte-Mecklenburg Board of Education, the Court unanimously said that pupil transportation was one of the many permissible remedies which a lower court may use to overcome the effects of State-sanctioned racial discrimination in the public schools. Not all busing would be approved, however. The Court made it clear that busing cannot be ordered where the time or distance of travel is so great as to risk the health of the children or to impinge on the educational process.

That is important. I wish it were possible for all parents concerned about the health and well-being of their children to read that case. It is a responsibility of the parents to be concerned about the health of their children and the educational opportunity of their children. Unfortunately, some of the parents who are most concerned about the Supreme Court's decisions on the busing issue have not had the chance to advise themselves that the Supreme Court, too, has expressed the same concern for the health

and educational opportunities of children. This is one of the basic criteria in the Swann case.

I want to emphasize that the Court in Swann said that pupil transportation was one of many tools available to courts; no one wants children to be transported unless it is absolutely necessary. Giving a finding of State-created segregation, we should first try to remedy the situation by other means—redrawing attendance zones, using cluster schools, educational parks, and other techniques whenever possible. But as the Court recognized in Swann, in some cases no remedy for past desegregation will succeed without some form of busing.

While I support limited busing where necessary under such circumstances, I have been opposed to and will continue to oppose certain kinds of transportation. For example, the Supreme Court has never approved busing which is shown to be educationally harmful. I would oppose such busing because it flies in the face of the basic purpose of all our efforts: to achieve quality education for all our citizens. This criterion must apply to children of all races, whether black, brown, or white. No one wants them to be bused if it might diminish their chance for quality education or if it physically be harmful to them.

When we deal with sensitive and complex questions of fundamental constitutional rights, it is particularly important to point out the difference between what people say the Court may require and what the Court has actually said. For example, the Court has never spoken to the question of whether school districts can be consolidated or students bused across political boundaries. An order involving such a remedy was entered in a Richmond, Va., case but was overturned by the Fourth Circuit Court of Appeals. An order involving such a remedy has been entered in relation to the Detroit school situation, but that has been stayed pending appeal to the sixth circuit. In like manner, the Supreme Court has never considered the issues whether busing can be ordered to overcome de facto segregation. It has such a case before it, Keyes against School District No. 1 of Denver, and argument will be heard this term. However, the court of appeals ruling in the case said that because only de facto segregation was involved, no constitutional question was presented.

One of the most important things for us to consider is the need for the Supreme Court itself, the highest judiciary of this land, to speak quickly and specifically about just where the guidelines will constitutionally be drawn in this very volatile subject of busing.

One of the most serious difficulties we have faced with trying to deal dispassionately with the busing issue is that we in Congress—and the lower courts—have had little guidance from the Supreme Court. I expect that after the Denver case is decided sometime this term, that problem will be eased greatly. Partly because of this lack of guidance, partly in order to allow more time for emotions to cool, and partly because some lower court orders appear to have gone beyond Swann, I supported the Mansfield-Scott amendment to the higher education bill which we passed last June. Briefly Mansfield-Scott prohibited the use of Federal funds for busing which was so extensive that it risked the health of children or significantly impinged on the educational process. It prohibited all Federal employees from urging or requiring school busing which endangered public school pupils' health or safety, or which resulted in students going to schools substantially inferior to those they would otherwise lawfully attend. And it postponed—for 1 year, or until judicial appeals were completed, whichever is shorter—district court orders requiring interdistrict transfer or transportation of pupils or consolidation of educational agencies.

The last provision of Mansfield-Scott—which postponed the effective date of certain busing orders for a limited period of time—was particularly important. It was designed to give the courts, including the Supreme Court, an opportunity to clarify the law. Once the legal situation is clarified, I am confident the issue will be put in its proper perspective.

But, Mr. President, now—when politics and emotion are joining together to cloud reason—is no time to tamper with the fundamental human rights involved in assuring high quality, equal educational opportunity to every child. For this reason I supported Mansfield-Scott. For the same reason, I opposed what I felt was the unconstitutional and unwise Griffin amendment, which attempted to withdraw from the Federal courts all jurisdiction to provide for pupil transportation, even where it is the only remedy available to end forced segregation.

I think it is imperative that the Congress have the intestinal fortitude to realize that this is an issue on which we have to stand up and be counted. Someone has to stand up and guarantee an equality of education for all children.

Mr. President, just to say, "Do not bring this subject in the doors of this Chamber because it might cause some grief back home" is not an answer. Anyone who feels that way ought to stay back home.

I have a certain amount of political sensitivity, along with every other Member of the Senate. And I would rather not have to deal with controversy. However, I think we ought to remind ourselves on this issue, as well as on some of the other hotly contested issues, of the guideline that President Truman laid down when he said:

If you can't stand the heat, stay out of the kitchen.

Anyone who wants milk and honey and rose petals and violet water, had better not run for the Senate because this body has to deal with controversial issues.

Hopefully, when the record is written it will show that the Senate was ready to stand up and be counted and require that this body fulfill its constitutional responsibility to see that the people of this land have the means to obtain quality education, which is so indispensable for fully sharing the rights of American citizenship.

Just as I could not support the unconstitutional Griffin amendment, I cannot support H.R. 13915, which has never even been considered by a Senate committee. By precluding pupil transportation beyond the closest or next closest school, H.R. 13915 will unconstitutionally attempt to preclude the Federal courts from carrying out the constitutional requirements established by Brown against Board of Education and its progeny. The Supreme Court held in Brown that State-imposed segregation by race denied equal protection of the laws. In a long series of cases since 1954, the Court has made it clear that school authorities are under a mandate to erase the vestiges of segregation and to create single, unified school systems. If the school systems fail to act, the courts are forced to step in and take action themselves. While there are generally many means available to overcome past desegregation, the evidence has shown that in some cases busing simply is the only remedy which can effectively implement a plan of desegregation. The legislation we are debating today is designed to preclude State authorities from using busing as a tool to achieve school desegregation—no matter how little busing, no matter how few children are involved, no matter how short the distance, and with no regard to the age of the pupils.

It is the judgment of the Senator from Indiana that if the Congress were to pass this law, it would be attempting to frustrate the courts in their efforts to implement and guarantee the fundamental rights established and preserved by the 14th amendment. Congress does not have that power, and it should not have that power. I would hope that this body would not follow our colleagues in the House by passing this legislation. And if we were to pass it, Mr. President, I predict that the Supreme Court of the United States would strike it down as unconstitutional and violative of every edict they have passed down on this important subject. The Court would have to act. Just as State policies must give way when they operate to hinder vindication of Federal constitutional guarantees, Congress, too, is precluded from preventing the enforcement of basic constitutional rights. For to preclude a remedy that might be essential to equal educational opportunity would be to nullify that right and, therefore, to perpetuate segregation in direct violation of the Constitution. As the Senator from North Carolina once observed:

To give people a constitutional right and then to deny them opportunity to vindicate that right, in case of its denial, is certainly making a hollow mockery of the Constitution.

I believe, therefore, that this bill is unconstitutional. It makes a hollow mockery of the Constitution. But this is not the only flaw in the bill. For example, section 406 contains a "reopener" clause so broadly drafted that it could result in the reopening and relitigation of all the more than 1,500 desegregation orders entered by Health, Education, and Welfare and the courts since 1954, even if those orders involved no pupil transportation of any kind.

If these decreases are no longer needed, or if the underlying circumstances have changed, the power to amend the decree already exists. An open-ended invitation

to upset hundreds of desegregation plans which are working, and which are working without trouble throughout the country cannot help but be a mistake of the highest order.

Mr. President, one of the most unfortunate effects of the emotional appeal that has been made over the busing issue goes far beyond the question of busing itself. There can be no denying that Brown against Board of Education as sound and as salutary as it was, was a great departure from precedent and practice in many parts of our country.

Human nature being what it is, any reasonable human being can understand that when precedent is shattered, when practices are changed there is going to be a period of perhaps tortured adjustment. But a proud chapter of our history was written then. Many citizens of this country, black and white alike, have gone through this period of tortured adjustment, have made necessary changes, have accommodated themselves to Brown against Board of Education, have opened the schoolhouse door, and found it is workable; and they are living side by side, studying side by side, practicing side by side, and playing side by side and they have found that the great threat that was expected, has in fact, been nonexistent.

White parents have put aside their fears. Black parents have seen their hopes realized. Now, Mr. President, for us to come along and consider striking down all this progress, exacerbating and reopening these fears and chilling these hopes is, in my opinion, one of the most tragic consequences of the bill now before us because it goes far beyond busing. It goes to the basic tenets of Brown itself by saying all of these orders could be opened, even if the plan has been working for years. I hope the Senate will stand firm and not tolerate such a tragic consequence.

Mr. President, I also feel that too little has been said in this debate about this bill's requirement that pupils be assigned no further than the "next closest" school. This provision will insure that all the burden of complying with desegregation orders—all the costs of past State-directed policies of segregation—will be shouldered by those citizens, both black and white, who by choice or out of economic necessity, have remained in our central cities.

Finally, and I think most importantly, we must consider the impact passage of this bill could have on blacks and other minority groups. This bill is of great symbolic importance because it marks the first congressional effort to retreat from the holding of the Brown case. Since Brown we have been deeply committed to the goal of ending segregation and creating truly equal opportunity throughout our society, for all of our citizens, without regard to race. This bill is designed to thwart that drive in the most direct way—by precluding the Federal courts from ordering effective remedies for de jure segregation. I hope my colleagues will bear in mind the effect passage of this bill will have on all those who have looked to Congress for preservation of their most basic rights.

Mr. President, even if I did not feel so strongly about these other objections, I would still oppose this bill because of its fundamental constitutional flaw, its blatant and unconstitutional attack on the ability of the Supreme Court to protect our fundamental liberties. Before expanding on this argument, however, I think it important to explore some of the legal and political background surrounding these issues.

CONGRESS AND CONSTITUTIONAL RESPONSIBILITY

Today's antibusing bill is another in a long series of very serious attacks on the Supreme Court. Since 1954, the Supreme Court has been regularly assailed by those opposed to school desegregation. Such attacks were rapidly decreasing in intensity and frequency by the late 1960's.

Now things have turned for the worse. The President has assumed leadership of those who assail the Court, even though he has had the great and unusual privilege of naming four members in a short period of time. The extraordinary fact is that it is the President of the United States who has proposed clearly unconstitutional legislation intended to overturn unanimous decisions of a Supreme Court headed by a "strict constructionist" Chief Justice he nominated himself. It is all part of a regrettable pattern of Presidential disrespect for our highest tribunal.

We have a President who does not believe in the separation of powers. In one short term of office he has consistently tried to usurp the power of Congress by withholding funds which this body has appropriated, by involving this country in foreign misadventures which are clearly acts of war, without seeking congressional ratification for these acts, and by even suggesting that this body should abrogate its power to advise and consent on a Supreme Court nominee. He has also tried to influence the independence of the Supreme Court.

This issue is just another of a whole series of issues which seems to the Senator from Indiana to go far beyond the academic question involved. We are talking about busing. Busing is immediately associated with schools and with educational opportunity. Closely related to busing are civil rights opportunities. Unfortunately it is also related to racial tensions.

These are the immediate products of the debate before us, but to the Senator from Indiana the matter goes far beyond that. It goes to the proposition that this Government of ours, the United States of America, has a rather unique governmental structure, a tripartite system, if you will, unlike most other governmental structures. It is dependent for its stability on the maintenance of three relatively equal and independent branches of Government. And I suggest to you that that has been one reason why this Nation has been able to survive turmoil, that it has been able to grow and prosper and give to its individual citizens what the citizens of few other nations and few other civilizations in the history of mankind have known.

To me one of the dangers in the issue before us is that it is a part of the effort which is being made by the executive branch to erode the independence of Congress, to erode the independence of the Supreme Court, to set up a real monarchy down at 1600 Pennsylvania Avenue, in which the President determines who should sit on the Court, how they shall rule, what money shall be spent, in what manner, and in what amount.

Perhaps my words could be said to be tainted by legislative prejudice. As a creature of the legislative process for 18 years, I suppose one has to be very careful in looking at the three separate but equal branches of Government, and that an 18-year legislator can become overly impressed with the responsibility of the legislative branch of the Government. I hope that is not the case, because I do not want the Senate of the United States to assume the prerogatives of the President, and I do not want the Senate of the United States to assume the prerogatives of the Supreme Court of the United States.

Mr. President, the record of the last few years contains numerous instances in which this body has slowly but surely permitted itself to relinquish authority, and we have seen the power of the once proud legislative branch assumed almost uncontested by the executive branch.

This is one issue. When it is disposed of in the next few days we are going to be faced with another. We are going to be asked by the President of the United States to let him determine how we spend our money and where we spend it.

Mr. President, if we go along with that request of the President of the United States to let him set a budget ceiling and let him determine where to cut and where the items in the budget are going to be fulfilled, and where they are going to be ignored completely, we might as well pack up and go home and sell the Capitol building to the National Historical Society, because that will be all it will be worth.

A. THE PRESIDENT'S EFFORT TO DEMEAN THE COURT

The President's lack of respect for an independent judiciary and his determination to make it bend to his policy objectives was most evident in his bitter struggle to place Judge Carswell on the Bench and in his later selection of candidates who had to be withdrawn even before they were formally nominated, because of strong opposition within the organized bar.

Mr. President, I do not want to reopen the Carswell nomination debate, because that was a matter of significant acrimony on the floor of this body. As I said in that debate, I do not mind opposing a colleague on an issue and going down to defeat or winning, but when we get involved in the course of the debate in an individual's qualifications, that is a different matter, one that I wish were not the responsibility of the Senate. But it is required by the Constitution, and thus is a responsibility we must fulfill.

I bring that particular issue to the Senate's attention, to remind the Senate that at that time the President of the United States had the audacity to suggest that this body, the Senate, had no

authority to even get involved in the situation; that the Constitution did not really say that the President shall nominate and the Senate shall advise and consent to the nomination and tell him how we feel about his Supreme Court nominations. So when the nomination was sent here, it was almost as if he was expected to anoint someone and the Senate would go along with it.

Of course, those who had advised the President had forgotten to read their history. They did not advise the Chief Executive that about 20 percent of all the Supreme Court nominations—20 percent, Mr. President—that had been made in the history of this country had not reached the Supreme Court of the United States. Even our beloved Founding Father, George Washington, found that he was not given carte blanche authority to anoint somebody to sit on the Supreme Court of the United States. One of our Presidents had three successive nominees turned down.

I point that out only as indicative of efforts of the Executive to erode the responsibility of an independent and coequal branch of the Government; namely, the Congress of the United States and the Senate of the United States. Luckily, the people have objected to such Presidential assaults on the other branches of Government.

Hundreds of lawyers and law professors from all parts of the country organized to protect the Court from the insult of unqualified Justices. Back several months ago, when the President's initial choices for the last two seats became known, the American Bar Association committee refused to lend support, not on ideological grounds, but on grounds of lack of skill and experience. This treatment of judicial appointments, by a President who is a lawyer, by the way, and has campaigned consistently on the law-and-order theme, shows a profound lack of respect for the judiciary, and a profound ignorance of the separation of powers and the responsibility to advise and consent that rests on the Senate of the United States as far as judicial nominees are concerned.

B. THE PRESIDENT'S EFFORT TO REVERSE CIVIL RIGHTS LAW

President Nixon has not only attempted to staff the Court with weak judges, but he has also chosen men with records of insensitivity or oposition to the development of civil rights protections in the case law. Both Judge Haynsworth and Judge Carswell had been repeatedly reversed on major civil rights questions by higher courts. Mr. Rehnquist's record in private life showed vigorous opposition to civil rights measures. There is no evidence that serious consideration was given to any of the southern Republican Federal judges who distinguished themselves in their defense of the Constitution during the school controversy. The message the President is trying to send to the judges of the country is very clear.

C. JUSTICE DEPARTMENT AS AN OPPONENT OF CIVIL RIGHTS

Even more disconcerting than the President's efforts to find anticivil rights judges for the Supreme Court has been the politicizing of the Civil Rights Division of the Department of Justice. Beginning with its effort to end enforcement of the school desegregaton guidelines and to postpone court-ordered desegregation of Mississippi in 1969, the Justice Department has repeatedly gone into court in opposition to lawyers representing black children. This was true in the Mississippi case, in the Norfolk case, in the Austin case, in the Nashville case, and in the Richmond case. The Department's motivation has been so clearly political that the lawyers of the Civil Rights Division have twice been stirred to the extraordinary step of open rebellion against Department positions. During the Eisenhower, Kennedy, and Johnson administrations, the Civil Rights Division was at the center of the movement for racial justice and it attracted some of the finest and most dedicated young lawyers in the country. Now, many of those men and women have left. Some have been fired. Those who remain must work under tight political control. In too many cases, the Justice Department is no longer a friend or even a neutral observer in civil rights battles, but a powerful part of the opposition.

The great civil rights acts of the 1950's and 1960's were drafted in the Justice Department. The Attorney General and his staff were at the center of the drive to expand legislative protection of civil rights. Now, for the first time since 1894, Congress is considering legislation which clearly takes away rights upheld by the Supreme Court, and the Justice Department is drafting and defending the legislation. And the President has done his utmost to intensify this destructive process.

D. ATTACK ON THE INSTITUTIONAL POWERS OF THE COURT—THE FINAL STAGE

Even though the President has had an opportunity to appoint more Justices to the Supreme Court in a shorter time than all but a handful of other Presidents, he is unwilling to abide by the law of the land as the Court defines it. For the first time in American history, the President is supporting an effort to limit fundamental constitutional rights sustained by unanimous Supreme Court decisions. More than that, he is supporting legislation based on the assumption that Congress possesses power to overturn those decisions by simple statute. When the crisis over school desegregation came in Little Rock, President Eisenhower decided that the supreme law of the land must be upheld whatever the cost. Now that we face a school busing crisis, generated in good measure by the President's own attacks on the courts, this President has decided the law of the land must be overturned, whatever the cost to our constitutional principles.

E. CONGRESS MUST UPHOLD THE CONSTITUTION

We are now in the midst of a very serious conflict between the executive and judicial branches of the Government over the rights of black children. The pressures of political expediency urge us to join the administration in its assault on constitutional law, as handed down by a broadly representative Supreme Court. Our constitutional obligation, on the other hand, is clear. Our oath of office binds us to uphold the Constitution even when the Constitution requires unpopular actions. This oath, and the whole principle of constitutional government is tested when the Court hands down widely criticized decisions. Almost a century and a half ago, a southern Senator, Robert Hayne of South Carolina, explained the kind of situation we confront today:

> If the will of a majority of Congress is to be the supreme law of the land, it is clear that the Constitution is a dead letter and has utterly failed of the very object for which it was designed—the protection of the rights of the minority.

Senator John Berrien of Georgia warned, in 1827, of the danger of emotional congressional decisions disregarding constitutional requirements:

> How often the decisions of deliberative bodies are influenced by consideration of temporary expediency, how often they are swayed by the impulses of momentary feeling. . . . I observe, in seasons of great political excitement, with what undeviating uniformity the ranks of party are marshalled even on questions of unconstitutional law. . . .

At a time when confidence in political leadership and American institutions is already at a record low, let us not cynically pass a clearly unconstitutional law. We must not join the administration in a confrontation with the Supreme Court which will only damage us all.

This is a time and a place for political courage. The Senate has shown that courage time after time in defeating administration efforts to demean the courts and to weaken civil rights laws. In this frantic preelection period, we must, once again, protect the Constitution and the Court. We have no higher obligation.

III. CONGRESSIONAL POWER AND JUDICIAL RIGHTS

A. RECENT CONGRESSIONAL EFFORTS TO LIMIT THE COURT'S POWER

A recent study of conflicts between the Congress and the Supreme Court reports seven periods of serious attack on the institutional powers of our highest judicial body before 1960. We are clearly in the midst of another such period now. The strategies for changing decisions have been diverse. Some proposals tried to change the size of the Court, others to establish specific qualifications for membership, still others proposed limited terms for Court appointments. Serious proposals of the progressive movement included the requirement for extraordinary majorities to declare laws unconstitutional and a proposal that Congress be empowered to override the Court by passing the same measure twice. Other bills and constitutional amendments were designed to reverse specific Court decisions. Finally, there have been recurring proposals to limit the Court's jurisdiction, thus permitting unrestrained congressional sovereignty in an entire area of law by forbidding the Court to hear cases.

Only three of these tools have actually been employed by Congress. The size of the Supreme Court was changed several times during the 19th century, sometimes in an effort to affect the political balance on the Court. President Roosevelt attempted to revive this approach in his 1937 "court packing" bill and was badly defeated by Congress. On a number of occasions, Congress has adopted consti-

tutional amendments or laws meant to reverse Supreme Court decisions on both constitutional and statutory issues. Congress, of course, lacks power to reverse a decision based on interpretation of the Constitution except through the constitutional amendment process. The final, and most drastic, of the experiments has been with limitation of the Supreme Court's jurisdiction. Congress has unambiguously resorted to this power to limit established rights only once, under extraordinary conditions in the immediate aftermath of the Civil War. Even the fullest judicial definition of that power, in the McCardle case, would not sustain the present legislation.

B. THE ALLEGED CONSTITUTIONAL BASIS FOR THE PRESENT BILL

The equal educational opportunities bill, both as initially proposed by the President and as passed by the House, attempts to reverse clearly established constitutional interpretations handed down by a unanimous Supreme Court. More than that, it attempts to limit the Court's jurisdiction and dictate procedures which all Federal courts must follow in developing remedies.

On its face, the idea of overruling the Supreme Court by a simple majority vote of Congress seems absurd. There are, however, two constitutional arguments advanced to justify the change. One is based on the theory that Congress possesses plenary power over the appellate jurisdiction of the Supreme Court, even when limiting the Court's right to hear cases abrogates a constitutional right. The other argument asserts that Congress may legitimately regulate the remedies employed by the courts to enforce the 14th amendment. In each case, the argument is based on a dubious reading of a phrase of the Constitution and of a Supreme Court decision interpreting that phrase. We must examine these arguments in some detail.

C. CONGRESSIONAL ENFORCEMENT POWERS UNDER THE 14TH AMENDMENT

The most commonly mentioned constitutional basis for the legislation now before us is section 5 of the 14th amendment. First I will examine the obvious deficiencies of this approach and then turn to the more serious question of Congress power over the jurisdiction of the Court.

Proponents of the House bill have argued that it is constitutional, because Congress possesses broad powers under section 5 of the 14th amendment "to enforce, by appropriate legislation, the provisions of this article." They rely on the Supreme Court's holding in the voting rights case, *South Carolina* v. *Katzenbach* (383 U.S. 301), which relied on a similar grant of power to Congress to sustain the far-reaching provisions of the 1965 Voting Rights Act. The specious premise in this argument is the assumption that the power to enact appropriate legislation to enforce the equal protection clause is also the power to enact a law to deny rights clearly protected by the amendment. Supporters of this theory are taking the position that an appropriate method of enforcing a right is to enact legislation forbidding the courts' enforcement powers.

Former Associate Justice Arthur J. Goldberg effectively rebuts the administration argument:

In *Katzenbach* v. *Morgan*, litigation brought to test provisions of the Voting Rights Act of 1965 raised the issue of the scope of congressional power under section 5. The Supreme Court observed that, since the adoption of the fourteenth amendment, congressional power under section 5 had been interpreted as parallel to the scope of congressional power under the necessary and proper clause. Chief Justice Marshall gave the classic formulation of the latter power in *McCulloch* v. *Maryland:*

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional."

The Court in *Katzenbach* upheld section 4 (e) of the Act, a provision banning state literacy tests, as a proper exercise of the section 5 power because it was "plainly adapted to [the] end" of the equal protection clause and consistent with "the letter and spirit of the constitution." Justice Harlan dissented and expressed concern lest the Court, by holding section 4(e) to be appropriate fourteenth amendment legislation, give future license to Congress substantively to dilute the current judicial interpretation of the amendment as well as expand it. The majority answered Justice Harlan's concern by denying Congress' power to contract the amendment:

"§ 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."

This limited nature of the section 5 power was reaffirmed by Justice Black in *Oregon v. Mitchell:*

"As broad as the congressional enforcement power is, it is not unlimited. Specifically, there are at least three limitations upon Congress' power to enforce the guarantees of the Civil War amendments . . . Third, Congress may only 'enforce' the provisions of the amendments and may do so only by "appropriate legislation." Congress has no power under the enforcement sections to undercut the amendments' guarantees of personal equality and freedom from discrimination. . . ."

If this bill was devoted to positive congressional action to aid school systems seeking effective desegregation, the constitutional issue would be very different. If, for example, Congress had adopted Senator RIBICOFF's bill for gradual desegregation of urban areas, I believe the courts would sustain it, at least in the absence of proof of de jure segregation in a locality. The congressional power to enforce the 14th amendment is a valuable tool and should be used to assist and to ease the process of creating real equal educational opportunity—but to repeat the warning of the majority in Morgan, "section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees."

D. THE EXCEPTIONS CLAUSE

1. THE FRAMER'S INTENT

Much of the argument in favor of the constitutionality of H.R. 13915 stems from article III, section 2 of the Constitution, which provides that—

The Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.

On first examination it would seem that Congress powers curtail the appellate jurisdiction of the court was unlimited. But history and the case law clearly does not support such an interpretation.

Fortunately, Congress can now learn a great deal about this crucial question from Raoul Berger's 1969 book, "Congress versus the Supreme Court," which contains an exhaustive historical analysis of this issue. Berger argues convincingly that the debate, both at the constitutional convention and at the State ratification conventions, showed a very deep preoccupation with the need to check legislative tyranny. Such a preoccupation, he insists, is simply not compatible with the theory that the Constitution gives Congress unlimited control over the business of the Supreme Court. I quote from Mr. Berger:

In the Convention John F. Mercer asked, "What led to the appointment of this Convention? The corruption and mutability of the Legislative Councils of the States." Madison noted that there had been a tendency "to throw all power into the legislative vortex . . . If no effective checks be devised for restraining the instability and encroachments of the latter . . . a revolution . . . would be inevitable." Gouverneur Morris concurred with Madison "in thinking that the public liberty is in greater danger from Legislative usurpations than from any other source"; he considered "Legislative tyranny the greatest danger to be apprehended." James Wilson said that "we have seen the Legislatures in our own country deprive the citizen of Life, of Liberty, & Property, we have seen Attainders, Banishment, & Confiscations."

These strictures, to be sure, were aimed at State excesses, but the Framers were not slow to draw the moral, to discern that a national legislature might ape the State assemblies. Mason, discussing proposed judicial participation in revision of federal enactments prior to effectiveness, said that the national Legislature "would so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary." Madison, after referring to the "strong propensity" of State legislatures "to a variety of pernicious measures," said that "one object" of an executive veto "was to controul the Natl. Legislature, so far as it might be infected with a similar propensity." "Is there no danger of a Legislative despotism," asked Wilson? "Theory & practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability." "All agree," said Nathaniel Gorham, "that a check on the Legislature is necessary."

Berger's analysis resolves the contradiction by showing that the power to make exceptions to the Court's jurisdiction "was the subject of prolonged debate" which turned not at all on a curb of judicial "excess," but was solely concerned with potential problems which could arise if the Court chose to review

matters of "fact" decided by the lower courts:

Such review was "bitterly denounced" by opponents of the Constitution on the ground that it infringed the right of trial by jury. The issue is clearly expressed in Luther Martin's report to Maryland:

"The proposed constitution . . . by its appellate jurisdiction, *absolutely takes away that inestimable privilege* [trial by jury]; since it expressly declares that the Supreme Court shall have appellate jurisdiction both as to law and *fact* . . . The Supreme Court is to take up *all questions of fact . . . to decide upon them* as if they *had never been tried by a jury* . . ."

The difficulty, in a nutshell, was the greatly varied practice in the States respecting review of facts, not alone in jury trials but in admiralty and equity as well. As Spaight, a member of the federal Convention, told the North Carolina convention, "the subject took up a considerable time to investigate it. It was impossible to make any one uniform regulation for all the states, or that would include all cases where it would be necessary." This was the explanation also made by two other Framers, Pinckney in South Carolina, and Wilson in Pennsylvania: "no particular mode of trial by jury could be discovered that would suit them all." Because of such difficulties, said Iredell, paraphrasing Spaight, the Framers "thought it better to leave all such regulations to the legislature itself." Randolph, also a Framer, said, "The appellate jurisdiction might be corrected as to matters of fact by the exceptions and regulations of Congress." This was also Madison's explanation in Virginia—cheek by jowl with his statement, "Were I to select a power which might be given with confidence, it would be the judicial power"—of Wilson in Pennsylvania, of Maclaine in North Carolina, and of Pendleton and Marshall in Virginia. The "exceptions" power, said Marshall, would "go to the cure of the mischief apprehended."

Madison stated in the Virginia convention that the "principal criticism which has been made, was against the appellate cognizance as well of fact as of law." Randolph said, "I can see no reason for giving it jurisdiction with respect to fact as well as law." Mason said "I would confine the appellate jurisdiction to matters of law only." Randolph stated that "The appellate jurisdiction might be corrected, as to matters of fact, by the exceptions and regulations of Congress." In Maryland an amendment was proposed that would "prevent the appeal from fact."

The acute Yates minutely examined Article III and concluded that "the supreme court has the power, in the last resort, to determine all questions on the meaning . . . of the constitution," and that the "legislature can not deprive the former of this right." The same meaning attaches to Hamilton's acknowledgment of judicial "finality" and explanation that Congress would not be left to adjudge the validity of its own laws. Literal reading of the "exceptions" clause requires us to conclude that Yates and Hamilton, and those who like Marshall and Iredell relied on judicial review for "protection from [Congressional] infringement of the Constitution," completely overlooked the fact that Congress had but to enact an "exception" to the "appellate" jurisdiction to deprive the Supreme Court of the power to decide that a Congressional Act was contrary to the Constitution. . . .

The sole reference to a curb on the "independence" and "responsibility" of the judiciary which I could find was to the impeachment power. This, said Hamilton, "is the only provision on the point which is consistent with the necessary independence of the judicial character." He expanded on the matter in *Federalist* No. 81.

Berger's exhaustive research strongly suggests that those who rely on the exceptions clause to support a theory of congressional power over the Supreme Court are making an unsupportable interpretation of a poorly drafted provision. The concern of the Founding Fathers, it seems clear, was not to limit the right of the Court to uphold the Constitution but to give Congress full power to protect the valuable right to a jury trial to decide the facts of a case. As Berger concludes:

In sum, discussion of the "exceptions" power in the Ratification conventions revolved almost exclusively about the retrial of facts found by a jury. So complicated were the varying practices that it was concluded to leave the problem for handling by the Congress through the medium of the "exceptions" clause, fashioned to meet the "principal criticism" of the appellate jurisdiction, its inclusion of matters of "fact." Questions of constitutionality are "matters of law," and as Hamilton said, "The propriety of this appellate jurisdiction has scarcely been called in question in regard to matters of law; but the clamors have been loud against it as applied to matters of fact." Constitutional issues therefore fell outside the remedial purposes of the "exceptions" clause.

Berger's view of the intentions of the framers is also supported by Prof. William W. Crosskey's exhaustive word-by-word analysis of the meaning of the various provisions of the Constitution at the time they were written. Crosskey argues that the "excepting power" of Congress is confined to determining at what level cases may be heard, not whether or not the courts may hear certain categories of cases. Although Crosskey's views on other issues often diverge widely from Berger's, it is significant that scholars operating from widely different sets of assumptions about constitutional history reach compatible conclusions about the limited nature of the exception clause:

The principal provisions addressed specifically to the national judiciary, and, more particularly, to the Supreme Court of the United States, are those found in the Judiciary Article of the Constitution. As previously noted, the Supreme Court's "judicial" "suprem[acy]" is there provided, as to all kinds of "Law," in mandatory terms; and, in similar terms, it is also provided that the Court *"shall* have" original jurisdiction in certain of the "Cases" falling within the categories of "the [national] judicial Power" there described, and appellate jurisdiction in "all the other Cases" falling within those categories. The Court's appellate jurisdiction is subject, however, to an excepting power in the hands of Congress; but this excepting power is itself subject to the condition, growing out of other mandatory provisions of Article III, that Congress shall provide other national courts of the kind there described—that is, *"inferior"* national courts, which means courts subject to some effective scheme of Supreme Court supervision—to hear all the "Cases," or parts of "Cases," that Congress decides to "except" from the appellate jurisdiction for which the Constitution tentatively provides. The rights of the Court growing out of these provisions—rights which, as to the people of the United States, are duties—come to it, then, by direct act of the people, in the Constitution. And this being true, the natural conclusion is that the Federal Convention expected the Supreme Court to exercise these rights—that is to say, to perform these duties—without regard to any acts of Congress, interfering unconstitutionally with them. The fact that the Court has never done this fully does not alter what the Constitution says; or what the Court's duties, under its provisions, really are.

Had the Founding Fathers had any conception that Congress could easily overturn constitutional rights simply by invoking an established power over jurisdiction, Berger maintains, the whole debate over a Bill of Rights in the Constitution would have made little sense:

So much emerges from Madison's explanation of the proposed Amendments to the First Congress: laws may "be considered necessary and proper by Congress . . . which laws in themselves are neither necessary nor proper; as well as improper laws could be enacted by State legislatures . . . If there was reason for restraining the State governments from exercising this power ["general warrants"], there is like reason for restraining the Federal Government." And, he went on to say, if these Amendments are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive.

No challenge was made to this statement; and indeed, shortly thereafter, in the course of the debate on the President's "removal" power, a decided preponderance of the spokesmen in the House expressly recognized that the courts were the ultimate arbiters whether Congressional Acts were consistent with the Constitution. An "impenetrable bulwark" against Congressional oppression that could easily be flanked by Congressional withdrawal of jurisdiction from the courts would be no bulwark at all. . . . Is it reasonable to conclude that in riveting the accompanying guarantees against Congressional invasions of liberty and property without due process or just compensation, they intended through the medium of the "exceptions" clause to leave those rights at the mercy of Congress?

Contrary to the claims of this bill's supporters, Berger insists that the idea of clear congressional power over the jurisdiction of the Supreme Court is by no means uniformly accepted. Had it been, he argues, it would have been preposterous for President Franklin Roosevelt, faced by a very severe threat to his entire legislative program, to resort to the court-packing plan:

Least of all should that inference be drawn by a generation that saw the most popular President in decades, Franklin D. Roosevelt, thrown back by Congress when he sought its help to "pack" a Court that had repeatedly invalidated legislation designed to rescue the nation from the depths of the Depression. The "Court-packing" plan, wrote President Roosevelt to then Professor Frankfurter, was "arrived at by a process of elimination" after searching through "all the other proposals for legislative action." It enlisted the aid, behind-the-scenes, of Frankfurter, himself the leading authority on federal jurisdiction, the lore of the Constitution, and the Court. How could Roosevelt and Frankfurter, with a corps of brilliant New Deal lawyers at their command, have overlooked the "simple" alternative: a Congressional exercise of Article III power to "strike at . . . judicial excess" by delimiting jurisdiction of constitutional controversies? All the hullabaloo about "Court-packing" was so easily avoidable if this alternative is so legitimate and available. The explanation, I suggest, lies not merely in the devotion of the people to the Court, but in the Congressional rejection of the view that "when the Court stands in the way of a legislative enactment, the Congress may

reverse it by enlarging the Court. When such a principle is adopted, our constitutional system is overthrown."

2. THE DANGER OF 50 DIFFERENT SETS OF REMEDIES

Even if the Supreme Court were to accept a limitation on its appellate jurisdiction forbidding it to enter or provide remedies for certain types of cases, it would not settle the issue but merely guarantee maximum confusion. The courts of the various States could still hear the cases and would be bound to provide remedies repairing the denial of constitutional rights. Prof. Henry Hart, Jr., described this State power in his article on the jurisdiction of the Federal courts:

The state courts always have a general jurisdiction to fall back on. And the Supremacy Clause binds them to exercise that jurisdiction in accordance with the Constitution.

3. THE M'CARDLE CASE AND ITS LIMITS

Since Congress has only once directly challenged the Supreme Court by attacking its jurisdiction to hear cases involving important constitutional rights, there is very little case law on the subject. This fact has given great importance to the one major judicial pronouncement on the subject, ex parte McCardle.

The facts of the situation are simple. One of the Reconstruction laws had granted a broad right of appeal in habeas corpus cases to the Supreme Court. McCardle, a Mississippi editor who was to be tried before a military commission authorized by a Reconstruction statute, appealed to the Supreme Court challenging the constitutionality of the law establishing the commission. The case threatened to undermine Congress' whole plan for dealing with the former Confederate States.

Supporters of Reconstruction, in the midst of the attempt to impeach Andrew Johnson and with vivid memories of the Dred Scott case, sought some way to prevent a disastrous reversal of national policy. The House first responded with a very direct and permanent threat to the Court. The House passed a bill requiring a two-thirds majority for any decision declaring an act of Congress unconstitutional. The House passed this measure, 116 to 39. Emotions ran high and there was broad public support for this drastic step. Charles Warren quotes the contemporary press accounts:

Harper's Weekly argued, in support of the measure, that: "If the Court shall decide against the validity of the Legal Tender Act, that the War was fought on an unconstitutional basis, and that the Southern States are still in the Union . . . results that cannot be contemplated without extreme solicitude would follow, and it is wholly unsafe to leave these questions to the decision of a bare majority of the Judges. . . . The regulation in question in no manner interferes with the stability of the Court, except to promote it. It leaves the whole judicial power in the tribunal, and only regulates it so as to prevent a capricious judgment. The independence of the Judge is not interfered with." The *Indianapolis Journal* regretted that the bill had not been introduced at an earlier date, when it would not provoke such partisan feeling; but it said that it was never of so great importance as now. "The Reconstruction Acts are full of the rights and liberties of millions of men; and to have these stricken down, by the decision of some old fossil on the Supreme Bench whose political opinion belongs to a past era, would be an outrage on humanity." It urged that a two-thirds requirement would lift judicial decisions into universal respect, while the present close divisions exposed the Court to imputations of partisanship.

This bill languished in the Senate, partly because of fears that two-thirds of the Court might vote to strike down the Reconstruction laws. The Court heard arguments on the McCardle case just as the Chief Justice was called temporarily from the bench to preside over the Senate impeachment trial of President Johnson. In the midst of this tense spectacle, Republican radicals in the House suddenly inserted a sweeping limitation on the Supreme Court's jurisdiction in a minor bill, without debate or any notice of their intentions. Warren explains the situation:

On March 12, 1868, there was pending in the House a harmless and unimportant Senate bill to extend to the Court's appellate jurisdiction in cases involving customs and revenue officers. Unanimous consent had been obtained by Robert C. Schenck of Ohio for its consideration, on the statement that it was a mere routine matter; and while the Democrats were thus thrown off their guard by this assertion, James F. Wilson of Iowa, without any explanation or debate, introduced an amendment entirely repealing the appellate jurisdiction of the Court under the Habeas Corpus Act of 1867, and further prohibiting the exercise of any jurisdiction by the Court on appeals which had been or might be taken. The amendment was agreed to without comment or objection, and the bill as thus amended by the House went back to the Senate. Then, for the first time, the moderate Republicans and the Democrats awoke to the fact that they had been deceived. Benjamin M. Boyer of Pennsylvania charged that the House had been disarmed by Schenck's remarks and induced to accept an amendment not genuine. He charged that it had been smuggled through, to prevent a test of the constitutionality of the Reconstruction Acts; and while admitting that the minority had no been wide enough awake, and had been caught napping, he thought that it would have been more manly to have introduced such a measure for free discussion. Schenck, in reply, boldly and frankly avowed that his purpose had been to deprive the Court of its power and jurisdiction, saying that he had lost confidence in the majority of that tribunal, and that: "They usurp power, whenever they dare to undertake to settle questions, purely political, in regard to the status of the States and the manner in which those States are to be held subject to the law-making power. And if I find them abusing that power, by attempting to arrogate to themselves jurisdiction under any statute that happens to be upon the record from which they claim to derive that jurisdiction, and I can take it away from them by a repeal of the statute, I will do it. . . . Now I hold that the Supreme Court, arrogating to themselves the pretension to settle not merely judicial but political questions, and trampling upon the principle of the decision made in the case of the Dorr Rebellion and upon every other decision of that kind, are, the majority of them, proceeding step by step to the usurpation of jurisdiction which does not belong to them. And I hold it to be not only my right, but my duty as a Representative of the people, to clip the wings of that Court."

"In the Senate, the amendment to its bill was concurred in, with no explanation or debate, on March 12, 1868, by a vote of thirty-two to six, with sixteen Senators absent. A request by Charles R. Buckalew of Pennsylvania for information as to the purpose of the amendment received only a very brief reply by George H. Williams of Oregon, which did not in any way explain its real purpose; and a request by Buckalew for postponement of action was refused. Within a very few days, however, after the passage of the bill through both Houses, the fact that Congress had been practically tricked into passing, without debate, a measure of the utmost importance burst with a shock upon the country. . . .

But the Radical Republican press was exultant. "The passage of that little bill which put a knife to the throat of the *McCardle Case* was a splendid performance . . . Congress will not abandon its Reconstruction policy to please any Court, because it sincerely believes that the welfare of the Nation depends upon the success of that policy," said the *Independent*. "This Congress will not brook opposition from the Court in political matters. The safety of the Nation demands that Congressional Reconstruction shall be successful; and if the Court interferes, the Court will go to the wall. This language sounds harsh and indecorous to fossil ears, no doubt." And the *Springfield Republican* said: "Congress does not intend to permit the Supreme Court to overthrow it or revive rebellion, if it can help it."

Although his impeachment trial had already begun, the President did not hesitate, even at this desperate moment in his career, to meet the Congressional attack upon the Court with a vigorous determination to uphold the honorable status of that tribunal; and on March 25, he sent to Congress a powerfully worded veto of the bill, in which he stated:

"Thus far during the existing of the Government, the Supreme Court of the United State has been viewed by the people as the true expounder of their Constitution, and in the most violent party conflicts, its judgments and decrees have always been sought and deferred to with confidence and respect. In public estimation, it combines judicial wisdom and impartiality in a greater degree than any other authority known to the Constitution; and any act which may be construed into, or mistaken for, an attempt to prevent or evade its decisions on a question which affects the liberty of the citizens and agitates the country cannot fail to be attended with unpropitious consequences. It will be justly held by a large portion of the people as an admission of the unconstitutionality of the act on which its judgment may be forbidden or forestalled, and may interfere with that willing acquiescence in its provisions which is necessary for the harmonious and efficient execution of any law."

Congress, however, passed the bill over the President's veto. The Court was now directly confronted with a major crisis. After some postponement, the Court unanimously bowed to Congress, in an opinion suggesting very broad congressional power to control the Court's business.

Chief Justice Chase spoke for the Court (7 Wall. 506):

It is quite true, as was argued by the counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred "with such exceptions and under such regulations as Congress shall make." . . .

The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of *habeas corpus* is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution;

and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.

Once the McCardle case was decided, there was danger of further congressional infringement. The danger seemed imminent in 1869, when the Court accepted the case of another Mississippi editor imprisoned by the military. In an initial decision on the case (*Ex parte Yerger*, 8 Wall. 85) the Court surprised Congress by holding that it did still have habeas corpus jurisdiction under the 1789 Judiciary Act. The decision implictly argued that Congress could not constitutionally deny the Supreme Court all habeas corpus jurisdiction:

In the particular class of cases [habeas corpus], of which that before the court is an example, when the custody to which the prisoner is remanded is that of some authority other than that of the remanding court, it is evident that the imprisoned citizen . . . is wholly without remedy unless it be found in the appellate jurisdiction of this court.

These considerations . . . would strongly persuade against the denial of the jurisdiction even were the reasons for affirming it less cogent than they are.

4. LESSONS OF THE M'CARDLE CASE

Since the McCardle decision has been very widely cited as the leading authority for congressional action to limit Supreme Court powers, it has been necessary to examine the historical context of the decision in some detail. It is now possible to state a series of important conclusions about the limits of the McCardle precedent:

First. The decision was made at a time of social and political upheaval, under circumstances of extreme political pressure on the Court. Taking these factors into account, its value in predicting the future development of the law should perhaps be discounted, much in the way the aberration of the Korematsu decision is explained—if not justified—by the context of west coast hysteria during World War II. Prof. Raoul Berger argues that McCardle "may be regarded as a cautious attempt to ride out the Reconstruction storm."

Second. The decision did not extinguish the right of appeal on habeas corpus grounds. The Supreme Court would entertain such writs as part of its original jurisdiction. It was still possible to appeal lower court decisions to a Circuit Court of Appeals, although the Supreme Court was forbidden to hear a second level of appeal. In his famous article, "The Power of Congress to Limit the Jurisdiction of Federal Courts," Prof. Henry M. Hart, Jr. argued that such limitations could be constitutional because they did not "destroy the essential role of the Supreme Court in the constitutional plan."

He says—

The circuit courts of the United States were still open in habeas corpus, and the Supreme Court itself could still entertain petitions for the writ which were filed with it in the first instance.

Third. The Supreme Court reasserted its habeas corpus power in a similar case less than a year later, surprising Congress by reviving an old statutory authorization. This action tends to confirm the argument that the Supreme Court had indeed been influenced by the unique political context of the McCardle case.

Fourth. If the full logic of the McCardle case were accepted, there would be no obstacle to total control by Congress of Federal court enforcement of fundamental constitutional rights. This obvious tendency was apparent in the Congressional reaction to the Yerger case. In the Yerger decision, the Supreme Court at least implicitly rejected this expansive theory of congressional authority.

Prof. Henry Hart, Jr., in his article, "The Power of Congress to Limit the Jurisdiction of Federal Courts," insists that exceptions to the Court's jurisdiction "must not be such as will destroy the essential role of the Supreme Court in the constitutional plan."

He says:

Whatever the difficulties of the test, they are less, are they not, than the difficulties of reading the Constitution as authorizing its own destruction.

If we are to have constitutional government, Hart writes:

A court must always be available to pass on claims of constitutional right to judicial process, and to provide such process if the claim is sustained.

5. POST-M'CARDLE CASES AND STATUTES

Even assuming the continuing force of the McCardle precedent, there is no basis for an assumption that the Supreme Court would permit Congress to eliminate a substantive constitutional right by manipulating its jurisdiction.

The Congress can regulate the way a judicial hearing is obtained, but not deny it altogether. Mr. Justice Brandeis made this crucial distinction in a 1936 opinion:

"The supremacy of law demands that there shall be an opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly. To that extent, the person asserting a right, whatever its source, should be entitled to the independent judgment of a court on the ultimate question of constitutionality.

"But the supremacy of law does not demand that the correctness of every finding of fact to which the rule of law is applied shall be subject to review by a court. If it did, the power of courts to set aside findings of fact by an administrative tribunal would be broader than their power to set aside a jury's verdict. The Constitution contains no such command." *St. Joseph Stock Yards Co. v. U.S.*, 298 U.S. 38, at 84 (1936).

Former Supreme Court Justice Arthur Goldberg stated the basic rule this way:

Congress cannot remove lower court original jurisdiction in a way which would deprive a party of his sole federal remedy for a violation of a constitutional right. Congress has attempted to remove specific district court remedial jurisdiction, but the courts have consistently construed such statutes to avoid the barring of adequate remedies. For example, 26 U.S.C. § 7421(a) prohibits all suits to restrain the collection of federal taxes. The Court has upheld that power of Congress to preclude tax collection injunctions in those situations where it considered judicial redress after collection to be adequate to protect taxpayers' due process property rights. By contrast, when litigation after collection is an insufficient remedy because the government is attempting to collect patently illegal taxes, the Court recognizes an exception to the anti-injunction statute and allows injunctions to issue. Similarly, the Emergency Price Control Act of 1942 denied district court jurisdiction to restrain the enforcement, or consider the validity, of price regulations issued under it. The Court upheld the denial of this jurisdiction to the district courts because the Act provided an alternative remedy in the newly created Emergency Court of Appeals. However, to the extent that the Act literally denied jurisdiction to any court to consider in a civil action the constitutionality of the Act itself, the Court felt constrained to broadly interpret the Act to vest that jurisdiction in the Emergency Court of Appeals as well. The Portal-to-Portal Act of 1947 denies to any court, state or federal, jurisdiction to enforce an earlier act which has been interpreted by the Supreme Court to create enormous retroactive wage liabilities in various industries. Although this blanket removal of jurisdiction has never been discussed by the Supreme Court, several circuit courts have sustained the removal only because they first held that no vested constitutional property rights would thereby be impaired. As stated in *Battaglia v. General Motors Corporation:*

We think, however, that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts . . . it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law. . . .

"The inability of Congress to impair constitutional rights by restricting federal court remedial jurisdiction is not contradicted by the experience of the Norris-LaGuardia Act. Prior to the Norris-LaGuardia Act, Supreme Court case law had proclaimed the substantive due process right of employers to contract freely with employees to prevent unionization. In fact, the Court had declared a state anti-injunction statute violative of the fourteenth amendment because it prohibited state court restraint of peaceful strikes. The Norris-LaGuardia Act of 1932 is a similar anti-injunction statute; it narrowly circumscribes federal court jurisdiction to issue injunctions or restraining orders in cases involving peaceful activities in a labor dispute.

The Act was attacked in Lauf v. E. G. Shinner & Co., but the Court curtly sustained its validity as within Congress' power to restrict jurisdiction. That case, however, is not precedent for Congress' power to use a jurisdictional statute to block redress of violated constitutional rights because, when the case was decided in 1937, there were no longer any pertinent employer constitutional rights to redress. Economic substantive due process was in rapid decline, and the early employer's rights cases had been distinguished and were soon to be overruled. In fact, rather than permitting the violation of constitutional rights, the Norris-LaGuardia anti-injunction statute protected labor's first amendment right to picket peacefully.

Neither is the limit upon Congress' power to remove jurisdiction belied by 28 U.S.C. § 2283. This anti-injunction statute provides that no federal court shall grant an injunction staying state court proceedings except as authorized by Congress, or in aid of a court's jurisdiction or judgments. In Atlantic

Coast Line R.R. v. Brotherhod of Locomotive Engineers, the statute was interpreted as absolutely prohibiting injunctions in any circumstance not strictly within its express statutory exceptions, even when the state court proceedings sought to be enjoined interfered unmistakably with federally protected rights. The Supreme Court pointed out, however, that ever since its enactment in 1793, the purpose of this anti-injunction statute has been to protect from federal interference the reserved powers of the states and the independent functioning of their courts. Thus, the incidental impairment of individual federal rights which this statute may work in specific cases is arguably justified by the countervailing and fundamental constitutional interest in federalism which it protects.

"The second limitation on Congress' power to remove jurisdiction is the separation of powers. This was implied in Ex parte McCardle where the Court, in upholding the statute partially removing its appellate jurisdiction, distinguished statutes involving "the exercise of judicial power by the legislature, or of legislative interference with courts in the exercising of continuing jurisdiction." Three years later, in United States v. Klein, the Supreme Court refused to follow a statute which divested it and the Court of Claims of jurisdiction of suits for the return of confiscated Civil War property whenever it appeared in evidence that the suitor had been disloyal. The Court held that the statute effectively prescribed a result in the pending case and that it thus violated the separation of powers, notwithstanding the congressional power over Supreme Court appellate jurisdiction:

(We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power.

(It is of vital importance that these powers be kept distinct.)

By analogy, Congress cannot remove the jurisdiction of the lower federal courts in a way which violates the separation of powers.

E. THE IMPACT OF THE REOPENER CLAUSE

Section 406 of H.R. 13915 provides that educational agencies may reopen court orders or desegregation plans now in existence and have the orders modified to comply with the provisions of this act. Under the terms of the section the Attorney General is to assist educational agencies in the reopening and modification of these existing orders. This is one of the most damaging provisions of the bill, for it would allow the reopening of the cases in all of the more than 1,500 school districts which have desegregated by order of Federal court or the Department of Health, Education, and Welfare since 1954. Even in cases where peaceful and progressive adaptation to the new order had been made, a reopening of the case would be allowed with a consequent relitigation of the entire dispute. Generally such orders cannot be amended except because of changed circumstances. Here no circumstances have changed and there seems no reason to upset final and viable decisions and desegregation plans which are currently being implemented throughout the country.

It should be pointed out that this provision is by no means limited to cases involving pupil transportation. It would allow the reopening of all past school desegregation cases, possibly going all the way back to the original Brown decision, without regard to whether those cases involved transportation. In testimony presented to the House Judiciary Committee, Attorney General Richard Kleindienst said that cases could be reopened under this section whether or not any busing had been involved. He said:

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.

Reopening of these cases could only serve to injure the thousands and thousands of pupils, teachers, and other people concerned with the well-being of their schools who have lived through these periods of turmoil, the changes required by Swann and its predecessors. They would be forced to go through all this turmoil and change once more. If decrees are no longer needed, or if the circumstances have changed, the courts now have the power to reexamine and reopen the cases. This additional grant of statutory power is not only unnecessary, but it could be a pervasive nuisance, one that we would all regret.

IV. IMPACT OF DESEGREGATION ON CHILDREN AND SCHOOL SYSTEMS

A. MAKING DESEGREGATION WORK: THE CHILDREN AND THE EDUCATORS

A great deal of the debate over this bill has, quite properly, focused on constitutional issues. It is terribly important, however, that we not lose sight of what is actually happening in the classrooms. While the President inflames a bitter national controversy over schoolbusing, children, teachers, and school administrators have been quietly working to provide a better education for everyone in desegregated systems. Senators should listen carefully to what some of them said when they came to Washington to testify before congressional committees:

Desegregation is the only way to bring about understanding among the races. What I'm hearing parents say is, "If it works, if the kids get an education it's the best thing that ever happened. It's better than going to the moon." They never had it. Their parents never had it. They are grateful their children are having this chance at humanization.—A school official; May 1970. Berkeley, Calif.

For the sake of unity, and against the background of our residential separation, the schools are being asked to bring us together. And the controversy, anger, fear, and division around busing reveal the deep sickness, for when race is removed from the scene, no one grows angry about busing. With 50 percent of our students in America climbing into buses every day, busing is as American as apple pie.—Bishop Richard Emich; Diocese of Michigan, April 26, 1972.

In this complex urban, segregated society in which most of us live, busing is the only practicable way to integrate the public schools . . . They [parents] know that if our own public schools are integrated—truly integrated—then housing and jobs will become integrated . . . if children grow up together in school they will respect each other, and, once they do this it will be impossible for them to practice the narrow and restrictive policies which so severely affect our present American society.—Samuel G. Sheats, Member Pasadena School Board, Pasadena, California.

I think we have built through neighborhood schools an isolation in our school system that prohibits the kind of interchange between children in various cultural levels. This is the most crucial cultural problem we have. We must either get it together in this country or otherwise we are going to have separate societies.—Dr. Laurence Read, Superintendent of Schools, Jackson, Nov. 1, 1971.

Often the words of the students themselves are most telling, as in this statement by a black student in Jackson:

I get on the bus at 7:30 in the morning for a ten minute ride. I like riding the bus. Going to schools with kids of other races helps us to understand each other. If we understand each other, we will not fight.

And "Students for a Quality Integrated Education" from Pontiac, Mich., had the following to report:

In my particular school 82 percent of the students responded that they had made friends of the opposite race. We no longer had gang wars or fights, or anything else. It is very rare when we have a fight, whether it be between two blacks, between two whites, or black-white.

A seventh grade group from Pontiac stated their acceptance of integration:

We speak for almost everyone in the school. A couple of kids are puppets of their parents. A lot of the people who talk about busing don't really have an idea of what it's like 'cause they aren't kids.—John Kindig.

Some parents influence their kids how to think. Kids have been quiet for a long time, and it's about time we had our say.—Ramona Parker.

We don't want the parents in this. We want to show that we can make it work. The parents grew up that way. We're trying to fix it so more kids won't be brought up like that.—Sharyl Toby.

What do those people in the NAG sweatshirts know—they don't send their kids to school.—Kathy McGarragan.

The parents are the trouble, and we wish they'd stay out of it.—April Barr.

A white student in Florida states:

The problem with integration is more of the parents' fault than the students'. If they would let the students alone, everything would work out very well.

Kids have no problems with desegregation; it's the adults.—a black teacher, Moore County, N.C.

But some parents, many parents, have supported busing where necessary to provide equal educational opportunity:

I want my children to live in the real world and contribute to the real world and not to live in an isolated situation. That's why I send them to public schools.—member of the School Board, Moore County, N.C.

Our neighborhood school is one block away, and we are busing 2 miles because the quality of education at the Lab School is better. Also, we feel our child will be involved with every type of individual, and that is what life is, getting along with all people and different situations.—White Parent, Evanston, Illinois.

Integration is working in Pontiac, particularly well in the elementary schools . . . The inconvenience busing creates for the parents and the extra time students spend on the bus seem a very small price to pay to see, hopefully, our children mature into the type of American citizens that the drafters of our Constitution and the present interpreters of the Constitution must have envisioned when they included and interpreted the provisions for equality!—Mrs. Francile Anderson, President, PTA Council; March 8, 1972.

Initially the parents were very upset by the plan, but the students have always been

calm and cool. Now everyone is calm. Things have worked out well.—member of the school Board, Volusia County, Florida.

The fear and sometimes blatant emotionalism prior to implementation is the most and probably the only destructive aspect of a desegregation plan. A black parent representing many black parents of Charlotte, N.C., states:

We did not easily achieve school desegregation in our community. Opposition to desegregation, led by our school board, resulted in much anguish, resentment, and popular confusion over what would be required to desegregate. All of the myths associated with busing and desegregation were successfully employed by the school board to encourage fierce community resistance. Nevertheless, the courts, including the Supreme Court, held firm and 2 years ago we were "forced" to bus some students to eliminate the former racial identities of our schools. Today the community as a whole is again concerned with traditional questions of educational quality. Only now it is white parents and black parents working together for common goals in their schools. The myths used to stir up resistance never became realities. While the myths may have disappeared in our community, they continue in others and have recently received a veneer of dignity and new vitality when the President collected them all together in his March 17, 1972, message to Congress.

The transportation of public school students across neighborhood lines in Jackson, Miss., is proving to be a successful way of eliminating inferior, dual school systems. Despite critics' claims, there is no violence on buses, no oppressively transported students, no shocked child psyches.

It is a clamor by uninformed voters and vote seekers that are dismayed at the success of busing:

If mandatory transportation across neighborhood lines to achieve improved education can work in Jackson, Mississippi, it can conceivably work anywhere.—Community Coalition for Public Schools, Jackson, April 26, 1972.

And a parent's fears reside:

I suppose I wasn't eager to have my kids bused—I liked the idea that they could walk to school. But now the advantages so outweigh the disadvantages that I'm delighted—and this school is especially exciting.—Mrs. Matt Wadleigh, parent, Berkeley, October 31, 1970.

B. BLACK VIEWS ON THE ISSUE OF DESEGREGATED SCHOOLS

Many members of the black community rightly view the busing controversy as a statement for or against a segregated society rather than one for or against a child riding a yellow bus to school. Black attitudes have been interpreted by busing opponents, integrationists, and black separatists as proof of their particular position.

Proponents of this bill have claimed that the black community is on their side. They point to national polls and the so-called antibusing position adopted by the National Black Political Convention in Gary, Ind. Polls reflect significant black opposition to busing as high as 34 percent in one poll with 14 percent undecided. However, the questions in much quoted Harris and Gallup polls concerning the public's attitude toward busing were heavy with negative overtones.

For example, in the Harris poll, the question asked was: "Do you favor or oppose busing schoolchildren to achieve racial balance?" This question was asked of whites and blacks with no apparent attempt by the pollsters to probe for evidence that white and black opposition to busing have fundamental differences in character and motivation. The use of the term "racial balance" is questionable and inflamatory since racial balance per se is not the issue. No court has required racial balance as a condition of court-ordered desegregation. Racial balance has been employed as a negative distortion of racial integration and elicits negative responses from both blacks and white resentful of the arbitrary treatment of their children that such a term implies.

"Do you favor or oppose busing schoolchildren to achieve equal educational opportunity?" The response of black Americans to this phrasing of the question would have probably reflected a more accurate measurement of their attitude toward busing. Roy Wilkins, executive director of the NAACP has stated:

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 quality education as surely as if they stood in the door of a school and physically turned away blacks.

Vernon Jordan, executive director of the National Urban League has 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.

It must be reemphasized that many members of the black community rightly view the busing controversy as a statement for or against a segregated society rather than one for or against a child riding a yellow schoolbus. The overwhelming majority of blacks are not opposed to integrated schools. But many are opposed to exposing their children to the hostility and humiliation that often accompanies enrollment in previously segregated schools.

The much publicized resolution against busing approved by the National Black Political Convention in Gary, Ind., is reflective of increasing despair by blacks that the constitutional requirement of equal educational opportunity and prohibition of racially segregated education can ever be a reality. Prof. Derrick A. Bell, Jr., a black professor at Harvard Law School and a former HEW official, captured the essence of this despair in his analysis of the educational alternatives facing blacks. Dr. Bell stated:

Considering the racial crisis it has caused, black gains in other areas it has endangered, the lack of real educational advantage to blacks required to go to school with hostile whites, there is an overwhelming temptation—not to quit—but to alter strategy, to seek perhaps a compromise on "forced busing," to accept the reality of all black schools and trade away the possibility of integration in return for additional funds. Perhaps they might enable schools to do now what they were unable to do during "separate but equal" days: effectively serve the educational needs of black children.

The resolution of the Gary convention has been misrepresented as a statement of black rejection of integrated schools. But close examination suggests that continued white opposition to school integration has fostered growing black determination to find less painful educational alternatives for their children. This search for alternatives appears to be not so much an abandonment of belief in the concept of integrated education as a frustrated and despairing withdrawal from hostile circumstances beyond their control.

Those whites and blacks who would in effect reconstitute the concept of so-called separate but equal education are wrong not only as a matter of constitutional law, but as a cold fact of political life. As Professor Bell states further:

A society willing to deny black children a decent education in order to preserve segregation is not likely to spend three or four times as much on black children's education as on whites, even if this kept black children out of white schools.

Moreover, as Professor Bell points out:

There is little proof that school inputs (of dollars) have much relation to school outputs (in student achievement), nor are there clear standards for defining, much less measuring, achievement. School funding reform is needed and appears on the way, but it is not a suitable substitute for school integration, (or) for insuring a better education for black children.

The Senate must not be deceived by those opponents of this bill who reinforce their arguments with reference to supposed black agreement with their position. Rather the Senate must defeat this bill. The Senate must give black Americans, indeed all Americans, clear evidence that the constitutional right to equal educational opportunity is not to be despaired but enjoyed as a guarantee of a free and democratic society.

V. THE CHOICE BEFORE CONGRESS

Americans are always uncomfortable when they are abandoning the basic commitment of the American Constitution to equal opportunity. Typically, we are offered such a course under a soothing euphemism to disguise the betrayal, and even suggest that enforced inequality somehow is consistent with freedom and liberty. Today's bill, ironically titled the "Equal Educational Opportunities Act of 1972," fits squarely in that tradition. This bill provides no new money to equalize school spending. This bill suggests no constructive program to erase the burdens of desegregation. This bill offers no hope of equal educational opportunity. This bill is a fraud.

This bill asserts that Congress has the right to overturn a succession of unanimous Supreme Court decisions and forbid the courts access to a specific remedy—even if it were the only real remedy to a clear constitutional right—and no matter how carefully and judiciously it might be applied.

In the past many of the confrontations have been over decisions handed down by divided courts which deeply divided

public opinion. Often the battles were in areas where there was no doubt as to the power of Congress. Now Congress proposes to overturn unambiguous unanimous decisions of our highest court and not by constitutional amendment, but by statute. If a mere majority of Congress can infringe so directly on the power of the Court, it is difficult to conceive of any practical limits on the authority of Congress to interpret the Constitution however it likes.

This bill is based on the theory that while the Court has the duty to determine whether or not a school system has violated the Constitution, Congress has the right to establish a national system of preferred remedies. Proponents of this legislation argue that the courts have already recognized this right in ruling on earlier civil rights statutes, particularly the Voting Rights Act. The 13th, 14th, and 15th amendments all grant Congress the power to "enforce this article by appropriate legislation." Unquestionably, Congress does have authority to spell out remedies for violations of the constitutional rights established by these amendments.

This bill does not spell out remedies, it removes them. In some cases it makes any remedy impossible, thus establishing the situation of a right without any remedy. Such a right is no right at all. Under the guise of defining types of solution, the Congress attempts to forbid any solution. Under the House bill, Congress would reverse hundreds of court decisions and invite communities already peacefully and successfully desegregated to go back into court to undo their desegregation plans.

The bill also departs from commonsense and simple equity by attempting to prescribe from Washington the way school systems in all areas should handle a set of very different problems. Virtually every major piece of education legislation passed by Congress has included a section entitled "Federal Control of Education Prohibited." This bill does not. That section normally prohibits imposition of rigid national standards for the administration of local school systems. This act, on the other hand, infringes on localized control of local school problems. If a Federal judge, for example, finds a school system guilty of unconstitutional discrimination and orders the school board to submit a desegregation plan, school administrators would be forced to comply with detailed and inflexible Federal standards, even when they do not make educational sense, or protect constitutional rights in the local circumstances. In a situation, for example, where a small minority population could easily be integrated in a cluster of three or four schools, the administration of the local school system might well be forced to propose a two-school desegregation plan which everyone knows will accelerate white flight to the suburbs and foster resegregation.

Detailed national standards will not work. The scale of the problems, the nature of local school facilities, diverse transportation systems, different minority populations, differing population densities, and a multitude of other factors demand flexibility. That is why we have a flexible national judiciary—to deal with the incredible complexity of squaring broad constitutional mandates with the specific problems of local communities.

The Supreme Court has recognized this fact. From the initial Brown decisions to last year's Swann decision on urban segregation, the Court has given only broad interpretations of fundamental constitutional requirements. Most of the responsibility of shaping plans has been left to local Federal judges, who are products of their States, who know local conditions, and who must undertake to find the facts and encourage a solution. How can we in Washington, without this knowledge, without this experience, proscribe his remedies—no matter how careful, no matter how narrow?

Some say this is a conservative bill. It is not. In fact, it departs radically from some of the strongest conservative traditions, in order to prevent the courts from developing remedies for unconstitutional urban school segregation. To preserve segregation, it proposes to drastically infringe on the independence of the courts, the very institutions which preserve our basic constitutional structure. It threatens the doctrine of separation of powers, on which the American idea of limited, constitutional government rests. This law flies in the face of decades of arguments for local autonomy and constitutional stability and sets precedents true conservatives will surely regret.

James Madison, the father of the Constitution and a true conservative, argued that "the people ought to indulge all their jealousy and exhaust all the precautions" against the danger of legislative autocracy. Thomas Jefferson warned that concentration of powers in the legislative branch "is precisely the definition of despotic government." "One hundred and seventy-three depots," he said, "would surely be as oppressive as one."

The American solution has been the supremacy of our written Constitution. The great protector of the Constitution is the independence of the courts. If Congress tells the courts what parts of the Constitution to ignore and how it must be interpreted—if Congress can decide which of our basic rights shall henceforth have no remedy—Congress assumes what Chief Justice Marshall described as "a practical and real omnipotence." This, he warned "reduces to nothing" the protections provided by the Constitution. Legislators committed to the stability of American institutions follow this path with great peril.

Most Members of Congress deeply cherish our constitutional system and our honored tradition of local autonomy. I hope we will not abandon these principles. I hope we will overcome the fears fanned by politicians attempting to exploit racial polarization. I hope we will recognize the real dangers in this bill. I hope we will defeat this bill, and move on toward a real commitment to equal educational opportunity, not just in name, but in fact.

Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Mississippi (Mr. STENNIS), with the understanding that on the termination of the business which he will bring before the Senate, the Senator from Indiana will regain the floor without that repossession of the floor counting as a second speech.

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

Mr. MANSFIELD. Mr. President, if the Senator will yield to me, may I say we are not keeping track of second speeches, and the Senator need have no fear that he will be recognized again.

Mr. BAYH. The Senator from Indiana is preparing himself for a day in the distant future when that may be the case.

Mr. MANSFIELD. Well, practice helps.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army.

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

U.S. ARMY

The legislative clerk read the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army.

Mr. STENNIS. Mr. President, I certainly thank the Senator from Indiana for his courtesy as well as his geniality in permitting the interruption of his speech so that we may take up this matter.

Mr. President, I yield to the distinguished majority leader, with the understanding that I retain the floor.

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

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. I yield to the assistant majority leader.

HOUSE CONCURRENT RESOLUTION 717—CORRECTION IN THE ENROLLMENT OF H.R. 10420

Mr. ROBERT C. BYRD. Mr. President, as in legislative session, I ask unanimous consent that the Chair lay before the Senate House Concurrent Resolution 717.

The PRESIDING OFFICER. The concurrent resolution will be stated.

The legislative clerk read as follows:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 10420) to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes, is authorized and directed to make the following correction:

On page 11 of the conference report, on line 1, insert the word "of" after the word "conditions".

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

There being no objection, the concurrent resolution (H. Con. Res. 717) was considered and agreed to.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum under the same conditions as heretofore.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CANNON. Will the Senator from Mississippi yield to me?

Mr. STENNIS. Mr. President, I am glad to yield to the Senator from Nevada, with the understanding that I not lose my right to the floor.

ADDITIONAL CONFEREES—S. 2280

Mr. CANNON. Mr. President, as in legislative session, I ask unanimous consent that the Senate appoint Mr. Moss and Mr. STEVENS as additional conferees for the Senate on S. 2280, the Anti-hijacking Act and the Air Transportation Security Act of 1972.

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

U.S. ARMY

The Senate continued with the consideration of the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army.

Mr. STENNIS. Mr. President, I ask unanimous consent that James Woosley and T. E. Braswell of the staff of the Committee on Armed Services, who worked on the matter concerning the nomination of General Abrams, be permitted to be present on the floor during the debate on the nomination.

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

Mr. STENNIS. Mr. President, the facts on the Abrams nomination itself, I think, are rather clear and rather overwhelming. The hearings in connection with this nomination and that of General Lavelle consumed some days and a great deal of preparation. But in reporting on General Abrams' nomination, 15 of the 16 members of the committee voted for, and recommended that the nomination be confirmed. The other member voted in favor of reporting the nomination. So there was no real difference within the committee as far as the votes cast were concerned.

On each Senator's desk we have had placed a copy of the printed hearings of the entire proceedings, with only the classified part being stricken out. In terms of volume, that was not a great percentage of the testimony deleted, so Senators have before them virtually everything concerning the hearings.

Mr. President, it is not mandatory and it is not really customary for the committee to file reports on nominations, especially where they are reported as overwhelmingly as this one is. But in this case, Mr. President, to get the matter in perspective, we did file a brief report, copies of which are now being passed around and placed upon each Senator's desk. It is a brief summary of the relevant facts that pertain to General Abrams.

I shall not take a great deal of time. I hope that the Senator from Wisconsin (Mr. PROXMIRE) has been notified.

Mr. MANSFIELD. He has.

Mr. STENNIS. I thank the majority leader.

Mr. President, I want to speak today to two issues. One is the issue now before the Senate: the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army. The other is the collection of questions that I know troubles many Senators: What happened in the Lavelle affair, and how can we keep it from happening again?

The first issue is, I submit, more straightforward than the second. As I say, I am not going to take a great deal of time. I think there will be a good chance for us to obtain a time limitation during the course of the early part of the debate. I certainly hope so. I shall speak in part for the committee and in part for myself.

Mr. President, on the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army, the first issue that I shall discuss concerns the qualifications of General Abrams himself. I have known of General Abrams' military record for a long time, and while I have no personal intimacy with him of any kind, I have known him and have had official contact with him. I helped prepare for and attended all of the hearings except for just a few lines of testimony that might have been taken while I was called to the telephone.

I have no doubt that General Abrams is fully qualified to serve as Chief of Staff, and I believe that we should confirm his nomination so that he can begin the urgent business of mobilizing the Army to deal with the many severe problems which it faces. I believe that he will make an outstanding Chief of Staff. He has been an outstanding soldier over a period of years—36 years, I think. In my way of expressing myself, he is what I call a field general, with mud on his boots. He is not much of a shiny boot man or anything of that kind. He is a rugged soldier. He is a battlefield general, and he knows the Army literally from the ground up, all its problems and all its needs.

The report says that the reputation of General Abrams, both within and outside the Army, is of the finest. He is a rugged individual of the utmost integrity and veracity, a true soldier of the highest type.

I am not given to praise any man. No man is great, in my book—truly great. I emphasize that because it does have a bearing on the facts of these hearings.

The second issue—the overall questions surrounding the Lavelle affair—is far from over, for any of us, and I do not suggest in any way that the book be closed upon it. There are still many unanswered questions in my mind about this second issue, and toward the end of these remarks I will make some suggestions about how we may begin to get some answers.

I do want to say a word here about General Lavelle. He had a good military record. In some conferences and in the hearings, I found him to be a man of compassion. He certainly is not a troublemaker; he is not the troublemaking type, by any means. He is not the type who would defy orders as such, although I had to conclude that he had not lived up to those orders. He is certainly not the type to defy orders or to try to create a movement or sentiment of any kind to defy orders or to try to overrun civilian authority. I want to say that in fairness and with great deference to a gentleman whom I reluctantly concluded I could not vote to promote.

MATTERS BEFORE THE COMMITTEE

Let me begin by describing how this matter came before the Senate and our committee.

On May 15 of this year, the Chief of Staff of the Air Force announced that Gen. John D. Lavelle had been relieved of command of the 7th Air Force "because of irregularities in the conduct of his command responsibilities." There had been prior statements by the Department of Defense concerning General Lavelle's retirement which had not indicated such irregularities.

The committee, having before it the nominations of General Lavelle to be appointed lieutenant general on the retired list, U.S. Air Force—one grade below the highest at which he served—and of two of his former immediate superiors in the chain of command—Gen. Creighton W. Abrams for appointment as Chief of Staff, U.S. Army, and Adm. John S. McCain for appointment as admiral on the retired list, U.S. Navy—undertook to examine the circumstances surrounding these irregularities.

In order to obtain sufficient information to make recommendations to the Senate regarding these three nominations, the committee conducted an inquiry. On July 10 two staff members of the committee traveled to Southeast Asia to interview witnesses and obtain documents and materials related to these nominations. The committee subsequently obtained other materials from the Department of Defense and, on September 11, 1972, the committee staff briefed the committee on the results of the inquiry. Hearings began the afternoon of September 11 and continued for 3 weeks. The commitee heard of three nominees and nine other witnesses during the hearings, which were completed on Friday, September 29. The full printed record covers 507 pages of testimony. On October 6, the committee voted against recommending General Lavelle's nomination to the Senate.

The votes by the committee on this and the other two nominations completed action on the legislative matters before it. As I have already pointed out, there are many other questions which deserve further examination.

BACKGROUND

To understand the Lavelle affair fully requires a rather thorough understanding of military command and control, operational reporting systems, the tactics of air warfare, the technology of radar and electronic countermeasures, and a host of other matters. There is no one whom I would call an expert on all aspects of this case, and I am just about as far from being that expert, in many ways, as one could find. But we had to go into those items to some extent.

Since the bombing pause began in November of 1968, the United States has been conducting manned tactical reconnaissance over the southern portion of North Vietnam. Very shortly after the bombing pause began the North Vietnamese attacked one of our unarmed reconnaissance aircraft and we then began to escort the reconnaissance aircraft with armed fighters. During 3½ years between November 1968, and March 1972, these escort aircraft were authorized to retaliate if fired upon. For a brief time in early 1970 there was authority for this retaliation to be slightly delayed, but by the summer of 1970 the rule which pertained during General Lavelle's tenure at 7th Air Force—August 1971–March 1972—was established, requiring retaliation to be immediate. In the course of our committee hearings this rule was stated to be:

Fighter aircraft may strike any SAM or AAA site below 20° North which fires at or is activated against U.S. aircraft conducting missions over Laos or North Vietnam.

The rule applied to aircraft armed with standoff antiradiation missiles as well as those carrying bombs; it applied to protective reaction strikes by aircraft which were fired upon from within North Vietnam while operating in Laos as well as aircraft operating over North Vietnam.

This rule is, of course, only a small portion of the rules of engagement for our forces in Southeast Asia. The rules of engagement for air operations alone comprise a reasonably large book. These rules are not sent, as such, to commands in the field, such as 7th Air Force. Instead there are large numbers of messages sent down through the chain of command which state the authorities for certain types of operations and these are translated into specific rules at lower levels, such as 7th Air Force.

Our committee reviewed some 80 messages, requested from the Department of Defense, which dealt with the subject of operating authorities for the air war. The substance of most of these messages concerned both requests coming up the chain of command to liberalize the authorities and to permit targets such as airfields, SAM sites, and so forth, to be struck, as well as responses going down the chain of command from the Joint Chiefs of Staff to Admiral McCain's headquarters—CINCPAC; General Abrams' headquarters—COMUSMACV; and General Lavelle's—7th Air Force. These messages were also, of course, only a very small portion of the many thousands of messages which go to and from the Department of Defense daily.

That is the proximity of General Abrams to the Lavelle matter. General Abrams was our ground commander in South Vietnam, with certain other duties, including some responsibilities in connection with the air, and General Lavelle was the commander in charge of the 7th Air Force there, having been selected by the Air Force.

The rule of engagement stated above was not in effect at all times. Special strikes against military targets in North Vietnam were authorized from time to time, beginning in early 1970. These were called "limited duration protective reaction Strikes" by the U.S. Government, but this terminology is confusing. These strikes were not "protective reaction strikes" in the same sense as the immediate retaliation by exort aircraft when a reconnaissance plane was fired upon. They were full-scale preplanned strikes, authorized by Washington. Hereafter, for purposes of clarity, I will refer to them simply as Washington-authorized strikes. These Washington-authorized strikes against North Vietnam occurred intermittently throughout the 2-year period between March 1970 and March 1972. According to information provided to the committee by the Department of Defense there were, during this period, 8 days of such strikes in 1970—in March, April, May, and November, 12 days in 1971—in February, March, September, and December; and 2 days in 1972—in February.

UNAUTHORIZED STRIKES

I want to turn now to the question of unauthorized protective reaction strikes. At various times during the committee's inquiry the Department of Defense provided lists of strikes which were at issue. The committee was also provided with computer, runs, and some raw reports giving basic data about missions over North Vietnam during the period in question—November 1971–March 1972. These were also analyzed. The most recent list prepared within the Department of Defense—comprising 24 strikes—was inserted in the record of the committee hearings in response to questions asked of General Ryan; it appears on page 281 of the committee hearings.

The 24 strikes, comprising 137 sorties, may be compared to any of several relevant figures. There were approximately 25,000 strike sorties flown by the 7th Air Force in Southeast Asia during this 4-month period. In North Vietnam there were approximately 130 7th Air Force reconnaissance sorties accompanied by about 700 escorts, 167 of which expended ordnance. During the period there were publicly reported to be about 120 protective reaction strikes by both Air Force and Navy in North Vietnam, about half using antiradiation missiles and half using bombs. Of those using bombs, about 40 strikes were by 7th Air Force.

It is important to note that the list of 24 strikes to which I have referred is a list of strikes which appear to fall within the category of missions ordered to expend ordnance whether or not there was enemy reaction from SAM defenses or AAA. The information provided by the Department of Defense indicates that on a number of these strikes, no enemy action was observed, but that evidence about enemy firing is inconclusive regarding most of the specific missions. General Lavelle's letter of September 26 to me, which is part of this sworn testimony—beginning on page 95 of the committee hearing—takes issue with the inclusion of several of these missions on such a list.

UNAUTHORIZED STRIKES AND THE ABRAMS NOMINATION

First of all, it is clear from the most systematic source of information about the unauthorized strikes was not available to General Abrams. This is because the basic operations reports on these missions were being falsified within the 7th Air Force. This falsification covered several matters but, most importantly, it covered the key issue of whether reconnaissance aircraft and escorts were being fired upon before the escorts delivered ordnance. Since the reports always indicated that there was an enemy reaction and, in some cases, indicated a false or partial set of targets, it was not readily apparent from the reports that these were not ordinary, authorized protection reaction strikes.

Second, General Abrams testified that he had no knowledge that the missions in question had been flown in violation of the rules of engagement or that they had been flown pursuant to any "liberal interpretation" of the rules. General Lavelle confirmed that he had not told General Abrams that his—General Lavelle's—liberal interpretation of the rules constituted grounds for protective reaction strikes—page 45 of committee hearings.

Third, both General Abrams and General Lavelle agreed that they had discussed internetting of radars, preplanning of tactics, and targets which might be struck on protective reaction strikes. General Abrams testified, however, that all such discussions were in the context of actions to be taken within the rules; that is, after pilots were fired upon or a SAM or AAA site was activated against them—pages 143–146 of committee hearings.

This is the No. 1 important fact in this case, the question whether General Abrams knew that planes would drop bombs, whether there was hostile reaction or not.

There is another major part, that the records were falsified, that they were deliberately filled out wrong and filed inaccurately. General Lavelle testified that he made a remark to someone that—

You cannot fail to report reaction—meaning reaction from the ground. Well, the subject matter there was whether they would report "action" from the ground or "no action" from the ground. When he told them they could not report no action the effect was to say, "You must report action."

Anyway, that led to a series of actions by those under him deliberately and systematically filing false reports, and to two reports, one true and one false, keeping the true report in their own record and sending the false report to the other

military agencies. That was clearly established, the way it happened.

On January 5, 1972, a strike with antiradiation missiles was authorized by General Abrams against a ground control intercept—GCI—radar at Moc-Chau in North Vietnam. The discussion of this strike is on pages 106–108 and 122–123 of the committee hearings. The results of this mission were reported accurately and within hours a message from the Joint Chiefs of Staff in Washington questioned the strike. After receiving further details from the relevant military commands in South Vietnam and the Pacific, the Joint Chiefs ordered that no further strikes of this type be made until the operating authorities had been reviewed. Three weeks later the authorities were changed and strikes with antiradiation missiles against this type of radar in this geographic area were then permitted when Mig's were airborne and showing hostile intent. That is a followup of the facts.

I do not believe that this strike constitutes grounds for opposing General Abrams' confirmation. The question there was clearly within the orders whether he and General Lavelle jointly went into that matter and General Abrams told him to make the strike but it was reported, as I said, and reported accurately. After the Joint Chiefs of Staff had criticized and said it was beyond the bounds, General Abrams responded and according to instructions he authorized no further operations of this type until his authorizations were changed 3 weeks later. That is the key factor in this whole matter. It was from that point on that General Lavelle, according to the evidence I have referred to, did not stop. But General Abrams stopped.

He said under oath that he knew nothing about these other strikes by General Lavelle being beyond the rules of engagement—he knew nothing about the false reporting and that was not in any measure of substance contradicted at all.

After the January 5 raid was executed it was reported accurately and questioned by the JCS—in short, the command and control system functioned as it should function in monitoring a war fought according to such detailed rules, rules which are, to some degree, subject to interpretation. General Abrams responded according to instructions: He authorized no further operations of this type until his authorization was changed 3 weeks later.

A final point should be made, Mr. President, on this subject of authorization. North Vietnam is divided into seven districts, called route packages, for purposes of conducting the air war. In three of these the Air Force has primary responsibility—the southernmost route package and the two northernmost route packages. The four other route packages are the primary responsibility of the Navy. General Abrams was in the chain of command for air operations in only one of these seven route packages—the southernmost. For the other six the chain of command went directly from General Lavelle to General Clay—PACAF—or from the Navy commander offshore to Admiral McCain—CINCPAC. In fact, all but two of the unauthorized missions I have been discussing occurred within the southernmost route package, but I think this fragmentation of authority is important background in understanding that the question of "who is whose superior" is not a simple one when discussing the air war in Southeast Asia.

FALSE REPORTING

According to General Lavelle's testimony, he made a statement on January 23, 1972—I refer to this now, out of necessity, because, as I said, this has to be gone into, to show that General Abrams had no contact—to his director of operations that "we could not report 'no enemy reaction'." This statement resulted in the establishment within the 7th Air Force of a system of false reporting. This reporting system is covered in detail in the committee hearings. General Lavelle testified that he, in fact, did not know of the establishment of the false reporting system, but that he took full responsibility for its being established. It is to his credit that he stated explicitly in his opening remarks before the committee that—

> I have never suggested that the responsibility was any other than my own.

He also said that he had so stated in his testimony before the House committee:

> In my earlier testimony before the House Armed Services Committee I accepted full responsibility for those reports and I still do. (p. 4 of the committee hearings).

He further testified—page 22 of hearings—that General Abrams would have no reason to believe that he had ordered a strike crew not to report "no reaction."

General Abrams testified that he had no knowledge of false reporting until the investigation into the allegations against General Lavelle was begun about March 9, 1972.

Those are highly significant facts. Frankly, I thought in the beginning that the facts might show General Abrams either had knowledge of these things and failed to act, or was so close to it that he was negligent in failing to find out and act. But upon full consideration of all these facts—and I have detailed them to bring out some of the background—why I believe as I do, and on these facts I decided fully and clearly that he did not have this knowledge, that his responsibilities, proximities, and his duties were not such that they would make him negligent for failing to know. That had to be the very firm conclusion in my mind about that matter before I could be in favor of bringing in such a report and taking the stand here about this nomination that I have.

ISSUES FOR THE FUTURE

Now I want to speak briefly about some issues that I think come in for the future.

There are many other questions, as I said at the beginning, that need to be raised and answered.

First of all, we do not yet know enough about the conduct of the air war in Southeast Asia to make a judgment about several important matters. The questions raised in this inquiry are most serious and they must not only be answered clearly and objectively, but they must be seen to be answered in this way. Our committee, even though it has some expertise in the area of military affairs in general, cannot hope to conduct as thorough and detailed an investigation as is needed: Many of the issues involving military operations require technical experts, for example. I believe we have looked into these nominations as thoroughly and carefully as any military nominations since I have been on the Armed Services Committee.

Many of these things involving the military involve technical experts. I am referring now to the command and the operation of the command. But far more than that is needed. What is required is a thorough and professional inquiry into the entire subject of protective reaction strikes in North Vietnam in 1971–72 as well as the overall command and control and reporting systems for the air war in Southeast Asia. Nor should this inquiry be limited to the Air Force, Mr. President, but should include the Navy as well. The Navy was doing some of this bombing, I mean carrying on some of the bombing. I am not saying that it was outside the restrictions of the authorizations, but the Navy was carrying out some of the bombing. And this further showing and further explanation to the Congress and to the public should include their operations, too.

Answering the unresolved questions involves details of tactics and related subjects which deserve far more attention than could be given to them in the closing days of a Congress in the course of making a decision about the nomination of an Army commander.

The forum for such an inquiry could be established in one of several ways: A commission within the Department of Defense, reporting also to the Congress, is one possibility. If future facts indicate that hearings are necessary, however, we will give that the most serious consideration. But the next move is up to the Department of Defense, and we await their actions with interest.

There are other methods that could be considered. I want to make clear now that this is my thought on the subject. This is in no way passing my responsibility on. We have done what we could on the evidence we could find and consider in the limited time we had. But I think that a responsibility rests on the military for the discipline of their own system. They are the ones that have the primary duty of disciplining the military, and they should be held responsible as professionals. That is exactly what they are, and they are very valuable professionals, too.

I know secretaries of the services come and go. I think Mr. Laird is the best one that I have ever known. We have some exceedingly able secretaries over there at the service level. But, at the very best, these gentlemen have limited knowledge of the subject matter. Most of them, when they go there, on the average do not stay long. But it is the military men that make a career in this field. It is their department of government and

they are the ones—under civilian control, of course—that have the responsibility, as I see it, to plan their own operations, it seems to me, more effectively than they have done.

I know things are not easy in time of war, and this was an unusual situation over there, the military buildup on the other side of the DMZ and the prospects that an invasion was coming. These airmen, especially, could see it and know it. And it made them more uncertain. But at the same time, this matter was of such proportion, it seems to me, that a better system within their own organization would have had a better chance to know all about what would happen.

I want to emphasize, Mr. President, that I am not trying to push this off on anybody else. I am swinging around and pointing some shared responsibility. We are by no means just getting out of the case. I made that clear in my report to the press, that we had considered such testimony as we could get, find, and present.

We are not relinquishing anything. We have stopped these proceedings for the time being. We have no definite plans for trying to open them up anytime soon.

I am very hopeful now that something constructive and good and enlightening and strengthening to the operations of the military will be forthcoming. I certainly think that we have a right to expect that.

I know that something definite must be done. I think the people will welcome something more being done, and I think it will create more—I believe in the military and am not discrediting them—understanding and more faith in their determination, professional capacity, and determination to solve these problems, find the trouble and do something about it within their own ranks.

There are some old words that have gone out of use almost, "self-examination, self-scrutiny, self-discipline."

I think all of us, everyone needs some of this. I need some of it myself. A generation ago people were more aware of this. I think we all have got to tighten up our belts in that field and concentrate within those lines.

I think people are anxious to have confidence and faith in all the services, Congress, the military, the President, and all the executive branch. But I do think things are happening so fast that those of us that are in positions of responsibility and power have a greater responsibility than ever before.

Now, this almost completes my remarks, Mr. President. I do want to follow through on this a little further as regards what should be done.

Mr. President, to my knowledge, there has been no official guidance within the Department of Defense concerning the importance of truthful and accurate reporting since General Lavelle was relieved of command in late March of this year. Truthful and accurate reports are the lifeblood of military command and control. It simply must be pointed out, and pointed out forcefully, by the Department of Defense and the Military Services, that false reporting will not be tolerated under any circumstances.

It may be the Department of Defense is waiting until these hearings have concluded before they move into this field. They may have some plans. I do not know. We did our work the best we could.

I do not know, but I hope they already have some plans. But I have been concerned about this false reporting from the day I first heard of it. I knew nothing about this case until weeks after it started. Finally, when they gave me a report and talked about this false reporting and all that went with it, why, I was very much concerned and very much interested and still am.

Under the Uniform Code of Military Justice military men must obey any lawful order. But an order to falsify a report, under article 107 of the code, is an unlawful order within itself, because it is a matter of a crime. This point should be reiterated in training in the Academies, and in whatever other ways are necessary to emphasize its importance.

I have thought about it many times at night. I have some sympathy in my system, like anybody else, some compassion, and I have asked myself the question, Can this thing be tolerated?

Every time I came back to the conclusion that it could not be, that this false reporting was not a matter of close judgment. It was not a matter of opinion. It was a pack of lies. It was deliberately false. It cannot be tolerated. It is contrary to everything that they teach at the Academy. Boys have been shipped from there, not just for cheating, but for failure to report cheating.

I think that is a sound rule. I went to law school under the same system. We have to shore up these matters and give a better example to our young men in the services.

Further, Mr. President, some of the difficulties which arose in this case may have been the result of certain ambiguities brought about when operating authorities and rules of engagement had been changed. One of the witnesses before the committee, Gen. Alton D. Slay, recommended that some increased formality in the establishment of rules of engagement would be desirable—such as the requirement for written changes to be written and to originate at the top command. We need to take care not to increase redtape unnecessarily, but there may be some merit in General Slay's suggestion.

Then, finally, there are several issues about which we need more information before the Congress itself can decide whether legislative or other institutional changes are desirable.

For example, one unfortunate aspect of this case is that the enlisted man who wrote to Senator HUGHES and initiated the inquiry did not have sufficient faith in the Air Force Inspector General system to use it to register his complaint. His reason was a very understandable one—namely, that the Inspector General of the wing was both its vice commander and a participant in some of the missions which he considered to be unauthorized. The inspector general systems in all of the services have important functions, and they should not necessarily be completely revamped because of one incident. These are matters about which the Congress simply does not have enough information at this time.

By the way, I think the Air Force Inspector General, General Wilson, did an excellent job when he was sent there to investigate. He was prompt, thorough, and complete. What I say is not critical of them. He is an after-the-fact man. I want them to have something more, something that is an act of surveillance as we go along the line from day to day.

It is difficult to understand why there was not more transmission of facts and information from one command or subcommand to the other. But it was not functioning that way.

I wish to mention the Senator from Iowa (Mr. HUGHES) who received a letter from this young sergeant, who was a constituent of his. Senator HUGHES mentioned this matter to me some time ago. He had worked on it thoroughly and diligently, with knowledge, understanding, and circumspection, and with a great expenditure of time and effort, as well as judgment. I think his efforts have been exactly what the efforts of a Senator should be. I have especially mentioned the Senator from Iowa (Mr. HUGHES) because he took the lead all the way through.

Others on the committee have worked on this matter diligently and contributed greatly. They all deserve credit. How they might have voted is immaterial to me. The Senator from Missouri made the suggestion that we put all the witnesses under oath. I was glad we did that, the way the matter developed and turned out. So there was a spirit of cooperation and effort in our committee and great concern all the way through.

There are other inspection systems within the Armed Forces—one well-known inspection system, that of the Strategic Air Command, has functioned well for many years in a highly important and sensitive role. This is a question on which I believe the Congress should be provided a full report: the operation of the Inspector General systems and other inspection systems and monitoring systems within the military services.

A second matter about which the Congress needs more information is the overall operation of the command structure of unified and specified commands. The President's Blue Ribbon Panel report 2 years ago was critical of the operation of the current command system. In particular, there was reference to its complex nature and the weak authority given to unified and subunified commanders such as General Abrams. Congress last passed legislation on this subject in 1958: the Defense Reorganization Act. The Blue Ribbon Panel report indicates that Congress attempt in that act to overcome the problems of "diluted command," forcefully set out by President Eisenhower, may not have been effectively implemented by the Department of Defense. This type of issue requires detailed study and should also be the subject of a report to the Congress.

I say this because I was surprised when we got into the facts that showed General Abrams did not have more direct com-

mand and responsibility, and contact with all the things that were going on over there. General Abrams at that time, I thought, had a broader command, in that he was Commander of the U.S. Army in South Vietnam, and the operation that went into Cambodia, because that was called an incursion; but he was Commander of the U.S. Army and his other hat was as Commander of the U.S. Military Assistance Command there. General Lavelle was Deputy of Air and Commander of the 7th Air Force when he was operating there. He was deputy to General Abrams. But, operationally, certain functions including discipline came in from another source.

I say those things can be improved upon and I hope they can. I cannot say I know exactly what to do. I do want to get the Senate to act affirmatively now on the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army. Holding up this distinguished soldier's nomination to serve as Chief of Staff of the Army will not help any of our armed services to overcome the serious problems which I have discussed today. Quite the contrary, I, therefore, strongly urge that the recommendation of the committee be approved.

I send up a copy of the report in which all except one Member recommended the nomination be approved. That Member will be heard from in this matter.

Mr. President, I ask unanimous consent to have printed in the RECORD the report of the Committee on Armed Services on the nomination of Gen. Creighton W. Abrams for nomination as Chief of Staff, U.S. Army, with additional views of Senator MARGARET CHASE SMITH.

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

REPORT OF THE COMMITTEE ON ARMED SERVICES

(On the nomination of Gen. Creighton W. Abrams for nomination as Chief of Staff, U.S. Army, with additional views of Senator MARGARET CHASE SMITH, October 11, 1972)

The Committee on Armed Services on October 6, 1972, voted unanimously with sixteen members being recorded to report to the Senate the confirmation of General Creighton W. Abrams for appointment as Chief of Staff, U.S. Army, with 15 members voting to report favorably for confirmation.

The following is a brief statement with respect to the Committee's findings and conclusions in support of the favorable recommendation on the nomination of General Abrams. The issue before the Committee concerns the qualifications of General Abrams to be Chief of Staff of the Army. The hearings on this matter also included the nominations of General John D. Lavelle for appointment as Lieutenant General on the retired list, U.S.A.F., and Admiral John S. McCain for appointment as Admiral on the retired list, U.S.N. The hearings on these three nominations were completed September 29, 1972, and comprised 505 pages of printed testimony. These hearings with respect to all three nominees deal with two issues (1) the authority for approximately twenty strikes by U.S. aircraft in North Vietnam between November 7, 1971, and March 9, 1972, and (2) the system of false reports relating to some of these strikes.

There are a number of issues which arise from General Lavelle's nomination and also the operation of the Command and Reporting system during this period. These however are separate and apart from this report which is concerned only with the relationship of General Abrams to these issues and his nomination.

The Committee concluded based on the entire testimony:

(1) that none of the evidence indicates that General Abrams had any knowledge that false reports were being submitted;

(2) that with respect to the authority for the strikes many matters relating to protective reaction strikes were discussed between General Abrams and General Lavelle but General Abrams did not know of, or give authority for strikes which exceeded the authority which had been extended to him (see especially pp. 143–47 of Committee hearings). In one instance, on January 5, 1972, General Abrams authorized a strike against a particular radar site in North Vietnam; the Joint Chiefs of Staff subsequently questioned this mission and disapproved further strikes against this type of radar until approval was granted from Washington (see especially pp. 106–08, 122–123). This incident was reported accurately and was not followed by any other such authorizations by General Abrams. Consequently it is not believed that this single incident constituted a factor against General Abrams' confirmation.

Based on the evidence the Committee determined that General Abrams was not responsible for either the unauthorized protective reaction strikes in question or for the false reporting.

It should also be emphasized that General Abrams has completed over thirty-six years of distinguished military service with a wide range of staff assignments including that of Vice Chief of Staff for the Army from 1964–1967 and that of Commanding General of U.S. forces in Vietnam since July of 1968. The reputation of General Abrams both within and outside the Army is of the finest. He is a rugged individual, of the utmost integrity and veracity, a true soldier of the highest type.

As already indicated, the Committee overwhelmingly supported the nomination of General Abrams.

As indicated in the additional views set forth below, Senator Smith does not concur with the view that General Abrams had no responsibility whatsoever for the unauthorized protective reaction strikes.

INDIVIDUAL VIEWS OF SENATOR MARGARET CHASE SMITH

In stating my individual views I first want to make it emphatically clear that I have deep respect for General Abrams who has had a long and distinguished military career and has a great war record.

Although the sworn testimony presented in the Committee does not indicate that General Abrams knew what his Air Deputy was doing, General Abrams was in command. It was his job to know what was happening and his failure to ascertain that the Rules imposed by the Commander in Chief were being followed is nonfeasance by anyone's definition. This is but one of the responsibilities of command.

General Abrams was there and he was in charge. General Lavelle was his Air Deputy sitting at the same base headquarters. I, for one, do not believe that the responsibility for the bombing violations must be borne by General Lavelle alone.

Authority may be delegated—but not responsibility.

At least on one occasion, General Abrams admitted to his own liberal interpretation of the Rules of Engagement. He personally authorized a highly questionable raid into North Vietnam for which he was immediately criticized by the Joint Chiefs of Staff. In response to my questioning during the hearings. General Abrams stated, and I quote:

"If I or any other commander of similar rank picks and chooses among the rules . . . it will unravel in a way that you will never be able to control."

If General Abrams at least on one occasion misinterpreted the rules then I can well understand how his own officers could do likewise.

I am also not satisfied that General Abrams' superiors up the chain of command are as innocent of what was occurring as they purport to be. Instead of insuring that missions flown into North Vietnam were purely reconnaissance flights under the standing rules, the testimony shows that the Pentagon was concerned about the bomb damage.

I am not convinced by any means that General Lavelle alone is the culprit. We have conflicting testimony in the record of hearings and I seriously doubt that the Navy missions were not also in violation of the Standing Rules of Engagement.

It appears to me that the Joint Chiefs of Staff, the Pacific Commanders and the Commanders in Vietnam must share the burden of command responsibility for not enforcing the orders of the Commander in Chief.

Mr. STENNIS. Mr. President, I made reference to General Lavelle's letter. In fairness to him it should be placed in the RECORD. I ask unanimous consent that the statement of September 26, 1972, which was referred to be printed in the RECORD at this point.

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

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

SEPTEMBER 26, 1972.

Hon. JOHN C. STENNIS,
Chairman, Senate Armed Services Committee, Old Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As I reread my testimony, certain very important elements appear to have been presented with a fragmented continuity which tends to obscure their clarity. The purpose of this letter is to attempt to assemble the important features of my testimony with the continuity necessary to project a concise summary of the essentials and to focus on those features which I believe to be of the greatest importance to this Committee in making its decision.

As a first order of business, it is important, I think, to resolve what appears to me to be a certain amount of lingering confusion about the number and nature of the air strikes in question.

During the course of my testimony you requested, and I readily concurred, that I explain the strikes on a list presented to me by Mr. Woolsey. You opened the review with the following statement. "Mr. Woolsey, identify the strikes with the General and let him explain it, tell what he did, and then you can cross-examine him on his answers if you want to." Because Mr. Woolsey's list was reviewed almost solely in the form of cross-examination, certain very pertinent information appears to be obscured and I'd like to go over these strikes again.

Mr. Woolsey's list was the third different list that I had seen. That list was shown to me for the first time by Mr. Woolsey, just a few days before my testimony. I believe that only 15 or 16 strikes that were on the original list furnished the Investigative Sub-Committee of the House Armed Services Committee are on the list Mr. Woolsey now has. The original list contained several regular strikes that were on the list in error and which were subsequently deleted. I believe the current list similarly contains strikes that should not be included in the list.

The first two strikes on the list are the ones discussed with Admiral Moorer and covered in extensive detail during my testimony. These strikes were reported accurately and the post strike photography was sent to all higher headquarters. I believe the reason for their inclusion on the original list was that airfields were not considered to be authorized targets on protective reaction strikes. The reason listed for their inclusion on the current list is that crews were instructed to deliver their ordnance whether or not they received fire. I don't remember any details of the 7 November strike, but with respect to the 8 November strike, I don't believe this is the case, since we knew we could not fly over that airfield without being fired on, but this is academic since both strikes were fired on.

The fourth strike on the list is:

4. 25 January; [deleted]; 4F–4's; Rte. 137.

As ascertained from Mr. Woolsey's records, this was a normally scheduled reconnaissance flight, fired on by a SAM. The escort aircraft expended their ordnance on the missile site.

The seventh strike on the list is:

7. 4 February; [deleted]; 4F–4's; North of DMZ.

This strike was made by a wing not involved in the protective reaction strikes under question. The ordnance they carried was never used on these strikes. I believe this was a regular reaction against antiaircraft artillery firing from North Vietnam on our aircraft operating over Laos.

The eighth, ninth and tenth strikes on the list are:

8. 16 February [deleted]; 9F–4's; Bat Lake SAM.

9. 16 February; [deleted]; 14F–4's; Bat Lake SAM and Rte. 137.

10. 17 February; [deleted]; 4F–4's; SAM Site No. of DMZ.

These were part of the strike force employed on the JCS authorized strikes against the 130 MM guns just north of the DMZ. These three strikes were part of the prebriefed, widely distributed, operations plan. These were part of a large coordinated and very precisely timed operation, involving two carriers and four fighter bases. They have not been previously questioned and were not on the original list.

The thirteenth strike on the list is:

13. 21 February; [deleted]; 2F–4's; Rte. 137.

This strike was also made by a wing not involved in the protective reaction strikes under question. Further, no planned protective reaction strikes were scheduled with less than four aircraft.

The twenty-second strike on the list is:

22. 4 March; [deleted]; 3F–4's; Rte. 15.

Mr. Woolsey's records indicate this was a normal fragged mission diverted by the Airborne Command and Control Center, to a more lucrative target.

I believe the above listed nine strikes should be removed from consideration.

Of the nineteen remaining strikes, two, on 23 January and 9 March, were counter plans executed to stop [deleted] deployed to Dong Hoi airfield. They were executing their plan to attack a B–52 or an RC–135 and we were reacting. Certainly we were expected to counter their attempt to shoot down one of our bombers or an unarmed intelligence aircraft.

Of the seventeen remaining strikes, two, on the 7th and 8th of March, were directed at the SAM sites firing across the DMZ and preventing us from operating in Northern South Vietnam and maintaining a gunship over Dong Ha.

Of the fifteen remaining strikes, some are new additions that I never saw before, do not remember and therefore cannot comment. Some are breakouts where they were carried as one on the original list and are now listed as two. The strikes of 31 January and 3 March are in this latter category although they were planned and executed as one strike. The majority of the strikes remaining on Mr. Woolsey's current list are on route 137, opposite the Ban Karai pass, through which the missiles were brought into Laos and appear to be against missiles on transporters and their accompanying trucks, vans and equipment preparing to enter Laos.

Except for the two airfield strikes on November 7 and 8 which were covered in considerable detail in my testimony, the period covered by the strikes under consideration was from January 23, 1972 to March 9, 1972, a period of just over five weeks. The strikes on other than active SAM sites and MIG's on airfields were on 31 January and then from 18 February to 8 March. With one exception, they were confined to a 19-day period.

These approximately 20 strikes out of a total of approximately 40,000 sorties flown during that time period, were executed under a liberal interpretation of a rule of engagement, in order to strike targets dedicated to shooting down United States aircraft.

I believe the above presents a clearer review of the strikes in question than was portrayed through the fragmented pattern of questioning during my testimony. With that review as a backdrop, I would, accordingly, like to recapitulate my testimony.

Mr. Chairman, the propriety of my actions as Commander of the Seventh Air Force has been subjected to scrutiny in two essential respects. First, there is the question of civilian control over the military and whether or not I exceeded my authority and therefore disregarded this control. The second is whether or not I ordered or sanctioned false reports by a subordinate echelon of my Command.

As to the question of whether or not I ordered or sanctioned false reports, I am convinced my testimony shows that I did not knowingly encourage falsehood. I have repeatedly acknowledged that I did tell my Director of Operations that we could not report "no enemy reaction". I have also covered the conditions and the existing tensions at the time that spontaneous comment was made. I have also acknowledged that my instructions were not clear and were subject to misinterpretation and, in retrospect, were apparently interpreted by my subordinates as an exhortation to report enemy fire when there was none. "Hostile action, enemy radar", would, in my judgment, have been an accurate report. Even though I wasn't aware of the false reports and stopped them when they were brought to my attention, I have always accepted responsibility for them, since they were triggered by my unfortunate remark.

It seems to me that the real issue of consequence raised in these hearings is the question of whether I disregarded civilian authority and exceeded my own authority. I am satisfied my testimony shows that I did not designedly or purposefully exceed my authority. I believed then, and I still believe, that in the crisis environment we faced and in light of the frequent encouragement from higher authorities to be more aggressive and flexible, I acted legitimately and within the framework of this guidance.

So important is the question of the reasonableness of my actions, that I believe the Committee should bear in mind all that my testimony shows concerning my reasons for the actions I took. Accordingly, I would like to review again those circumstances that my testimony touched on, which were significant contributing influences:

a. *The strikes in early November.* These strikes and the rationale for them were discussed with the Chairman of the JCS. My interpretation of our discussion was that he encouraged me to run a protective reaction mission to attempt to get the MIG or MIG's on Quang Lang. He took care of Navy clearance into their area, and he was shown the post strike photographs the following day. Subsequently, I received a call and a message from General Clay at PACAF, in which he indicated Washington dissatisfaction with the poor results of the Quang Lang strike. It was not a well executed strike, due principally to poor planning and bombing under heavy fire.

b. *The Honolulu Conference.* This conference was called as the result of a directive from the Commander of SAC, [deleted]. The conference was hurriedly set up and the COMSAC directive was cancelled within 24 hours. The purpose of the conference was to discuss methods of countering the enemy threat. During the conference, as reported to me by my representative, the Director, JCS, indicated:

(1) Field Commanders should be more aggressive.

(2) Field Commanders had not been flexible enough in the use of existing authorities.

(3) Fighter escorts for reconnaissance aircraft should be increased to 8 or 16 to insure adequate damage on protective reaction strikes.

(4) When intelligence indicates MIG presence on Southern airfields, schedule maximum escorts.

(5) JCS would not question our aiming points (targets) on protective reaction strikes.

(6) In the advent of adverse publicity we could expect full backing from JCS.

c. *Discussion with Secretary Laird in Saigon.* Although I do not remember any of the Secretary's comments verbatim, the essence as I understood them was: Don't come into Washington and ask for additional approvals or authorities, it was an inopportune time. Make maximum use of the authorities we had and he'd support us in Washington.

d. *CINCPAC–JCS wires.* Receipt of CINCPAC and JCS wires referring to the Honolulu conference and noting that comanders had adopted a more vigorous reaction posture, resulting in several successful protective reaction strikes such as the Navy strike on Quang Lang and the Air Force strike on Dong Hoi. The JCS wire further authorized intensifying reconnaissance activity in the vicinity of Dong Hoi, Vinh and Quang Lang with appropriate escort and defense suppression support to insure effective results.

e. *GCI directed missile firings.* [Deleted] aircraft and [deleted] crewmen were lost to missiles that were fired under the direction of air defense radars. The crews received [deleted] radar warning of these missile firings. Although the air defense radars had previously been netted with missile units for the purpose of warning them of approaching United States aircraft, January of this year was the first time, to our knowledge, that they were used in lieu of the tracking Fan Song radars, which the crews could detect.

f. *Fighting in several areas.* The critical condition and the resulting pressure and tensions were also an influence. While we were encouraged to deal aggressively with the preinvasion build-up, we were also heavily committed to the support of the [deleted] fighting to hold Long Thieng. My testimony covered my visits to Vientienne, Long Thieng and Bangkok.

g. *Missile firings into South Vietnam.* For the first time in this war, the NVN had fired missiles into South Vietnam and [deleted] we were nightly keeping airborne over Dong Ha to protect that forward fire support base.

All of the foregoing factors were vital ingredients of my thinking. It seems to me that they collectively demonstrate the reasonableness of my actions. Of particular importance, as I see it, were my discussion with the Chairman, JCS concerning the early November strikes; the strong exhortations made at the Honolulu conference to assume a more aggressive protective reaction posture; the CINCPAC and JCS wires emphasizing anew the policy expressions made at the Hous-

lulu conference; and my discussion with Secretary Laird in Saigon.

One other message of extreme importance in leading me to believe my actions were in accord with guidance from higher authority was a top secret wire from the Chairman, JCS to CINCPAC and MACV, dated 10 April 1971. This message, brought to my attention by my staff, was in response to a request for specific authority to conduct TACAIR armed reconnaissance to locate and destroy 130 MM field artillery guns located just north of the DMZ. The wire from CJCS in response to that request states in pertinent part:

[Deleted.]

That response obviously interpreted the rule of engagement related to protective reaction strikes as authorizing us to strike field artillery positions even though the rule makes no mention whatever of field artillery as authorized protective reaction targets. The pertinent rule of engagement, as stated for the record by Senator Hughes, is as follows:

"Fighter aircraft may strike any SAM or Triple A site below 20° North which fires at or is activated against U.S. aircraft conducting missions over Laos or North Vietnam."

As can be seen, the rule states with crystal clarity that the only targets which could be hit under protective reaction were SAM and AAA sites. Yet, the wire quoted above encouraged us in very specific terms to use the protective reaction authority to make future strikes on a target other than SAM and AAA sites. This wire, together with the statement by the Director of the Joint Staff that no one in Washington would question our aiming points, led me to believe that a similar degree of liberal interpretation was expected regarding the conditions for a protective reaction strike. It seemed clear to me that higher authorities had recommended, encouraged and commended an extremely liberal policy, well beyond the literal language of the rule of engagement. This liberal interpretation of what could be struck, plus the encouragement to be more aggressive and flexible, vitally influenced my determination to make a similiar, though I believe less liberal, and very reasonable, interpretation of the conditions under which we could strike.

While I was of the opinion that my superiors were aware of the nature of our operations, it now appears that there was a different understanding than I thought existed. Notwithstanding, I still feel, and I believe my testimony demonstrates, that my interpretation of the pertinent rule of engagement was a reasonable one in light of all the important considerations which I have enumerated and discussed above. In summary, Mr. Chairman, the important point which my testimony makes is that I believed that my actions in ordering these strikes were legitimate and in harmony with the guidance we had received. I was not running my private war or disobeying direct orders from the President, as many news reports have claimed. These few strikes, directed only at enemy weapons systems trying to shoot us down, were executed in a manner designed to protect the lives of my crews.

It was brought out during the testimony that had I elected to "troll", i.e., send an aircraft and crew into the area as bait to draw fire, the strikes would then have been considered authorized under the pertinent rule of engagement. Mr. Chairman, I just couldn't do this in the environment in which my crews were flying. Even if a tactic of trolling would have made these strikes legal with respect to the enemy, it would not have been morally right in that hazardous area, with respect to my crews. Quite apart from that, it should be remembered that in the final analysis the practice of provoking enemy fire through trolling was done in order to execute air strikes involving precisely the same degree of preplanning as those which I directed. Consequently, as regards the preplanned aspects of the strikes, I respectfully submit that this tactic cannot be fairly differentiated.

Finally, Mr. Chairman, there has not been a completely objective treatment of this situation in the public press. I have been portrayed as an unprincipled malefactor, who recklessly endangered the prospects of peace, by conducting a massive, private air war, in calculated disregard for orders from the President and personally engineering a conspiracy to conceal it all through falsification of reports. The verdict has already been rendered in my trial by the news media, which has not had access to all the classified information available to your Committee. Contrary to the treatment I have received from the press, I am confident of the fairness and objectivity of the Committee.

Mr. Chairman it is not pleasant to contemplate ending a long and distinguished military career wth a catastrophic blemish on my record—a blemish for conscientiously doing the job I believe I was expected to do, and doing it with a minimum loss of American lives.

Mr. Chairman, I am submitting ths statement under the same conditions under which I testified with respect to this being sworn testimony. I do swear that the information in this letter is the truth, the whole truth, and nothing but the truth.

Sincerely,

JOHN D. LAVALLE.

WASHINGTON, DISTRICT OF COLUMBIA.

Mr. STENNIS. Mr. President, I have referred to a list of ceratin unauthorized strikes provided by the Department of Defense. I have the list here and I ask that it be printed in the RECORD.

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

Date	Number of strike aircraft	Target area
1. Nov. 7, 1971	4	Airfield (Dong Hoi).
2. Nov. 8, 1971	4	Airfield (Quan Lang).
3. Jan. 23, 1972	[1] 5	Airfield (Dong Hoi).
4. Jan. 25, 1972	4	Route 137.
5. Jan. 31, 1972	8	Do.
6. Jan. 31, 1972	8	Do.
7. Feb. 16, 1972	[2] 14	Do.
8. Feb. 17, 1972	4	Route 101.
9. Feb. 18, 1972	4	Route 1036.
10. Feb. 21, 1972	[3] 6	Route 137.
11. Feb. 22, 1972	12	Do.
12. Feb. 25, 1972	4	Do.
13. Feb. 25, 1972	8	Route 15.
14. Feb. 25, 1972	5	Route 137.
15. Mar. 2, 1972	4	Do.
16. Mar. 3, 1972	4	Do.
17. Mar. 4, 1972	9	Do.
18. Mar. 4, 1972	[4] 3	Route 15.
19. Mar. 6, 1972	8	Route 137.
20. Mar. 7, 1972	[4] 3	Do.
21. Mar. 7, 1972	4	2 miles north DM.
22. Mar. 8, 1972	4	Route 137.
23. Mar. 8, 1972	4	Do.
24. Mar. 9, 1972	4	Airfield (Dong Hoi).
Total escorts	137	

[1] Only 4 expended.
[2] Only 9 expended.
[3] 2 ground aborts.
[4] 1 ground abort.

Mr. STENNIS. Mr. President, that completes my opening remarks. I expect to make a brief statement later.

I yield the floor.

Mr. HUGHES. Mr. President, at the beginning, I would like to ask unanimous consent that two members of my staff be allowed the privilege of the floor, Mr. Charles Stevenson and Mr. Martin Jensen.

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

Mr. HUGHES. Mr. President I want to preface my statement by saying that the decision to bring the nomination of General Abrams to the floor was unanimous; 15 of the 16 members agreed at that time to vote for confirmation, and the other member will speak on the position taken by himself, I understand, this afternoon; but beyond that point, there are many differences within the committee regarding what was wrong, what should be done, what happened in the past, and what should be recommended in the future. What I shall have to say is going to be based on recommendations for the future rather than what happened in the past, with relation to this nomination. It certainly represents only my own views.

THE LAVELLE CASE: AN INTERIM REPORT

Mr. President, let me say at the outset that I join my colleagues from the Committee on Armed Services in supporting the nomination of Gen. Creighton Abrams to be Army Chief of Staff.

My decision was reached only after searching examination and extensive deliberation of the events of the past year involving the escalation of the air war in Southeast Asia and the roles of General Abrams and many others in that regard.

Prior to the discovery of irregularities in the air operations, however, I would not have hesitated to voice my support for General Abrams' appointment as Chief of Staff.

For over 5 years, he has had grueling responsibilities in a difficult and unpopular war. Although I have opposed the Presidential actions and congressional acquiescence that have prolonged the war, I believe that General Abrams carried out his orders with professionalism, with effectiveness, and with a respect for the primacy of civilian authority. He has proved himself, in my opinion, qualified for greater responsibilities.

General Abrams' attitude toward the problem of drug abuse among our men in Vietnam was wise and humane. When staff members of the Subcommittee on Drug Abuse in the Military visited Vietnam, they found General Abrams and other commanders realistic and openminded in their views toward the problem and, in many respects, more enlightened than many officials and private citizens here in the United States.

In his testimony before the Armed Services Committee last month, General Abrams demonstrated a continuing concern with the condition of the Army today and the changes which must be made to attract and retain qualified men.

I also believe he has shown the requisite sensitivity and compassion regarding the consequences of racial tensions and low morale, as well as drug abuse, which seem to plague our military services at this time.

As you know, Mr. President, General Abrams' testimony was taken in connection with an extensive inquiry by the committee into the activities of our air and naval air forces over North Vietnam during the period of November 1971 to mid-March 1972.

The committee also reviewed in great detail the actions taken by the Chief of Staff of the Air Force, with concurrence of higher authority, in removing Gen. John D. Lavelle from command of the

7th Air Force and recommending his advancement on the retired list to lieutenant general from his permanent active rank of major general.

Transcripts of the hearings have been released to the press and published for general public consumption. There have been certain deletions of sensitive material for reasons of national security, but the deletions, in my view, do not significantly reduce the body of evidence accumulated by the committee.

From the evidence we have, at least three conclusions have been richly documented:

First, certain air strikes against targets in North Vietnam were conducted in violation of the standing rules of engagement.

Second, reports were falsified in an effort to conceal the real nature of some of these strikes.

Third, pilots were instructed to strike certain targets, regardless of any enemy provocation that could justify the attacks under technical interpretations of the rules of engagement.

Mr. President, this is not merely a matter of breaking the rules of the "club." These are serious violations of law, of orders, and of regulations that cry out for remedy.

The main question before the committee in regard to General Abrams was whether he knowingly participated in any way in these serious violations. I, for one, do not believe that he did.

Certainly, General Abrams could have known the nature and detail of the unauthorized air strikes, if General Lavelle had spelled out in such detail precisely what the 7th Air Force was doing.

In a single instance, General Abrams conceded that he authorized a strike in early January of this year under an expanded interpretation of the rules of engagement. But he did not order another after the raid was criticized and his rationale rejected by higher authority.

The matter was discussed thoroughly prior to the attack and he ordered that a report be written up immediately, even while the attack was going on, and sent on to the JCS.

General Lavelle cited no other specific conversation in which General Abrams was told of General Lavelle's continued use of that liberal interpretation of the rules or in which General Abrams approved a mission with the understanding that ordnance would be expended regardless of enemy provocation.

In addition, Mr. President, General Lavelle has told the committee of the vital ingredients that influenced his thinking with regard to liberalizing the interpretation of the rules of engagement. Of particular importance, in General Lavelle's words were the following:

There was the conference in Hawaii on December 4 and 5, 1971, to explore ways to deal with an increased Mig threat. General Vogt, who at that time was staff director for the Joint Chiefs, urged more aggressiveness, recommended increasing the explosive punch of reconnaissance escorts, urged more targeting on possible Mig bases in southern North Vietnam, and assured the air commanders that the Joint Chiefs would deal with adverse publicity arising from such strikes.

There was the criticism leveled at the 7th Air Force by General Ryan, General Clay—the Air Force representative in the Unified Cincpac Command—and others after Air Force planes did a poor job of bombing an airfield at Quang Lang on November 8, 1971.

And there were the personal conversations with Admiral Moorer and Secretary Laird regarding the developing enemy threats to our air elements operating over Southeast Asia.

These are the factors which General Lavelle says were most persuasive upon him. But it is important to note that none of them involves General Abrams.

Instead, they involved individuals at the highest levels of our Military Establishment, including the Secretary of Defense.

It can be argued that General Abrams should have known about the unauthorized air strikes, on the theory that a commander has the responsibilty to know what his subordinates are doing.

That is a valid theory, to which military officers will always attest, but in the practical situation in South Vietnam, I do not believe that it was more than remotely possible.

The blame in this case, according to the evidence compiled by the committee, falls not on General Abrams, but on some of the people who served under him and, even more significantly, on the deficiencies of the command structure we employed in Southeast Asia, in my opinion.

This so-called unified command structure is unified in only one respect: to command—to get things done, to convey instructions down the operational chain of command and coordinate them. But it does not provide even a bare minimum of what is needed for monitoring, investigating, and evaluating how things are being done—the all-important element of control. Results are all that seem to be important.

The committee record shows that these control functions were fragmented among the services individually, and in many respects, were out of the hands of the unified commander. Time and again, witnesses told the committee that any transgressions by the 7th Air Force were the sole responsibility of the Air Force, not the operational chain of command.

In fact, there were at least four major chains of command involved.

There was the overall operational chain of command, from the Secretary of Defense through the Joint Chiefs of Staff to the unified command at CINC PAC and then to the MACV unified command and General Abrams.

The other three chains—one for each of the services—provided logistics to their forces and were responsible for discipline and monitoring.

So in the Air Force, General Lavelle responded to the Pacific Air Force commander in Honolulu who in turn was responsible to the Air Force Chief of Staff and the Secretary of the Air Force.

In the Navy, the line ran from the Secretary to the Chief of Naval Operations to the 7th Fleet Commander and then to the ships in Task Force 77 in the waters in Southeast Asia.

In the Army, it ran from the Secretary through the Chief of Staff to General Abrams and his subordinate Army commander.

It is no wonder that confusion resulted when so many different hats had to be worn by commanders.

Mr. President, when the military system purports to lay upon a commander the responsibility for control, it should give him the tools for doing it—but General Abrams, in my opinion, did not have them.

Another mitigating factor in my judgment of General Abrams was the extremely broad field of concerns with which he had to deal. He was immersed in all aspects of U.S. involvement in South Vietnam and in the border regions of three other countries—in particular, the always-changing ground situation and the difficulties of coordinating with South Vietnamese military units.

Against this background, it is not difficult to understand or appreciate the fact that General Abrams did not detect violations of rules involving about 130 air sorties out of a total of nearly 25,000 flown under his command during this period in the area for which he was responsible.

On the other hand, General Lavelle personally ordered the missions into North Vietnam and personally supervised the conduct of many of them. He was deeply involved in the details of the day-to-day activities of his units, particularly over North Vietnam, and from his perspective, the violations could hardly have gone undetected. After all, at least half of the raids into North Vietnam during this period were unauthorized, not counting the "limited duration" strikes specifically authorized by the President.

I would point out, Mr. President, that with only three exceptions, the unauthorized strikes were conducted after the restrictive rules of engagement were reaffirmed by Washington.

Classified documents in possession of the committee clearly indicate that the formal communications regarding the rules of engagement insisted upon maintenance of the restrictive rules for operations over the air force sector of North Vietnam. These formal communications contained the cautionary phrase, "when fired upon," in each case, so far as I am able to determine.

Mr. President, these operational restrictions came down the chain of command to General Abrams and were forwarded by him to General Lavelle. Having formally conveyed these orders to General Lavelle through official channels, General Abrams indicates that he felt he could rely upon General Lavelle to see that they were carried out without deviation.

I believe that General Abrams had every reason to expect that they would be. I believe General Abrams when he says he was surprised to learn—in early March—that they were not. And I believe General Abrams when he says that if he had known, he would not have condoned it.

Mr. President, I do not wish my colleagues to infer that my support for General Abrams' nomination can be taken as an exoneration of all others in the chain of command.

There are still some serious questions in my mind about the roles played by some of the highest ranking military officers and civilian authorities of our Government.

In addition to the vital ingredients cited by General Lavelle, I am reminded of the fact that—after falsified reports were discovered by Pentagon officials in early March—a study was undertaken to determine which strikes in North Vietnam were unauthorized. Using reports and other information already on file here in Washington, the list of unauthorized strikes has been revised twice from the original version developed by the Air Force Inspector General in March.

Since it was possible to make these determinations—in Washington—in April, May, June and July, why were they not made in January, February, and March, when the bulk of the unauthorized raids were being conducted?

Thus, Mr. President, a great deal more must be done by the Department of Defense in connection with the events surrounding the removal of General Lavelle from his command.

But in my view, General Abrams conducted his duties with dedication and effectiveness under the most difficult circumstances, and the testimony in the committee record provides no grounds for denying his promotion to Army Chief of Staff.

THE OVERRIDING CONCERNS

Seven months have passed since the Air Force began to investigate charges of unauthorized bombing of North Vietnam, and we are only beginning to get at the truth.

We have seen and probed the tip of the iceberg, but many other aspects remain frozen in the files or submerged from congressional and public view.

Time is the enemy of truth in these closing days of the 92d Congress, forcing us to act hastily and on the basis of incomplete information. Nevertheless, I believe that we can act now on the nomination of General Abrams, and I believe that we can present to the Department of Defense an agenda for study and action which can then be the basis for further congressional consideration early next year.

The issue involved here is far more important than one or two nominations and more significant than clarifying the record for historians.

The basic issue is whether civilians have lost control over the military and the military has lost control over itself.

I believe that the record developed so far contains evidence of military disregard of explicit orders approved by civilian authorities and of a breakdown, caused by falsified reports, in the control and monitoring system.

Mr. President, the overriding concern in the Senate today—the one that takes precedence over all others derived from "the Lavelle Affair"—is the legitimate fear that it could all too easily happen again.

Listen to the testimony of two of the Nation's top military commanders.

Adm. Thomas Moorer, Chairman of the Joint Chiefs of Staff:

> Can I guarantee that one particular individual might not take unauthorized action? I would have to say that I could not guarantee such a thing from this distance.

Gen. John Ryan, Air Force Chief of Staff:

> I cannot sit here, Senator, and guarantee you that it won't happen again.

These admissions stun the imagination. They strongly suggest that the sense of security we derive from our powerful military machine is a false sense of security—that subordinate military commanders in the ranks of generals and admirals have sufficient leeway in their command functions to permit them to involve us in hostilities that could engulf this Nation in war.

Mr. President, this is the deep and powerful undercurrent of our deliberations today, and I know it is foremost in the minds of Senators as we consider the surface details regarding General Abrams' nomination, General Lavelle's activities, and the involvement of others in them.

An iron-clad guarantee against a repetition of such an incident is, of course, somewhat more than we can expect.

But the incomplete investigation conducted by the Department of Defense, the erroneous and misleading statements that have emerged from the highest levels of the Government, and the almost total lack of concern in the executive branch for improving the system of command and control all testify to the fact that we have not received even basic, minimum assurances that an effort will be made to prevent such occurrences in the future.

This concern, more than any other, has been my motivation for pursuing an inquiry to the fullest extent of my capability into these matters, and it is the concern that has haunted me throughout the hearings of our committee.

RESPONSIBILITY FOR FUTURE ACTION

It is very unfortunate that the Congress has been involved in this matter in this way.

If the inspector general system in the Air Force had been different, the transgressions might have been discovered and handled directly by the Air Force. Instead, Sergeant Lonnie Franks felt he had no resort but to write to his U.S. Senator.

If the Air Force had vigorously conducted its own investigation, as provided under article 32 of the Uniform Code of Military Justice, we might now have a coherent set of facts, rather than a collection of clouded memories and scattered documents, that have been exceedingly difficult to collect.

If the Defense Department had presented the results of its partial investigation to the Congress earlier, we might have had time for the searching, probing inquiry that this deserves.

Under these difficult circumstances, I believe that the distinguished chairman of the Armed Services Committee (Mr. STENNIS) and his able staff have done an admirable job of gathering evidence and witnesses and of conducting hearings under severe time constraints. There never has been a time, from the beginning to the end of these hearings, that the distinguished chairman of the committee and his staff have not cooperated fully in trying to seek out documents, communications, and witnesses that might bring light to this subject matter, and I am deeply appreciative of that.

The focus of our inquiry, however, was limited to the immediate question of acting on several nominations which were pending before the committee—in particular, those of General Lavelle, General Abrams, Admiral Moorer, Admiral McCain, and General Haig. Based on the information so far available to the committee, I believe that we took the appropriate action in approving all nominations except that of General Lavelle.

But that does not end our responsibility, in my opinion, nor does it put this whole matter to rest. Under rule XXV(d) of the Senate, the Armed Services Committee has jurisdiction on the following subjects, among other things:

First. Common defense generally.

Second, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force, generally.

These are in addition to the concern with pay, promotion, retirement, and other benefits and privileges of members of the Armed Forces which were involved in these nominations.

Thus, the questions of command and control mechanisms, the inspector general system, and military operations in Southeast Asia are important responsibilities for the committee. We cannot rest satisfied until we have gone thoroughly into all relevant facets of these issues.

The committee has the means to conduct such an investigation, and I hope it will do so when there is more time. Coherent, comprehensive oversight hearings are much preferable to hurried inquiries focused on the question of pending nominations, particularly when you begin and do not know where you are going or where the trail leads, and you have to ferret out, one day against the next, what to do next.

The inadequacy of the investigation so far is the fault not of the committee, but rather of the Defense Department, which failed to provide the crucial information in a timely and comprehensive way.

The failure of the Defense Department to level with the Congress and the people necessitated the hearings which have been conducted.

I am pleased that the Air Force promptly began an investigation of the falsifying of reports, as charged in Sergeant Franks' letter, and that when those charges were confirmed, General Lavelle was immediately relieved of his command. I want to emphasize that.

But 7 months have passed, and what else has happened? Despite evidence that perhaps 200 people were involved in the planning of unauthorized attacks and the subsequent falsification of reports, no one besides General Lavelle, to my knowledge, has been counseled, admonished, reprimanded, or punished. Nothing of any significance has been done to prevent a recurrence of these improper ac-

tivities. The question of a thorough inquiry and possible judicial action is still pending, open, and under review.

I believe that the Defense Department and especially the Air Force have failed to fully exercise their responsibility. And, given the new issues raised about the Navy's involvement in similar unauthorized activities, I believe the Navy also has a responsibility to act. I want to point out that in the course of the hearings, it became obvious that the Air Force had strong communications from the Secretary's office or those above it in relation to reporting and what they were giving Congress by way of information.

Under article 32 of the Uniform Code of Military Justice, a thorough and impartial investigation must be conducted prior to any general court martial. To my knowledge, this has not been done. I ask unanimous consent to include the text of this article at this point in the RECORD.

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

ARTICLE 32, INVESTIGATION

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

Mr. HUGHES. Even if a court martial is not contemplated, the UCMJ provides for a court of inquiry to investigate any matter and make findings of fact. If so designated, it can also function like a grand jury and recommend a court martial. I ask unanimous consent that article 135 be inserted in the RECORD at this point.

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

ARTICLE 135. COURTS OF INQUIRY

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

Mr. HUGHES. I believe that the responsible authorities in the Department of Defense should, without further delay, convene a court of inquiry, or its equivalent be established, to hear witnesses, make a full and complete record of the facts, and recommend appropriate further actions relating to: (a) Protective reaction strikes in North Vietnam in 1971–72, and (b) Any reporting irregularities in connection with the air war in Southeast Asia during this period.

Only in this way can innocent men be cleared of suspicions raised by public attention to these hearings and any guilty men be given punishment appropriate to their offenses and sufficient to deter any such future violations.

General Lavelle and others deserve the chance to make their case with full constitutional safeguards and with full opportunity of legal counsel to cross-examine their accusers and the witnesses against them.

The Armed Services Committee is not a court—no congressional committee is a proper forum for a trial. But we need the facts, and we welcome the suggestions of the Departments concerned for corrective legislative action. If the Pentagon does its job of internal investigations and discipline, the Armed Services Committee and the Senate can discharge our responsibilities to oversee the proper functioning of the Defense Department.

Unless the Air Force take further action, it will run the risk of setting a dangerous double standard. I do not see how Academy cadets can be expelled for not reporting on their classmates who are cheating on examinations, yet men who apparently engage in flagrant violations of standing orders and law, and then in the falsification of reports are not called to account.

CORRECTIVE ACTIONS

The hearing record has ample evidence of unauthorized airstrikes and of false reporting—the first a violation of clear-standing orders, the second a violation of law.

Although the rules of engagement are detailed and highly classified in many respects, as well as subject to periodic modifications, the basic order in question here reads as follows:

Fighter aircraft may strike any SAM or AAA site in North Vietnam below 20 degrees north which fires at or is activated against U.S. aircraft conducting missions over Laos or North Vietnam. And . . . this authority is limited to immediate protective reaction without subsequent retaliation.

Testimony before the committee clearly showed preplanning of missions in which pilots were told to expend their ordnance regardless of hostile action. In some cases, the strikes were conducted without any such action, while in other cases radar activation or ground fire legitimated the raids in a technical sense.

In order to conceal the true nature of these activities, a system of false reporting was set up, whereby one set of data went into widely circulated forms for computer digestion and the true report came in special "eyes only" messages for General Lavelle's operations chief.

On the face of it, the rules of engagement prohibited strikes unless there was hostile enemy action, and thus there is probable cause that some violations of the UCMJ have occurred. I ask unanimous consent to insert in the record at this point the relevant sections of the UCMP on obedience to orders and on the falsification of official statements.

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

ARTICLE 90. ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed

forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.

ARTICLE 107. FALSE OFFICIAL STATEMENTS

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

Mr. HUGHES. Mr. President, for the benefit of Senators in the Chamber, I will read article 107:

ARTICLE 107. FALSE OFFICIAL STATEMENTS

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

In order to minimize or prevent similar violations from occurring in the future, I believe that the Defense Department should take two additional steps:

First, official guidance should be given to all members of the Armed Forces regarding their duty when given an order which they believe violates article 107 regarding false official statements.

Second, operating authorities and the rules of engagement should be unambiguous and clearly stated, in writing, and maintained in a single central location in operating military commands. All changes in these authorities and rules should be communicated, in writing, from the originating official or command.

If other steps are deemed necessary, they should be taken promptly and then reported to the Congress.

Something must also be done about the Inspector General system. In this instance, as the chairman of the committee has already pointed out, the fact that the Inspector General of the 432d Reconnaissance Wing at Udorn Air Force Base was also vice commander of the wing and involved in unauthorized activities certainly inhibited Sergeant Franks from making his reports within regular channels.

As of now, I do not favor a new, separate bureaucracy to handle these hopefully few instances of questionable activities or orders. But I believe that some changes are necessary to permit the uninhibited flow of information and to free men from the fear of disregard, harassment, or retaliation.

Therefore, I believe that the Secretary of Defense should submit to the Congress by January 30, 1973, a full and complete report on the operation of the Inspector General systems and other major inspection and monitoring systems within each military service, including alternative structures and possible reforms. That same report should discuss the steps taken to implement the provisions of the Defense Reorganization Act of 1958 vesting "full operational command" in the Unified Commander.

The whole military command structure has been called into question by these events. A full in-house study of command and control problems, together with the pros and cons of alternative structures, should provide the committee and the Congress an appropriate basis for legislative action next year.

Instead, what we have heard from the highest officials in the Defense Department is an affirmation that the system is sound as it is. I do not believe that that faith is justified when that system failed to prevent, failed to uncover or, in my opinion, so far failed to correct its breakdown in this instance.

MAGNITUDE OF THE VIOLATIONS

Now, ladies and gentlemen of the Senate, I would turn, if I may, to the question of the magnitude of the violations, in my opinion.

The magnitude of these violations has not really gotten through to the American people. Military witnesses tried to minimize their significance by comparing the 20 to 30 unauthorized strikes involving nearly 150 sorties with the 25,000 sorties flown by the entire 7th Air Force during this period.

These figures are misleading for several reasons. First, because of the diplomatic consequences, that any bombing at all of North Vietnam ran the risk of affecting the search for peace. Second, since he recognized the significance of this bombing, General Lavalle gave these strikes his close personal attention. Third, the unauthorized strikes constituted a shocking high proportion of the Air Force's missions over North Vietnam.

Precise figures remain classified, but the cleared testimony reveals that over 20 strikes took place during a 6-week period beginning in late January and ending only when the Inspector General confronted General Lavelle with the evidence of Sergeant Franks' letter on March 10.

Since Air Force reconnaissance missions over North Vietnam averaged one per day, at least half the missions flown during this period were in violation of the rules.

Rather than being isolated instances, these acts developed into a regular system of prior planning and subsequent falsification, implicating hundreds of people.

Of all the men involved—in planning, briefing, flying, navigating, debriefing, and evaluating—only one recognized what was going on was wrong and took action to correct it. Sgt. Lonnie Franks raised the issue with his immediate superior and then, rebuffed, wrote to his U.S. Senator.

When I became involved in this matter, I undertook to attempt to get to the bottom of it and to seek corrective action, and referred the letter to the distinguished Senator from Missouri (Mr. SYMINGTON) for his counsel and advice on how it should be handled. I have appreciated his assistance on this, and in the hearings, in trying to get to the bottom of everything that is going on.

I shall not rest, and I do not believe the Congress should rest, until we have examined every aspect of this problem. As far as the Senator from Iowa is concerned, this investigation is not over.

THE BREAKDOWN OF LEADERSHIP

The investigation into the circumstances surrounding the retirement of General Lavelle has exposed some alarming facts about the way this war has been conducted. While I do not wish in any way to minimize the seriousness of the incidents of unauthorized bombing and falsified reports, I believe that the American people should also be concerned with these broader issues.

I. DIPLOMACY

I have already told the Senate the detailed sequence of events which connects the first of the acknowledged unauthorized strikes last November with the breakdown in secret peace talks at that time.

In brief, I believe that these strikes, which were denounced in unusually strong language by the North Vietnamese Government, were a significant factor in the supposedly diplomatic illness of Le Duc Tho on November 17, 1971.

I am also disturbed, of course, that the President took that illness as a reason for breaking off the peace talks, refusing to seize this chance for a settlement. As a result, the North Vietnamese were left no alternative but to launch their usual dry season offensive.

Even if peace was not possible last November because of the intransigence on all sides, the testimony before the Armed Services Committee shows that military operations were poorly coordinated with diplomatic strategy.

Admiral Moorer, who approved the November raids on three North Vietnamese airfields, testified that he was not aware of any crucial diplomatic activity at that time. Nor was General Abrams cautioned to restrict his military operations, as had been done at least once before.

Despite the close connection between military policy and diplomacy, this administration, according to news reports, has given the military a relatively free hand in the conduct of the war. The careful, detailed, high-level attention of the Johnson years has been replaced by an attitude bordering on indifference, in my opinion.

It may well be that the inadequate coordination of the bombing and the peace talks prolonged the war into 1972 and thus helped to cause more than 200 Americans to die in Indochina, more than 100 to be added to the ranks of the missing, and more than 50 to join their fellow countrymen as prisoners of war.

This has been a costly and avoidable mistake.

II. CONCEALMENT

The true story of this apparent failure of Presidential control over the war may never be known. That would not be unusual, however, for concealment and deception have been the hallmarks of this war from the beginning.

The whole concept of "protective reaction strikes" began as a euphemism and turned into a fraud.

At the time of the 1968 halt in the U.S. bombing of North Vietnam, the United States declared its intention to continue to fly reconnaissance missions over that country. After a plane was fired on, President Johnson ordered the planes to be escorted by fighters.

The rules of engagement permitted pilots to return fire when fired upon, but their reaction had to be immediate and

had to be directed at the military installations which threatened them. Over a period of time, further modifications were made to allow pilots to react when radars which provided aiming information to gunners were locked-on to U.S. planes and to permit attacks on military installations associated with the threatening complex.

Around the time of the Cambodian invasion in 1970, the United States launched a new kind of operation under the label of "protective reaction"—the so-called limited duration strikes which were, in fact, temporary resumptions of regular bombing of the North. On 32 occasions between the spring of 1970 and April 1972, the United States conducted these large-scale raids by suspending the rule that strikes must be immediate and retaliatory.

General Lavelle took this one step further by preplanning his strikes on supposed reconnaissance missions and giving his pilots to understand that they should expend their ordnance regardless of ground action against them.

But even without General Lavelle's actions, the United States had reached a point where, to a significant degree, protective reaction strikes were neither protective nor reactions.

They were not protective of reconnaissance planes, but aggressive against various ground targets. Some witnesses told the Armed Services Committee that trucks, field artillery, and oil storage facilities were struck, as well as the SAM's and AAA which posed a real threat.

They were not reactions because of the extensive preplanning and the instructions to "expend regardless."

Instead, permission to conduct armed reconnaissance became a license to bomb. And North Vietnam's acts of self-defense created an environment so hostile that the United States began missions for the sake of bombing rather than reconnaissance.

Nevertheless, the Congress and the American people were led to believe that U.S. attacks on North Vietnam were purely defensive. General Lavelle admits he violated the letter of the rules of engagement, but the United States had already violated its own understandings with the North Vietnamese by conducting aggressive raids.

This fraud in labeling was only one of the deceptions. Another was the effort to conceal the truth about General Lavelle's retirement.

General Lavelle was relieved of his command on March 26. On April 8, the Air Force announced that General Vogt had replaced General Lavelle, who retired for "personal and health reasons."

On May 4, General Lavelle was nominated for advancement on the retired list to lieutenant general, but Pentagon spokesmen repeated—without further explanation, even when asked by the press to provide it—that he had retired for "personal and health reasons."

General Ryan has testified that Secretary Laird refused him permission to brief the chairmen of the Senate and House Armed Services Committees.

Three Members of the Senate were invited to a briefing on April 6—which I was unable to attend—but Senators SYMINGTON and CASE, who did attend—and I am sure that the Senator from Missouri (Mr. SYMINGTON) will speak for himself—have since said that they were not told about falsified reports.

Someone told CBS White House Correspondent Dan Rather in mid-April that General Lavelle had been relieved of command because he refused to order his men to fly below 10,000 feet on their reconnaissance missions—a clear case of fabrication.

Only continued pressure from the Congress finally secured the sparse information, on May 15, that General Lavelle had been relieved of his command and that it was "because of irregularities in the conduct of his command responsibilities."

Then, on June 12, a part of the true story was finally divulged in hearings before the House Armed Services Committee.

Even after that, the Defense Department resisted any further inquiry into the matter, with various spokesmen pronouncing with evident self-satisfaction that nothing further needed to be discovered or disclosed.

Mr. President, the Congress and the American people were denied pertinent factual material upon which they could base a judgment—regarding General Lavelle's actions, regarding the command and control system, and regarding the involvement of other military and civilian officials, including General Abrams, in the violations of law and regulation that occurred.

For nearly 6 months—from late March to late September—the Senate was afforded only slight and superficial information about this affair.

And all the while, officials of the administration, including the President himself, persevered in the delusion that the matter had been fully investigated and sufficient punishment meted out.

III. NEEDLESS RISK

Mr. President, I want to now point out some of the needless risks. I suppose that all these things were concealed from us in order that we would not have to admit that we were bombing North Vietnam without provocation.

The North Vietnamese, of course, would know the truth, but not the American people. That has often been the case in this war.

The tragic consequence of this deception, however, was that American lives were being needlessly risked in order to preserve the fiction that the strikes were protective reactions.

I fully sympathize with the pilots who felt they were being sent into combat half paralyzed by frustrating and dangerous rules of engagement.

How would any of us react under similar circumstances? Would we, flying at the speed of sound into a rain of missiles and antiaircraft fire, want to worry about which guns below had already fired and which were about to fire? Would we, seeing a Mig on an airfield, want to wait until that plane was airborne before it could be considered hostile?

The SAM threat was real. The AAA threat was real. The Mig threat was real. And the numbers of each were increasing in the final months of 1971 tremendously.

Was there no other means of gathering the required intelligence?

Under similar circumstances, I am sure that we all would ask, as our commanders repeatedly asked, for changes in the rules of engagement to minimize the risks to our pilots.

But what was the response of our civilian officials? These requests were repeatedly denied. General Lavelle testified that Secretary Laird told him personally that—

> It was not the proper time to come in and ask for new authorities, but to take whatever action I could, the best I could, with the authorities we had.

There never was a "proper time," despite the increased air defenses and the evident movement of materiel southward, until the Easter offensive began. There never was a proper time.

At the same time that the rules were held the same, officials in Washington demanded that the men in the field be more aggressive—that they increase the number of reconnaissance flights and the number of escorts, still subject to those rules.

General Lavelle was understandably in a bind—ordered to be more aggressive, but denied the authority to carry out those orders with minimal risk to his men. He chose to break the rules, and his unit was forced to conceal the actions with falsified reports.

One cannot condone or excuse General Lavelle, since obedience and trustworthiness are essential to military command and control.

But our civilian leadership is also implicated—for giving new orders but not new authorities, for changing policy without changing the rules.

General Lavelle's "liberal interpretation" of the rules of engagement could just as easily have been authorized by the President, thus legalizing the strikes which took place. But, for some reason, it was never the "proper time" for such a change.

There is no evidence that the White House was trying to restrict military operations because of delicate diplomacy. On the contrary, every signal from Washington of which I know encouraged aggressiveness. Even in February, when the President began the massive buildup of U.S. forces in Thailand and offshore, the rules of engagement were kept the same.

This is no way to conduct a war. But this is no war for the United States to be involved in, anyway.

The answer to these criticisms of tactics is not to give the military a free rein, but rather to be sure that diplomacy and warmaking move together, and in the same direction.

If the people and the Congress had been kept fully informed, then we might have made a judgment on whether this new escalation, this new aggressiveness, was worth the risk to the pilots and to the chances for peace. Instead, we were all kept in the dark, and our pilots were needlessly endangered.

This war has gone on too long because we have been led to believe that we had "turned the corner" toward peace. Instead, each turn so far has only led us farther down the road of violence and suffering. We have yet to turn onto the clear, straight path to peace.

Mr. President, these hearings have wrung the hearts of many of the members of the committee that have investigated the matter. They have seen how the pressures increased on the officers to produce results. They have watched the final acts of desperation, the violations of the rules. And those violations cannot be condoned. However, realizing the pressures brought, most assuredly discipline is essential.

Mr. President, the way it was handled, in my opinion, was deplorable. And the responsibility of this Congress is absolute that more should be done in the future.

Mr. President, in the struggle of what we are doing today in the case of a good man, General Abrams, in the case of a man in a command structure in which there were four different routes of command, in the case of a man fighting a war to the best of his ability with all the ability he had, there was, in the opinion of the Senator from Iowa, no evidence on which to deny this man this important appointment.

The Senator from Iowa finds him entirely capable and entirely responsible to attain to this high position.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I support the nomination of Gen. Creighton W. Abrams as Chief of Staff of the U.S. Army.

General Abrams has completed over 36 years of distinguished service in the Army. He has held a wide range of assignments which have permitted him to serve in various positions and theaters. His experience as Vice Chief of Staff of the Army between 1964 and 1967 especially qualify him for this new assignment.

As the Members of the Senate know, General Abrams has spent the last 5 years in Vietnam and has served as commanding general of the Army in Vietnam since July of 1968.

During this period, U.S. military activities have taken on a new character, and General Abrams has admirably executed the orders of President Nixon. General Abrams was in charge during the strikes into Cambodia and Laos where the North Vietnamese Communists were establishing sanctuaries to launch attacks against South Vietnam.

Also, General Abrams served as commanding general in South Vietnam during the difficult and often dangerous period of U.S. troop reductions. Under his leadership this program has been carried out very successfully. Large numbers of American troops have been redeployed safely, and today we are witnessing a revived South Vietnamese force which is defending well against the current Communist offensive.

Mr. President, I welcome the opportunity to stand on the floor of the Senate and commend this able soldier for the admirable way in which he has carried out these difficult responsibilities in Vietnam.

President Nixon is to be commended for selecting General Abrams as the Army's new Chief of Staff. In my opinion, General Abrams will serve in this new post as honorably and as capably as he has in past assignments.

Based upon my questioning of General Abram during the Armed Services Committee hearings and based upon the entire body of evidence gathered by the committee, it is my view General Abrams deserves confirmation as the Army's Chief of Staff.

The committee investigation has revealed no shortcomings against General Abrams and recommended his confirmation.

Mr. President, it is my hope the Senate will approve this nomination with dispatch.

Mr. SYMINGTON. Mr. President, first I would commend the able Senator from Iowa for his superb presentation of this important matter. I do not agree with every word of it, but do agree with his overall position that something is very wrong about what has been going on in recent months, the relationship of the military, the various chains of command—the four that he pointed out—in the Vietnam war.

I would also commend General Ryan for his prompt action as soon as his Inspector General came back from the investigation he made as a result of the letter to Senator HUGHES.

When the matter of General Lavelle came up, I was shown months ago, his purported testimony before the House Appropriations Committee, and when some months later the Senate took it up I made the observation I did not want to see him made a patsy as the result of hearings now being discussed on the floor.

I also had been told by people I respected that this whole "protection reaction" justification for hitting various targets in Vietnam was a lot of bunk. With that premise, I have been watching these developments with interest.

Just before the end of the hearings, on September 22, a former lieutenant in the Navy wrote a letter to the chairman of the Armed Services Committee. The letter is on page 330 of the printed hearing record. I ask unanimous consent that it be included at this point in the RECORD.

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

FRESNO, CALIF., *September 22, 1972.*

U.S. SENATE,
Washington, D.C.

DEAR SENATOR STENNIS: I have been following with great interest your investigation of the illegal air strikes in Vietnam for some time now. However, it was not until recently that I felt that I was in a position to write you because my resignation from the Navy was pending. I have just recently received an honorable discharge from the Navy, and I would like to add whatever information I can to shed some light on the illegal air strikes in North Vietnam.

I was attached to Attack Squadron One Four Six embarked on the USS Constellation CVA-64 from September 28, 1971 until 30 June 1972. During this time I flew approximately 84 combat missions in the A7-E, a single seat Navy attack jet. Although I did not actually participate in any of the illegal raids, I briefed for some and was closely associated with those who did participate.

In late January I refused to participate in any of the so-called protective reaction strikes because I felt they violated the rules of engagement. I eventually turned in my wings and quit flying because of the deceit, waste, and medal mongering that was a daily occurrence on the ship. I can speak with first-hand knowledge about the pressures that were brought to bear on anyone that questioned the illegality of these strikes, and I think I might have something to add to your present investigation.

Because of the sensitivity of the information, I would like some direction on the best way to present it to you. If a registered letter is secure enough, that would probably be best since my wife and I are attending school presently and travel of any sort is somewhat restricted.

WILLIAM GREGG GROEPPER,
Former lieutenant, U.S. Navy.

Mr. SYMINGTON. Mr. President, on page 352 of the testimony, under the questioning of the able Senator from Iowa (Mr. HUGHES), Mr. Groepper—former Lieutenant Groepper—was asked something about his career. He stated:

Mr. GROEPPER. I was born in Council Bluffs, Iowa, June 25, 1946. When I was about a year and a half or 2 years old my family moved to Montana. I grew up in Montana and went to Bozeman Senior High School and graduated from Bozeman Senior High School ninth out of a class of 230 in 1964, I believe it was. I then went to Iowa State University as part of the NROTC program and while I was at Iowa State University, my senior year at Iowa State University, I was selected as the outstanding midshipman in the State of Iowa and I received an award to that effect.

Senator HUGHES. Did you ever meet me when I was Governor during that period?

Mr. GROEPPER. I was trying to remember earlier. I received the Governor's Cup, which was an award.

Later in the hearing, Mr. President, on page 342, the distinguished Senator from Maine asked some questions which interested me a great deal, not only because of these hearings, but because of the years I spent at one time in my life working in the Pentagon. I read as follows:

Senator SMITH. Lieutenant, when did you get to Washington?

Mr. GROEPPER. Last night at 8:30 p.m.

Senator SMITH. And is this the first visit you have had since you were discharged?

Mr. GROEPPER. First visit with the committee?

Senator SMITH. In Washington. First time you came to Washington.

Mr. GROEPPER. Yes, Senator.

Senator SMITH. Have you talked with anyone or been briefed by anyone since you came to Washington?

Mr. GROEPPER. Mr. Woolsey met me at the airport and I spent the evening at his home and he did not coach me as to my responses. We talked about how to handle the press as I was, you know, in the dark about how I should go about this and he gave me some of his opinions but in no way instructed me as to speaking in one way or another.

Senator SMITH. And he is the only one you discussed it with?

Mr. GROEPPER. Yes, Senator.

Senator SMITH. Thank you, Mr. Chairman.

On page 384 of the testimony, the able Senator from Maine continued in discussing this matter with Lieutenant Moore. Lieutenant Moore, incidentally, was the officer who former Lieutenant

Groepper said would verify his statement, if he were asked.

Senator SMITH. Did I understand you to say that you and Lieutenant Groepper were roommates on the *Constellation?*

Lieutenant MOORE. Yes, Senator.

Senator SMITH. Was that all the time that both of you were on the *Constellation?*

Lieutenant MOORE. Yes, Senator. We were; the entire time.

Senator SMITH. Have you seen Lieutenant Groepper since you left the *Constellation,* or since you left there?

Lieutenant MOORE. I have seen him outside this room a couple of times and that is the first time.

Senator SMITH. Before today, I mean.

Lieutenant MOORE. No, Senator.

Senator SMITH. You haven't seen him since he was discharged then?

Lieutenant MOORE. No, Senator, I haven't seen him.

Senator SMITH. Mr. Chairman, I think it would be well for the record to show how Lieutenant Moore happened to come here. As I understand it, Lieutenant Groepper wrote the committee a letter and the committee invited him to appear?

The CHAIRMAN. That is correct.

Senator SMITH. To tell the committee what he wanted to say in addition to the letter.

Lieutenant Moore, did you write to the committee, or did you come through some other call?

Lieutenant MOORE. No, Senator. I didn't write to the committee.

Senator SMITH. May I ask, Mr. Chairman, if Lieutenant Moore came to the committee because of Lieutenant Groepper's reference to him?

The CHAIRMAN. As chairman of the committee, I contacted Lieutenant Moore through Mr. Woolsey, trying to find the situation, the facts and then invited him to come before this committee. I think the way we did it, getting him up here, was to notify the Navy that we wanted him to testify today.

Is that correct?

Mr. WOOLSEY. Yes, sir; we told the Navy we wanted him here and he was already in Washington.

Senator SMITH What I was getting at is, where did we get Lieutenant Moore's name?

The CHAIRMAN. From Lieutenant Groepper.

Senator SMITH. That is what I wanted to clear for the record.

Lieutenant Moore, when did you come to Washington this time?

Lieutenant MOORE. Two days ago, Senator.

Senator SMITH. And have you been briefed or have you talked with the officials in the Pentagon?

Lieutenant MOORE. I have talked with Commander Eggart, my air group commander, and Commander Miller, my squadron commanding officer and I have talked with some other officers in the Pentagon.

Senator SMITH. Since you have been here?

Lieutenant MOORE. Yes, Senator.

Senator SMITH. So that you have been briefed by your superiors?

Lieutenant MOORE. No one has briefed me.

Senator SMITH. Nor coached you?

Lieutenant MOORE. No, Senator. I have had discussions with them but I have not been briefed, other than to tell the truth.

Senator SMITH. Have you talked with Mr. Buzhardt at the Pentagon?

Lieutenant MOORE. Yes, Senator; I have.

Senator SMITH. I think that is all at present, Mr. Chairman.

The CHAIRMAN. All right, Senator. Thank you.

Senator Symington?

By this time, Mr. President, my antenna was up with respect to whether or not this junior officer had been approached with respect to the testimony he had been asked to give in appearance before this committee.

So I questioned him as follows:

Lieutenant, did you know how Mr. Groepper felt about these missions, that he felt he was being told to attack targets regardless of any reaction?

Lieutenant MOORE. I didn't know that Mr. Groepper felt that way. I know he didn't go along with these particular strikes.

Senator SYMINGTON. Why did you think he didn't go along with the particular strikes?

Lieutenant MOORE. Sir, it is a long story. I have known him for some time. I knew him when we were training together. We just happened to end up in the same squadron. When he came on the cruise he was what we referred to as pretty gung ho and he was an excellent aviator and a real good naval officer and he started the cruise and did real well. Around December we got involved in Operation Proud Deep and he didn't like that very well. This was authorized bombing of North Vietnam by President Nixon. He didn't want to go along with that and one of our aviators was killed in one of these strikes and he didn't like that very much and then later on he said he was pretty disgusted. He was mainly disgusted with the tactics employed on Operation Proud Deep.

About a month or so later he became involved with—well, we were reading the newspapers that we got and he didn't like some of the things Mr. Thieu was involved in and he expressed on several—to me several times—that he didn't like participating in the war in support of President Thieu and he was really disgusted and I thought he was going to terminate his flight status right there. We talked about that a lot and then we got to—he really didn't express himself to me about the particular strike. I went on; he was graded, I thought, a real well done hop and he was pretty proud—he told me he thought I did a good job. And then he told me—let's see—about 1 April we talked a lot about what was going on and he said, well, "That is it; I have had enough."

Senator SYMINGTON. His testimony, to the best of my recollection, was that on the raid in question he was briefed to hit regardless of any protective reaction.

Lieutenant MOORE. He was told that?

Senator SYMINGTON. Yes.

Lieutenant MOORE. He didn't attend the briefing; he didn't go on the hop; he couldn't have been told that.

Remember, this is the officer Lieutenant Groepper asserted "will verify what I have said if you ask him."

Senator SYMINGTON. He said he attended one of the briefings, which was scrubbed because of the weather.

Lieutenant MOORE. That is his testimony, then. I didn't attend that briefing so I can't testify on it.

Senator SYMINGTON. Senator Smith asked you if you talked to Mr. Buzhardt, the General Counsel of the Defense Department.

Lieutenant MOORE. Yes, sir.

Senator SYMINGTON. What was the reason you talked to him?

Lieutenant MOORE. He called me in to tell me—he gave me a picture of members of the committee so I would be familiar with who you all were and he told me the procedures, how this thing was going to be conducted and I talked to him one time. He just wanted to meet me. That was about it. It lasted about 5 minutes.

Senator SYMINGTON. He told you about the members of the committee?

Lieutenant MOORE. Yes, he did. I asked him—well, he told me I was going to be called; that is the reason he talked to me. He said, "You are going to be asked to testify before the Armed Services Committee" and he gave me a picture—it was just a picture of you all sitting around the table, and also where I would be sitting.

Senator SYMINGTON. You mentioned you talked to various officers, other officers. You mentioned a captain, a commander; did you talk to an admiral about this?

Lieutenant MOORE. Yes, sir; I did.

Senator SYMINGTON. Whom did you talk to?

Lieutenant MOORE. I saw Admiral Zumwalt.

Senator SYMINGTON. Did you ask to see him or did he ask to see you?

Lieutenant MOORE. We just kind of ran into one another; I didn't know, sir—I didn't ask to see him.

Senator SYMINGTON. You happened to see him?

Lieutenant MOORE. I was taken to his office and introduced to him.

Senator HUGHES. Accidentally.

The CHAIRMAN. Who took you to his office?

Lieutenant MOORE. I am trying to remember now. Admiral Johnston took me to his office.

Senator SYMINGTON. Did you talk to Admiral Johnston?

Lieutenant MOORE. Yes, I did.

Senator SYMINGTON. What other admirals did you talk to?

Lieutenant MOORE. I talked to—I can't remember the names. I also talked to Admiral Moorer.

Senator SYMINGTON. How did you happen to run into him?

Lieutenant MOORE. He was in the same place Admiral Zumwalt was.

Senator SYMINGTON. Where was that?

Lieutenant MOORE. It was one of the offices in the Pentagon; I think it was Admiral Zumwalt's office, but I was taken in and introduced to these gentlemen.

Senator SYMINGTON. Thank you, Mr. Chairman, I have no further questions.

At one point in the record, page 391, when Senator SCHWEIKER was interrogating the witness, I asked him to yield. The Senator agreed and the hearing went as follows:

Senator SYMINGTON. Why did you come to Washington?

Lieutenant MOORE. I came to Washington; I got a phone call from the commander of the Fleet Air, Jacksonville saying that he thought I might be needed in Washington and he had an airplane ready for me to go.

Senator SYMINGTON. What reason did he give you for thinking you might be needed?

Lieutenant MOORE. Well, he told me that he had heard about this committee investigating and he knew that I talked to Mr. Woolsey and he said—it was a big surprise to me.

Senator SYMINGTON. The committee didn't ask you to come up at that point?

Lieutenant MOORE. If they did, my commanding officer said pick up a TA–4 and fly up to Washington and that is what I did.

Senator SYMINGTON. Would you make a list of the people you talked with after you came up to the Pentagon and give it to Mr. Woolsey?

Lieutenant MOORE. Yes, sir; I will do this.

(The information follows.)

Lt. Moore discussed his knowledge of Navy [deleted] operations with the Chairman, Joint Chiefs of Staff, the DOD General Counsel, CNO, and the Inspector General of the Navy. He was also in contact with staff members and shipmates. The following is a partial list of those with whom he has been in contact:

Mr. President, this partial list consists of 28 officers and civilians. In order to save the time of the Senate, I ask unanimous consent that the list be included at this point in the RECORD.

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

YN1 Allman.
Lt. Jg. Belchner.
J. Fred Buzhardt.
Cdr. J. Cartwright.
YN1 Cooke.
Cdr. L. F. Eggert.
R. Adm. Ferris.
Col. Zane E. Finkelstein.
Capt. R. E. Gardner.
V. Adm. Means Johnston, Jr.
Capt. J. S. Kenyon.
Capt. Arthur K. Knoizen.
Col. Robert M. Lucy.
Capt. J. H. McGhee.
Capt. E. D. McKellar.
Cdr. J. Miller.
Adm. Thomas H. Moorer.
Rose Norris.
Belva Perrine.
L. Cdr. David B. Robinson.
L. Cdr. J. R. Shepard.
Nancy Smilko.
Roosevelt Smith.
Virginia Stone.
L. Cdr. J. L. Vanderslice.
Marcia Webb.
Cdr. H. L. Wright.
Adm. Elmo R. Zumwalt, Jr.

Mr. SYMINGTON. Mr. President, yesterday, October 10, there appeared an article in the New York Times under the byline of Mr. Seymour M. Hersh. This article reads in part as follows:

Lieut. David A. Garner, 1967 graduate of the Naval Academy at Annapolis, said in an interview today that he personally took part in one of the missions and added, "We were briefed that we were going to hit the airfield, period."

"NO QUESTION AT ALL"

"As far as I was concerned," the career officer said, "there was no question at all whether we were going to drop bombs or not."

Lieutenant Garner, who is now a flight instructor at Lemoore Naval Training Base in California, said he had recently listened again to a tape recording of the mission in question, which took place on Dec. 18, 1971, and discovered that there had been no enemy fire reported until the planes began diving toward the airstrip.

"As far as the radio transmissions go," he said, "nobody called out any fire before we rolled in.'

"I thought it was a tough target that needed to be hit," the Lieutenant said, "but we were all surprised to read things in the newspapers as they came out—you know, the usual story that the unarmed reconnaissance had been fired on."

"It just didn't sit right," he said, in explaining why he was willing to be quoted.

I understand this officer has said, "There goes my career, but I believe the truth is more important."

Continuing with said article, it states:

David E. Pinkham, a former Lieut. who now lives in Exeter, Calif., did not recall participating in the controversial protective-reaction flights, but said briefing as a back-up pilot.

"I memorized the layout of the field and the route into it and what I was supposed to hit," he said. "We were briefed specifically on targets. And in every briefing I participated in, the A-5 was scheduled to come in after the strikes." The A-5 was the reconnaissance plane.

Mr. Pinkham also said that some of the pilots in the squadron "used to joke" about protective reaction and even designed a patch about it. "It had 'The Old Protective Reaction Ploy' written along the top," Mr. Pinkham said, "with a drawing of the top of a blue tree broken in half." Blue Tree was the squadron's code name for reconnaissance flights.

"It was sort of an in-joke," he explained, "but enough well known so that everybody knew what it meant."

Another former pilot, Andrew A. Anderson of Caldwell, Idaho, described the missions as "just blatant."

"As far as I'm concerned," he said, "it was stretching the rules so we could destroy an airfield."

Mr. Anderson said he and Mr. Groepper eventually turned in their wings because of disillusion with the war.

I ask unanimous consent that the article in the New York Times of Tuesday, October 10, 1972, entitled "Five Pilots Say Their Group Flew Unauthorized Raids," be inserted at this point in the RECORD.

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

[From the New York Times, Oct. 10, 1972]

FIVE PILOTS SAY THEIR GROUP FLEW UNAUTHORIZED RAIDS

(By Seymour M. Hersh)

WASHINGTON, October 9.—Five Navy pilots said in interviews today that their attack squadron participated, under the guise of "protective reaction," in at least three planned raids on a North Vietnamese airfield beginning last December.

Under the rules of the war at the time, "protective reaction" was permitted, that is, United States warplanes could respond if hostile fire was encountered or if electronic signals indicated that North Vietnamese forces were preparing to fire at reconnaissance craft on picture-taking intelligence runs.

The Navy pilots, three of whom have since resigned from the service, flew in the same unit with a former lieutenant, William T. Groepper, whose Senate testimony two weeks ago about unauthorized raids was vigorously denied by other Navy officers on active duty.

QUANGLAND CALLED TARGET

The pilots, interviewed by telephone, said the three planned missions were aimed at Quanglang airfield about 180 miles north of the demilitarized zone in North Vietnam. The first of Maj. Gen. John D. Lavelle's more than 20 unauthorized missions also was aimed at the airfield, then a forward base for North Vietnamese MIG fighters.

As many as 20 aircraft, some armed with 1,000-pound bombs, took part in the raids, the pilots said.

All five pilots said that on at least one of the raids, the reconnaissance plane—needed to justify the official report of "protective reaction"—flew behind the warplanes and served mainly to take photographs after the strike.

"The recce [reconnaissance missions] was more or less a secondary thing," said James D. Hyberg, a former lieutenant who now lives in Fresno, Calif. "They just run in through to make it look good. Our intention was to get rid of the bombs whether or not we were fired upon."

PILOTS ON CONSTELLATION

The names of Mr. Hyberg and the other pilots were supplied by a Senate source, to whom one pilot had complained after the hearings two weeks ago, and by Mr. Groepper, who also lives in Fresno.

The pilots were assigned to Attack Squadron 165, stationed aboard the Constellation, an aircraft carrier that began its tour in the Gulf of Tonkin in September, 1971.

After Mr. Groepper's appearance before the Senate Armed Services Committee, his former roommate, Lieut. Charles W. Moore Jr., and his former squadron commander, Comdr. John A. Miller, denied in testimony that there had been any planned protective-reaction missions.

Adm. Thomas H. Moorer, Chairman of the Joint Chiefs of Staff, also told the committee—then in the midst of its investigation into the Lavelle case—that the Navy had not conducted unauthorized bombing strikes against North Vietnam.

But Lieut. David A. Garner, a 1967 graduate of the Naval Academy at Annapolis, said in an interview today that he personally took part in one of the missions and added, "We were briefed that we were going to hit the airfield, period."

"NO QUESTION AT ALL"

"As far as I was concerned," the career officer said, "there was no question at all whether we were going to drop bombs or not."

Lieutenant Garner, who is now a flight instructor at Lemoore Naval Training Base in California, said he had recently listened again to a tape recording of the mission in question, which took place on Dec. 18, 1971, and discovered that there had been no enemy fire reported until the planes began diving toward the airstrip.

"As far as the radio transmissions go," he said, "nobody called out any fire before we rolled in."

"I thought it was a tough target that needed to be hit," the Lieutenant said, "but we were all surprised to read things in the newspapers as they came out—you know, the usual story that the unarmed reconnaissance had been fired on."

"It just didn't sit right," he said, in explaining why he was willing to be quoted.

FLOOR DEBATE COMING

The interviews came as the Senate prepared for a floor debate on the pending nomination of Gen. Creighton W. Abrams to be Army Chief of Staff.

In action today, the senators routinely approved the nomination of Adm. John C. McCain Jr. to retire in four-star grade and of Maj. Gen. Alexander M. Haig to become a full general. Admiral McCain recently retired as commander of the Pacific forces and General Haig has been serving as a deputy to Henry A. Kissinger, President Nixon's advisor in National Security. General Haig will become Army deputy chief of staff.

Last week the senate Armed Services Committee completed its inquiry into the Lavelle matter by stripping the general of an additional star and voting unanimously to approve the nomination of General Abrams, who had been Vietnam commander and, therefore, General Lavelle's direct superior at the time of the unauthorized raids.

PROXMIRE TO LEAD FIGHT

Senator William Proxmire, Democrat of Wisconsin, was known to be preparing to lead a floor fight against General Abram's nomination. Senate sources said the debate could take place tomorrow or Wednesday.

Senator John C. Stennis, chairman of the Armed Services Committee, announced at the close of the hearings that there had been no evidence indicating that any of General Lavelle's superiors had either ordered the attacks or learned of them until they were officially reported.

Spokesmen for the Armed Services Committee said that there would be no immediate comment on the allegations of the Navy pilots.

The first unauthorized Navy raid reportedly took place last Dec. 13, slightly more than a week after a commander's conference in Honolulu that was attended by high-ranking Navy and Air Force officers.

General Lavelle, in a private letter to Senator Stennis that was released last week, declared that his representatives had been told at the meeting that the Joint Chiefs of Staff "would not question" the targets struck in protection-reaction missions. The

general also declared that "in the event of adverse publicity," his deputies were told that "we could expect full backing" from the Joint Chiefs.

IN-JOKE AMONG PILOTS

David E. Pinkham, a former Lieut. who now lives in Exeter, Calif., did not recall participating in the controversial protective-reaction flights, but said briefing as a back-up pilot.

"I memorized the layout of the field and the route into it and what I was supposed to hit," he said. "We were briefed specifically on targets. And in every briefing I participated in, the A-5 was scheduled to come in after the strikes." The A-5 was the reconnaissance plane.

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"As far as I'm concerned," he said, "it was stretching the rules so we could destroy an airfield."

Mr. Anderson said he and Mr. Groepper eventually turned in their wings because of disillusion with the war.

Mr. SYMINGTON. Mr. President, I also ask unanimous consent to have printed in the RECORD an article entitled "Lavelle Affair Stirs Probe of Disability Pay," by George C. Wilson and published in the Washington Post of October 11, 1972; also, just under the Wilson article, an article entitled "Bomb-Quiz Pilot Gets High Level Attention."

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

LAVELLE AFFAIR SPURS PROBE OF DISABILITY PAY

(By George C. Wilson)

The Lavelle case moved into a new area yesterday, with Sen. Harry F. Byrd Jr. (Ind.-Va.) calling for an inquiry into the way disability payments are determined for military officers.

Maj. Gen. John D. Lavelle retired at 70 per cent disability shortly after passing physicals that found him healthy enough to fly airplanes.

"It does appear that there may be considerable abuse of the retirement system," said Byrd in recommending a study of how the Defense Department and Veterans Administration determine the degree of disability.

After learning that Lavelle would retire with an income of $27,000 a year, most of it tax free, Byrd demanded Pentagon figures showing the overall trend.

In the Air Force, Byrd said in summarizing the figures for the period from Jan. 1, 1964 through June 30, 1972, "more than half (53 per cent) of the general officers are retired with disability pay even though 77 per cent of those officers had within six months of retirement passed a medical examination qualifying them for the hazardous duty flight pay."

The same Pentagon survey of the Army and Marine Corps showed that about 40 per cent generals and 30 per cent of the Navy flag officers retire with the benefit of certified disabilities, according to Byrd.

In other developments related to the Lavelle case, the Senate Armed Services Committee in a strategy session decided to issue a short statement today approving the nomination of Gen. Creighton W. Abrams as Army Chief of Staff. Any recommendations for reducing chances of another breakdown in command which hid the Lavelle irregularities would come later.

The Senate as a whole is scheduled to start debating the Abrams' nomination today, with critics focusing on the unauthorized bombings Lavelle conducted while Abrams was field commander in Vietnam. Abrams has denied any knowledge or approval of the 28 unauthorized raids conducted between November, 1971, and March, 1972.

At the Pentagon, spokesman Jerry W. Friedheim said he did not see "anything particularly new" in published statements by five Navy pilots that strikes against North Vietnam were premeditated even though the "protective reaction" rules in force at the time required a hostile enemy response before bombs could be dropped.

But Sen. Harold E. Hughes (D-Iowa), a member of the Senate Armed Services Committee, said in an interview that there are still too many unresolved questions about the air war in Vietnam to end the Senate inquiry which was triggered by the disclosures about Lavelle's unauthorized bombing.

Hughes said the Senate, with its responsibility for authorizing and appropriating money for the war and the weapons used in it, need no limit its Lavelle investigation to the areas relevant to the nomination of Abrams.

Former Lt. William G. Groepper, who turned in his wings because of his disillusionment with the Vietnam War and reluctance to fly missions he believed violated protective-reaction rules, was asked by Hughes in testimony released yesterday whether there was "any doubt in your mind" that Navy planes in Quanglang air field in North Vietnam whether they were threatened by anti-aircraft units or not.

"They were intending to deliver the ordnance regardless of whether or not they were fired upon," answered Groepper. "In my mind that is perfectly clear."

Groepper's former superiors aboard the aircraft carrier Constellation contradicted him in other testimony before the Senate Committee.

Yesterday, however, The New York Times and Associated Press quoted other pilots in Attack Squadron 165 who supported Groepper's testimony. "The original intent was to drop the bombs in one way or another," said former pilot James D. Hyberg, 30, of Fresno, Calif.

BOMB-QUIZ PILOT GETS HIGH LEVEL ATTENTION

Lt. Charles W. Moore, Jr., a Navy pilot called to testify before the Senate Armed Services Committee on alleged bombing violations, drew high level attention at the Pentagon before he went to Capitol Hill—as this excerpt from the hearing record shows:

Sen. Stuart Symington (D-Mo.)—". . . Did you talk to an admiral about this?"

Moore—"Yes sir, I did."

Symington—"Whom did you talk to?"

Moore—"I saw Adm. (Elmo R.) Zumwalt" (Chief of Naval Operations).

Symington—"Did you ask to see him or did he ask to see you?"

Moore—"We just kind of ran into one another . . ."

Symington—"You happened to see him?"

Moore—"I am trying to remember now. Adm. (Means) Johnston (Navy Inspector General) took me to his office."

Symington—"What other admirals did you talk to?"

Moore—"I can't remember the names. I also talked to Adm. (Thomas H.) Moorer" (chairman of the Joint Chiefs of Staff).

Symington—"How did you happen to run into him?"

Moore—"He was in the same place Adm. Zumwalt was."

Mr. SYMINGTON. Mr. President, I felt obliged to make these remarks this afternoon to bear out my apprehensions about any paricular officer being cut out, made a patsy you might say. My previous statement appears well justified, based on the sworn testimony I have just presented the Senate.

The military people in Washington, and including the civilians in charge of the military, are mighty anxious to see results. They want something for the expenditure of $150 billion, plus the 50,000 lives that so many have defended on the floor of this Senate. Accordingly they emphasize consistently accuracy the importance of they criticize the bombing, and urge more bombing and more accurate bombing.

They now do have more bombing and because of technological developments, more accurate bombing.

In the past, the rules, regulations, and restrictions laid down for the air war were plenty misty. They were often verbal. I can remember a day back about 6 years when I said to the Secretary of Defense, in an open hearing some 5 years ago, "A pilot in an F–105 has to take off from a base in Thailand like Ta Khli, Udorn, Ubon, Karate, in a single-engine airplane like the F–105. He has to refuel going in and refuel going out. In addition, he must watch for enemy action, not only ground fire but also the Mig's. He has to watch the weather. He is all by himself. He also has to hook up with his communication plane up north.

"In addition to all that, he must drop his bombs accurately on target, then hope to connect up to refuel and get home. Moreover, he has given to him four pages, not of what he can do, but of what he cannot do."

The Secretary said, "That is not correct."

So I went back and got out papers one of the pilots had given me in Thailand, and called up the Secretary and said, "I want to apologize, it is not four pages of what he cannot do, it is five pages."

The Secretary said, "I know. I have checked it."

This is the way over the years we have been operating this war. An illustration of the great problems we have under these various chains of command is well illustrated by what the Senator from Iowa pointed out: four different chains of command for bombing in this theater.

I shall vote for the confirmation of General Abrams.

He came before the committee, stated before the committee he had approved one raid, said he was told it was wrong, and did not approve any more of that type. I thought him frank and forthright. But he did approve a raid, therefore General Lavelle was right when he said some raids had been approved.

I do not know what we are going to do about all these chains of command to handle what should have been a little war. The rules laid down for the mili-

tary by the civilians—off again on again—are one of the reasons we have achieved so little for all the billions, and what is far more important, all the lives expended in this effort. I would hope, in addition to this hearing which has destroyed the reputation of one military man, we would get down to the fundamentals of just what is going on, the inter-service rivalries for position and new weapons. The problems of the Pentagon which the Unification Act of 1947, in which I participated, was supposed to handle are not being handled.

They have not been solved. It is known we have wasted billions of dollars unnecessarily. Let us hope every one realizes this aspect of the problem.

Verbal orders, not written, followed immediately by claims of, "We had nothing to do with that."

Let us correct the situation so we have a single command, just as any large corporation has a single president. Otherwise these violations, these mistakes, this waste is bound to recur time and time again.

Back in 1953, in the first weeks I came to the Senate, a great general, Gen. Jim Van Fleet, in reply to a question asked by Chairman Saltonstall, as to whether he had anything to say to the committee, replied, "Yes, I would say one thing. Football"—of which he was a great star—"has been my love. I learned one lesson from that game: Never put an American boy in any game you do not want him to win."

I am against this war for many reasons, but believe that a well-chosen observation from a man who had just come back from Korea and was to be relieved of his command because he objected to what was going on in that case.

Again, Mr. President, I shall vote for General Abrams, because I believe he was forthright, and when instructed not to do any more of that type bombing, obeyed his orders.

Mr. President, I yield the floor.

THE NEED FOR ACTION ON CIVILIAN CONTROL OF THE MILITARY

Mr. PROXMIRE. Mr. President, I have listened with interest to the speeches by the Senator from Mississippi (Mr. STENNIS), the Senator from Iowa (Mr. HUGHES), the Senator from South Carolina (Mr. THURMOND), and the Senator from Missouri (Mr. SYMINGTON) on the confirmation of General Abrams, and I must say that I am perplexed and frustrated. Senators are puzzled that a series of unauthorized raids were conducted. Senators deplore the fact that deliberately falsified reports were carefully fabricated by over 200 of our military men. Yet all members of the Armed Services Committee approved the nomination of the commander who had the direct responsibility for our warfare in Vietnam.

Some Senators have called for the DOD to investigate—Senator STENNIS and Senator HUGHES did that—but no further action by Congress or by the Armed Services Committee. Mr. President, let us not kid ourselves. With all respect, this is a counsel for no action, a counsel that will lead to no change in a situation that cries out for action. As Senator HUGHES said, the Department of Defense has done nothing in the 7 months since these violations were disclosed, and nothing is going to be done unless we act.

In this speech, I shall suggest to the chairman several lines of inquiry the Senate can take as a minimum.

If the action is to leave it to the Pentagon, we might as well say, "Forget it." One way to get the message across that the Senate will not stand for this is to deny the nomination. Then the message will come through loud and clear. But, Mr. President, I can count. I understand the situation in the Senate. After all, when the Armed Services Committee votes unanimously, and when the administration obviously supports the nomination enthusiastically, there is no possibility of stopping it. But, Mr. President, this is so fundamental and so important that I think it does deserve much further consideration by this body.

WHY THE LAVELLE CASE AND THE NOMINATION OF GENERAL ABRAMS MUST BE THOROUGHLY AIRED

The Lavelle case and the Abrams nomination raise the fundamental question for a political democracy. On the single most important problem to face any nation; namely, the problem of war and peace; the question raised by this matter is "Whose finger is on the trigger?"

We face the sensitive and encompassing issue of civilian versus military control of the fate of our Nation and, indeed, of the world.

Since the time of Sinclair Lewis' book, "It Can't Happen Here," men have asked the terrible question, could we have a military dictatorship in this country. The fact that on the whole the military have acted honorably and nobly in the United States and that we have been blessed with great military leadership of the kind represented by General Eisenhower and General Marshall, should not prevent us from facing up to the issue of whether this tradition can be continued in the future?

So in this relatively small and quiet Chamber, it is my belief that the Senate of the United States has before it now an issue of such magnitude that it deserves and should receive attention equal to the importance of the questions it raises.

POWER OF THE MILITARY

There are probably a dozen generals now commanding forces throughout the world who, if they determined to take policy in their own hands, could destroy any number of individual countries. Generals now have the power—the physical force—to destroy an entire nation.

We must therefore make certain that the command and control system by which such officers function, cannot break down. The decisions must remain in the hands of the civilian authorities of the United States. They must be retained by those who are elected by and are responsible to the people of the United States.

It would be irresponsible of the Senate of the United States to merely push this matter under the rug, shrug our shoulders, throw up our hands, and forget about it. And this Senator, at least is not prepared to see the nomination of General Abrams confirmed until the Senate has done its duty. That duty consists of a thorough airing of this matter on the floor of the Senate, answers to the numerous issues and problems raised by it, and the recommendations which will result in making as sure as we can that it cannot happen in the future.

COMMITTEE WORK

At the outset I want to say that the hearings held by the Senate Armed Services Committee, the issues raised there, and the thoroughness with which this matter was pursued by them, deserves the commendation of both the Senate and the country. There are few more fascinating and intriguing documents that the one volume of hearings on the three nominations before that committee. I commend the chairman and the members for the thoroughness of the hearings. Frankly, I am disappointed at what the committee report fails to disclose. It is wholly inadequate, and I shall raise questions about this in the course of my speech.

I also want to say, however, that we still face the terrible issue of how such a situation can be prevented in the future. And I hope very much that on that issue the committee will give us some recommendations, tell us the procedures by which we can reach such answers, and inform us whether they intend to go into the entire issue further. That I think is a key point in this proceeding.

WHAT TOOK PLACE

The facts are that, contrary to the very precise and clear rules of engagement, General Lavelle, then the commander of the 7th Air Force in Vietnam, ordered from 20 to 28 air strikes in violation of his orders and his instructions.

I served in the Army for 5 years; most Members of Congress served for a considerable period of time. One thing we all learned is that you obey orders; and if you do not obey orders, you are in serious trouble. If the order is a serious order, which involves combat, you are likely to be court-martialed. You could be shot. You certainly could be imprisoned and given a dishonorable discharge. Certainly, the rules that would apply to an enlisted man should apply with far more force to a man who has the great prestige and honor of a general.

These violations took place from January 23 to March 9, 1972. In addition, there were two strikes in November of 1971.

General Lavelle violated his orders in more than one way.

First of all, he ordered planned strikes on targets at a time when bombing and firing was authorized only when our planes had been fired upon—namely, for "protective reaction."

Second, unauthorized targets were fired upon consisting not merely of the gun sites from which enemy fire came, but on trucks, on missiles, on transporters, on supply dumps, and on petroleum, oil, and lubricants—POL's. This was also a violation of the rules of engagement.

Third, a very elaborate scheme was de-

vised under which the records of the flights and missions were deliberately falsified.

Mr. President, violating an order is one thing. That can happen to anyone, and he has to suffer the consequences. As I said, people have been shot for this in our Army, and we have to exert the strongest kind of discipline. However, one violates an order on the impulse of a moment, in most cases. In this case it was far more than that. As I say, an elaborate system was set up to falsify, to make sure that false information was given to superiors. It seems to me that this is infinitely more serious.

There is no question but that the orders for the first two actions went up and down the chain of command of the 7th Air Force from General Lavelle to General Slay, who was the Deputy Chief of Staff for Operations of the 7th Air Force, to Colonel Gabriel, commander of the 432d Tactical Reconnaissance Wing of the 7th Air Force, to Capt. Douglas J. Murray who was branch chief of intelligence at the Udorn, Thailand base, and to the pilots, the enlisted men, the intelligence officers, and the briefing personnel of the wing. All together, some 200 military men who had sworn to abide by our Constitution and obey the orders of the President of the United States, as all of us are asked to do when we are inducted into the Armed Forces, were aware of what was going on and were engaging in this falsification.

ELABORATE PROCEDURES

The falsification of the reports of the strikes was not a minor act, merely one where there was a casual report that the enemy fired upon one of our planes first which would make it legal to fire back.

The crews would be debriefed. First of all, they told the truth about their mission, which was forwarded to General Lavelle and his command. But the official OPREP–4 reports were falsified in a most elaborate way.

As Sgt. Lonnie Franks testified, if trucks were struck, then the report had to be falsified, for that was illegal.

The coordinates of the striking planes had to be falsified to show that they were nearby the reconnaissance planes. That was difficult to do.

The timing had to be falsified, for often the striking planes were ahead of the reconnaissance planes. At times the striking planes had dropped their bombs before the reconnaissance plane had even entered Vietnam.

Time and again when they hit illegal targets, they masked that fact by stating that the results could not be observed because of the "smoke and foliage." In fact, the repeated use of that term might well have been the tipoff for someone reading the falsified OPREP–4 reports that illegal targets were being hit.

In addition, they had to be careful on the timing of enemy fire. Some antiaircraft bursts took place at specific intervals. Consequently, the falsification had to show that fact and to note the timing of the flak accurately or suspicions would be raised.

To falsify the reports took as long as 3 hours, and since both false reports and accurate reports were made, the debriefers were working overtime, and working very hard during this period to fabricate this lie, to cover up a deliberate, planned violation of the orders of the President of the United States. And there is no question that it was known up and down the chain of command. High ranking officers looked over the shoulders of the intelligence sergeants as the work was going on. Secret briefings sessions of a few officers were held after the general morning false briefings to give the accurate facts to the inner few.

It was a deliberate, elaborate, widespread action. And it all raises the most serious and fundamental issues concerning civilian command and control of the military that this country has faced in a very long time.

UNANSWERED QUESTIONS

Enough for the facts. What are the burning, unanswered questions which arises from them?

They are almost too numerous to list. The list is almost impossible to exhaust. But let me raise just the most serious of them.

DID GENERAL ABRAMS KNOW? SHOULD HE HAVE KNOWN?

Let me first address the issue concerning General Abrams, for it is his nomination which is before us. While the entire Lavelle matter raises issues far beyond that of whether General Abrams acted properly and should be confirmed as Army Chief of Staff, nevertheless that is the singlemost relevant issue to this debate.

General Abrams was commander of our forces in Vietnam. He was what is called MAC V—Military Assistance Command, Vietnam. The chain of command was from the President and the Secretary of Defense through the Joint Chiefs of Staff, to the Commander in Chief of the Pacific (CINCPAC), to General Abrams in Vietnam. Under General Abrams, and as a member of his personal staff, was Gen. John Lavelle, Commander of the 7th Air Force in Vietnam.

The question is, Did General Abrams know what was going on? If he did not know, should he have known?

LAVELLE ON ABRAMS' STAFF

First of all, General Lavelle was General Abrams Deputy for Air in Vietnam. He was on General Abrams personal staff. General Lavelle was a member of General Abrams Headquarters. General Abrams was as close to General Lavelle as General Eisenhower was to General Bradley, Field Marshall Montgomery, or General Patton during World War II.

He was in daily, intimate, often personal contact with General Lavelle throughout the period of the unauthorized raids.

General Abrams testified that he did not know of the strikes and little evidence was adduced to indicate that he was aware of them. If one accepts that fact, and I accept it with only one reservation which I shall deal with later, why did he not know about it?

Why did not General Abrams know what his air deputy, a member of his personal staff, and the General in charge of the Air Force for Vietnam at his Headquarters staff, was doing?

Why did he not know?

Let me give some reasons why he should have known apart from the daily, personal, official relationship which existed between these two officers.

In January 1972, General Abrams and General Lavelle together agreed to strike at a Ground Control Interceptor Radar (GCI) at radar installation called Moc Chau. This was clearly against the rules of engagement but a build-up was coming and, together, General Abrams and General Lavelle agreed to this strike.

I am not contending that this raid was in the same category as General Lavelle's later raids. That is not my point.

But on this raid, as General Abrams testified (p. 110):

> The one that we did, the one on the GCI, was discussed. His (General Lavelle) staff and my staff, he and I, were all present. I made the decision. The strike was reported for what it was—we were told we couldn't do it any more.
>
> What happened in these other cases—the reports—first there was no discussion like that and, second, the reports did not report what had happened. The one on the GCI did, where it took place, when it took place, and what it did; and I think that is the difference.

The point is that after this raid, as General Abrams said, "We were told we couldn't do it any more." They were told, of course, by the Joint Chiefs of Staff.

Obviously that had been initiated by General Lavelle. He argued persuasively about the GCI network locking into radars and General Abrams approved the strike. There was no cover-up, but they were ordered to stop.

That certainly should have been a warning to General Abrams that he had a "gung ho" general on his hands. Why, on this clear warning, did not General Abrams say something like this to General Lavelle?

"Jack, I want to know everything you are doing in precise detail. I want to know today and every day what is going on. I want to know what targets you are hitting, why, where, and under what circumstances. With this warning from the Joint Chiefs nothing can be more important than that we stick within the rules. I want to be informed fully, completely, and daily. We were wrong once. We must not be wrong again."

That is what, it seems to me, a responsible commander would have said to an Air Force general who had engaged with him in violating the rules once.

That is the kind of tough, exacting, demanding orders I believe General Abrams should have issued after the clear warning on January 5, 1972, from the Joint Chiefs of Staff, that the raid on Moc Chau was against the rules of engagement.

The failure of General Abrams to take that step led to his failure to know what was going on in his own command by his Deputy for Air with whom he was in touch on a routine basis day in and day out. It stretches our belief to understand how that could have taken place. Yet the evidence is pretty strong that it did.

But, should it have taken place? Was not General Abrams remiss in not running a tight enough ship that it could take place right under his nose? General Lavelle was not off in the boondocks

somewhere. He was on General Abrams Headquarters staff.

Not only did General Lavelle and General Abrams meet according to General Abrams testimony—"we were meeting every morning or every afternoon"—but by this period the Air War was overwhelmingly the single most important activity going on in Vietnam, and attacks on the North were the most sensible.

Our troops were being withdrawn at a very rapid rate. The war was being turned over to the South Vietnamese. Our ground people were going home, being pulled out of combat, and advising the South Vietnamese.

U.S. fighting was transferred from the ground to the air and sea. Therefore, to a much greater extent than before, General Abrams primary responsibility was not with the ground war but with the air war and, to a lesser degree, with the sea war.

He did not now have the kind of responsibilities, and the myriad of problems on the ground that he had during the time when we had 500,000 troops in Vietnam and were carrying the brunt of the war.

The responsibility of the Commander in Vietnam to a very great extent, involved running the air war, for that was the key war going on.

That, I believe, focuses the question even more on why General Abrams did not know what was going on, if indeed that finally proves to be the truth, as it seems now to be.

WHAT ABOUT THE PHOTOGRAPHS?

There is a second question which must be raised about this matter for which I found no good explanation in the hearings.

It can be argued that since the OPREP–4 reports were falsified, the 20 to 28 raids might well have gone unnoticed by General Abrams or someone on his staff or elsewhere who should have caught the matter.

There was, indeed, the most elaborate doctoring of the reports, done in detail with respect to timing, targets, and coordinates.

But what happened to the photographs? While reports can be doctored, photographs are very difficult to doctor.

Where did the photographs go? Who got them? Were they seen by anyone other than General Lavelle and his staff?

The hearings show that all reconnaissance photographs of all strikes were forwarded to the Pacific Command, and that all commanders reviewed those photographs—p. 61 hearings.

How did they all miss the unauthorized raids and the unauthorized targets.

Did not the photographs reveal what was really going on? Why were the illegal raids not caught? The photos would clearly show that unauthorized targets—trucks, POL, missile transporters, supply dumps—were being hit when these were illegal targets at that time.

Mr. GOLDWATER. Mr. President, will the Senator from Wisconsin yield at that point?

Mr. PROXMIRE. I yield.

Mr. GOLDWATER. I should like, if I may, to explain the question the Senator just raised, about the photographs. If the accompanying photographs show there is an authorized strike, there is no way that the viewing officer, at any intelligence level, would know that the attack had occurred. I have seen the photographs, for example, of the Mig on the airstrip that we bombed, which was criticized, and the Mig was not hit; but the reports stated that it was an authorized attack. But, there is no way in the world that anyone above the briefing officer would have any way of knowing that the photograph——

Mr. PROXMIRE. May I say to the Senator from Arizona that these targets I have discussed here at that time were not authorized targets——

Mr. GOLDWATER. They were all authorized.

Mr. PROXMIRE. Does the Senator argue that a truck or a POL dump was firing at the airplane?

Mr. GOLDWATER. If our crews received hostile action, these targets could be attacked. This is where the falsification of the reports entered. I am not defending this. I am merely answering the Senator's question. If the report says that a column of trucks or a radar site or something on an airfield shot at our aircraft, our aircraft had the authority to attack.

Mr. PROXMIRE. Does the Senator maintain that anyone looking at the photographs and seeing a truck or a supply dump that was hit could conclude that something on the truck or something at the supply dump had fired at our planes?

Mr. GOLDWATER. If the debriefing officer is told by the crew that it was a provocative action, he would know or would assume that the truck, or whatever it was, had fired upon them and that this had given them the authority to fire back.

Mr. PROXMIRE. The Senator from Arizona is a very distinguished and competent military man and an experienced pilot. He is a general, and he understands this far better than most of us would. It would seem to me, as a matter of commonsense, that if the only circumstances under which a pilot was authorized to drop his bombs was if he was fired upon, I could well understand how he could drop them and there would be no way of telling whether he was fired upon or not.

However, when it comes to a truck or a POL, it seems to me it is highly suppicious since this was done on about 28 raids. It seems to me that someone should have raised a question as to whether these were unauthorized targets that were being hit.

Mr. GOLDWATER. This was one of the big questions in the hearing. The order was in effect then. However, it does not stand today since the President reopened the bombing of the north. The pilots can now bomb anything they want to. However, prior to that time a tactical plane carrying bombs and accompanying a reconnaissance aircraft could not fire upon any target unless the target showed hostile action.

We asked the general what would hostile intentions be from a Mig aircraft. He said, "I guess when it starts to shoot at you."

That is one of the stupid things that our men have had to put up with.

In answer to the Senator's question, we are talking about a relatively few missions out of 20,000 or 40,000. Even if there had been one, it would have been wrong. Let me set the record straight on that. I have seen many of the reconnaissance flights on both carriers and on land. The question is never raised as to why this line of trucks were fired on. The deceit and the dishonesty comes in when they say, "Yes. Ten rounds of x millimeter exploded in front of me," or "I saw a SAM trail coming at me," and that is put down when it was not the case. In effect, the man on the ladder, after looking at the report accompanying the photograph, would say, "Well, there is nothing wrong with that."

I was going to talk a little bit about this in my few remarks. When such a plane leaves the Wing Headquarters, there is a computerized report. The information is fed into a computer, and the headquarters can get the answer.

There is no way that a man above the wing would know what was in that report that was false. It would be only the pilots, the briefers, and the debriefers.

The Senator from Iowa says that there were 200. I think that there are 200 people who would have some idea of this. But to answer the question of the Senator from Wisconsin, there is no way to tell.

Mr. PROXMIRE. I can think of one way to tell. There are no guns around the trucks, and there are none around the POL's.

Mr. GOLDWATER. Mr. President, they do not have to be. The effective range of the missile is 20,000 feet. The effective range of the triple-A fire is farther than that. They can be a long distance away from the target and the pilot could assume—and I would assume—that if there was a POL located there, it was being protected. And he would be justified in returning fire on the POL, even though he did not see the guns, once the SAM or triple-A system was activated.

This is the reasoning that went through General Lavelle's mind that caused immediate action.

Mr. PROXMIRE. Mr. President, I understand the question that was in his mind. However, we all agree that he was wrong and that he was unauthorized to do this.

Mr. GOLDWATER. The Senator is correct.

Mr. PROXMIRE. I cannot understand that the same reasoning would go through the minds of the very large number of people who reviewed these photographs—especially people directly under the command of General Abrams—time after time of occasions when trucks were hit, munition dumps were hit, and POL's were hit. There could have been an occasional situation where an antiaircraft gun or something of that kind might have been concealed. However, to have this happen so often to a large number of targets is highly suspicious to me.

Mr. GOLDWATER. Mr. President, some of the photographs of the protective weapons and the SAM sites may show nothing. However, the pilot says, "I was fired on." That is what it is all about.

Mr. PROXMIRE. That raises the question I was going to ask, whether we say that these photographs in the future should, on the basis of this experience, should be examined and examined with a idea of determining whether they reflect the orders given by the top authorities. And that question should be raised when we have a series of targets which appear to be unprotected and are hit time and time again. The commander should be alerted. It seems to me that General Abrams should have been alerted. And he was not alerted because of that.

Mr. GOLDWATER. The day is past when the Air Force is instructed as to what they can hit. However, I agree that the Senator from Wisconsin has a point when he assumes that the photographs go on up to headquarters. And we have not been there to sit in at an intelligence briefing. I can understand the concern of the Senator. I am not trying to defend General Lavelle. I am just trying to answer a question concerning the matter raised by the Senator. They go by the word of the pilot as to whether he was fired on. And if he says that he observed the fire to be such and such the photographers did not have to show the target.

Mr. HUGHES. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. Mr. President, I yield to the Senator from Iowa.

Mr. HUGHES. Mr. President, the question of the photographs came into my thinking a great deal in connection with the hearings.

Just recently a letter came to me from an airman who is still in the service. This man stated in the letter that he knew about at least one photograph that was removed from the intelligence files. And I do not know whether this is classified or not. So I will not say the source. However, it was at least a photograph of a target that was not on the list. That photograph was removed and not forwarded up. This did not come at a timely point to put this matter into the hearings. And also, the Senator from Iowa is not sure.

Mr. PROXMIRE. Mr. President, I think it was the letter that my office turned over to the Senator from Iowa, is that correct?

Mr. HUGHES. No. It was not.

Mr. PROXMIRE. That must have been another one.

Mr. HUGHES. It may have been another one. This is one of the matters involved. And I agree with the Senator from Wisconsin that we have a responsibility to investigate this matter and to go ahead with it, as I stated in my statement. The Senator from Iowa is not certain. Perhaps the Senator from Wisconsin can tell me from his staff research whether the photographs were separated.

As the Senator from Wisconsin will remember, I pointed out that there were at least 25,000 sorties flown during this period under the command of the Air Force, and it only appears that 150 sorties involved unauthorized raids.

If one of these 150 photographs out of 25,000 came through without any identification—because many of these targets are in South Vietnam, in Laos, and some of them are even in Cambodia where there were few restrictions against the nature and type bombing—if that is true and they were not separated out, it would be difficult for anyone to identify the difference on a few missions. If they were separated, and I do not know this and during the course of the hearings I wish I could have put this question to someone.

Mr. PROXMIRE. It is my information they were not. They went directly up the chain of command and they were clearly identified as to time and place. As the Senator from Arizona pointed out, it is very confusing. Nevertheless, I understand this can be concealed once or twice, but to do it so often on 130 sorties where you would hit a number of targets that were not authorized should at least have raised suspicions in the mind of General Abrams.

Mr. HUGHES. I would like to point out that no member of that committee was looking harder for evidence of misdeed than was the Senator from Iowa.

Many of these targets, I believe, when they talk about trucks, POL's, and launcher carriers, and so forth, were in the two mountain passes. An attempt was being made to stop them before they crossed from Vietnam into Laos.

In one of those passes there was no question that, with the AAA installations, they could not fly a plane through there on a bet without a reaction. That is a legitimate question I raised time and time again, and I think there is evidence they hit illegal targets. I did not observe any evidence that I felt warranted that General Abrams could have possibly had this detected, but I only point out my concern.

Mr. PROXMIRE. At page 61 of the hearings Senator GOLDWATER asked this question of General Lavelle:

> Didn't you send all recce photos of all strikes forward to Pacific Command at Headquarters here, so all commanders saw all recce strikes?
>
> General LAVELLE. Yes, sir.

I do not know if that is the answer.

Mr. GOLDWATER. Mr. President, will the Senator yield so that I might explain that?

Mr. PROXMIRE. I yield.

Mr. GOLDWATER. I think it would be good for the record to explain how these photographs came about. They are not taken willy-nilly. In the case of a pure recon flight the intelligence unit at some level, usually at the command level, has reason to believe there might be a concentration of SAM's coming down Route 13 at such and such a coordinate. The intelligence is not active enough to verify it so a recon flight is ordered. It can be flown by a Navy plane or by an Air Force plane. If permissible, the aircraft flies at a relatively low altitude and it takes an exceedingly large number of photographs. On some of these recons they fly at mach .7 or .75, and many, many negatives would be exposed in a matter of seconds. These photographs are then judged by recon photo intelligence officers and the best ones are sent up the road to the command intelligence staff. That is the origin of most recon photos.

In the case we are talking about where unauthorized strikes were involved, the recon aircraft were accompanied by tactical aircraft. There is nothing unusual about this, I might say. There has been a point made about accompanying tactical aircraft—4 to 8 to 16—and in World War II, probably twice as many tactical aircraft accompanied the flight. The operation is usually preplanned. They are sent out to take pictures of a certain area for intelligence.

On the return, the tactical pilots, because they had expended their ordnance, would verify in their report they had been struck. That is why the whole thing came about. Whether or not pictures were taken at the time is of small importance. They were reprimanded for not doing a better job, and even then the authority, CINCPAC, assumed that they had been fired on and the tactical aircraft returned the fire.

I wanted to make that clear as to how the photographs came about.

Mr. PROXMIRE. There are more unanswered questions about the operation. There is strategic reconnaissance. Not only did the operational photographs get to the Pacific Comm and, but there is a strategic reconnaissance as well.

The very high flying SR–71 planes routinely take photographs of Vietnam. They would catch on a regular basis any change in what happened on the ground. They would show what happened during air strikes, what was hit, and what specified targets were destroyed.

These photographs go to Washington, to the CIA, the DIA, the Joint Chiefs of Staff and others where they are intensively reviewed.

They would show very clearly that trucks, POL, supply depots, missile transporters, and other unauthorized targets were hit.

Therefore, this fact should have been known at the highest levels. Was it? If it was, why was not something done. If it was not, why was it not known? These questions remain unanswered.

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

Mr. PROXMIRE. I yield.

Mr. GOLDWATER. Very few SR–71 photographs are taken as far down in North Vietnam as the photographs we are talking about, but assuming they were, assuming an SR–71 had taken some at extremely high altitude, the review officer in Washington would assume they struck those targets because they had had a strike against them.

Mr. PROXMIRE. I understand that, but I thought the Senator from Iowa said in April and May when they began to take another course they could tell they were not unauthorized photographs. It was not stopped until the letter from Sergeant Franks to the Senator from Iowa.

Mr. GOLDWATER. Once the question

was raised by the sergeant there was no question they could go through and examine the targets, but on first look, without the pilot saying, "I fired, although I was not fired on," there was no way for a reviewing officer in Washington to know about it.

It is the same point I would make later that when we asked General Slay about when General Lavelle ordered General Slay, who was the operational officer, General Slay said he knew this was against regulations but he assumed, as any subordinate would that his commander, one, would not violate a rule and, two, that he had permission to do this.

Mr. PROXMIRE. Of course, he already violated the orders once and he had been informed together with General Abrams. That was not a full report. They were told the same day or the next day. So they knew this was a difficult situation and they had to watch it closely. They were on notice.

Mr. GOLDWATER. I did not intend to get into this but I think it is good to keep the record clear because I hope the press assiduously follows the errors of this war as they follow the errors of a few men.

Let us look at the situation involving the radar site. The Senator might think about this. What would be his reaction?

There was a radar site on a very high promontory in Laos that overlooked Moc Chau, a place where we were actively engaged in supply and rescue missions.

Mr. PROXMIRE. The Senator is talking about January 5, 1972; is that right?

Mr. GOLDWATER. Yes.

Mr. PROXMIRE. When Abrams was informed by Lavelle they discussed it, they went ahead, and were later corrected by the Joint Chiefs of Staff.

Mr. GOLDWATER. Yes; but I wanted the Senator to know, so that he might think about this and of how he would have interpreted the order. The order of engagement says that you cannot engage, unless the enemy shows a hostile intention.

Suppose that here is a radar site. The radar site is seeking out our helicopters and our aircraft. Of course, the radar can detect them. They alert the Migs. The Migs come in too low for our radar to pick them up, so the Mig's shoot down our helicopters and our tactical aircraft.

The question that goes through my mind, even though a radar site as such cannot shoot at you, cannot show the normal intentions that might be termed hostile, if the actions of the radar site result in the destruction of our equipment and the death of our men, would it not come under the rules of engagement to destroy their target?

I will be perfectly honest with the Senator. If I had been Abrams and that point had been put to me, I would have decided it that way, because I think a GCI radar site is a hostile piece of equipment, and radar is one of the biggest problems we have over there. We cannot detect it with our electronic gear because when our aircraft would alert the SAM radar we were coming, it directed its energy into a dummy. When the system signalled, "Here they come," in 2 seconds they had fired the SAM. Our aircraft had no warning. The fundamental part was that the big GCI radar on the top of the promontory had been netted to the SAM and Triple A and our aircraft did not stand a chance.

Frankly, I think General Abrams made the right decision, and after the question had been pushed to the top, 2 weeks later, I know the Joint Chiefs said the same thing: "Get rid of it. It is a hostile piece of equipment." I cannot think of it in any other terms at all.

Mr. PROXMIRE. The Senator, I think, makes my point to a considerable extent. If it was so difficult, the Joint Chiefs would say, "This is an unauthorized strike; it is wrong." It seems to me it is even clearer that when Lavelle went ahead and hit the other targets that were not missile sites, where there was no antiaircraft around them, as was later determined on the basis of reexamining the photos, under those circumstances, General Abrams should have had an intelligence system that was able to notice the repetition of hitting targets of this kind and should have alerted his command.

Mr. GOLDWATER. I think the strikes that the Senator is talking about were against relatively insignificant targets, and had I been General Lavelle, I would not have bothered General Abrams about them, because at that time, before the bombing of the North was resumed, General Abrams had no command over the selection of bombing targets. It was not until the President lifted the ban that General Abrams then assumed command over them. So if it had been an important target, such as a radar site—which I would have to say would be questionable, although, in my own opinion, a radar site is a hostile device engaged in hostile intentions—I would have gone to a higher commander just to make sure about it.

There was, as the hearings will show, some disagreement on both staffs as to whether or not this should be done. The telegram of Joint Chiefs of Staff was not a reprimand. It was merely one that stated that this kind of target should not be hit in the future and, as I mentioned, the decision was changed about 2 weeks later.

They disagreed among themselves. I think we could get a real split on this, with whomever we might talk to, when we stop to think about it and put ourselves in the position of a commander who is losing men and losing equipment because of the action of one device. I think the commander would be justified in taking that device out.

WHO WAS IN CHARGE OF THE SHOP?

Mr. PROXMIRE. Now I must raise a most important question about General Abrams. Let us grant that he knew nothing about what General Lavelle was doing. But he was MAC/V. He was in charge.

I want to go shortly to the question that Senator HUGHES and Senator STENNIS raised with respect to the position of his authority. Nevertheless, General Abrams was responsible for what went on in his command, what went on by his deputy for air, a member of his personal staff, under his very nose.

Is General Abrams responsible for those acts, or partly responsible, or remiss in his responsibility, for not knowing about it. The question is, "Who was in charge of the shop?" What was the attitude of General Abrams?

Was the attitude in General Abrams' command one of "Go ahead, do what you want, but do not get caught"? Was it "Go ahead, but do not tell us about it"? We do not know.

And if this could happen to General Abrams in Vietnam by his immediate deputy for air, is it likely to happen again if he becomes Chief of Staff of the Army.

During World War II, there was something called the Yamashita case. I am not in any way comparing General Abrams to General Yamashita, but I bring this up to indicate the standard of conduct the United States required even of enemy commanders.

THE YAMASHITA CASE

Gen. Pomoyuki Yamashita was commander in chief of the Japanese forces in the Philippines during World War II. He was the commander who occupied the Philippines after it had been conquered. He was dubbed "The Tiger of the Philippines."

At the end of the war, General Yamashita was tried, convicted, and hanged. Why? For the war crimes committed by troops under his command.

He was held responsible and was hanged for the crimes and acts of his troops even though he: first, had no knowledge of them and could not have had knowledge of them, and second, had no means of controlling them if he had had knowledge of them.

The facts were that General Yamashita was cut off from his troops, was out of touch with them, and had no control over them at the end of the war after the Leyte and Luzon landings by U.S. and other forces.

General Yamashita probably did not know what was going on.

But he was held responsible, nevertheless, for the conduct of the troops under his command, and was hanged until he was dead for their acts.

I am not prepared to judge whether it was a miscarriage of justice. Nonetheless, the United States and its allies extracted his death on the grounds that he was responsible for the acts of his troops even if they were not under his actual control.

Now no one is saying that this is an exact analogy with the Lavelle case. But in this case, General Abrams was in charge, met daily with General Lavelle, issued orders to him, and was responsible for his actions.

To say or to let stand the implication that he had no responsibility whatsoever for what General Lavelle did, seems to this Senator to be as extreme on the side of leniency as the Yamashita case was extreme on the side of harshness.

What we are being told in the case of General Abrams, is that "ignorance is innocence."

I ask, is that the standard of conduct which we should expect and demand in a

nuclear age from a commander—any commander—who has it within his power to launch death and destruction which could wipe out an entire country and, in fact, which could precipitate world war III?

Anybody in the galleries, anybody in the Chamber, who goes out and violates a traffic ordinance, no matter whether he pleads he just did not know it, is considered guilty, because he should have known it. Certainly the commander of troops in the field should know what his deputy for air is doing and make sure he provides a system under which he does know.

Harry Truman said, "The buck stops here." Where does it stop in the General Lavelle case?

RESPONSIBILITY IS THE COMMANDER'S

General Abrams cannot escape responsibility for the breakdown of command that occurred in Vietnam. This breakdown was not only foreseeable, it was foreseen.

As Senator STENNIS said earlier, the Fitzhugh Blue Ribbon Defense Panel established by President Nixon several years ago pointed out in its final report to the President, dated July 1, 1970, that the command structure in Vietnam as well as elsewhere was faulty and contained a considerable potential for confusion.

To understand the nature of the confusion that existed under General Abrams' command we need to go back to the Defense Reorganization Act of 1958. The purpose of that act was to do away with the division of authority that then existed under each command and to create a unified command structure. Prior to 1958 the unified commanders did not have full command over each of the component commands under him. For example, a unified commander would have authority over combat actions but would not have authority over matters such as supply, maintenance, administration, and discipline. The responsibilities for these matters would pass down a line from the military departments to the appropriate component command.

To resolve this divided authority, President Eisenhower proposed the Defense Reorganization Act of 1958 and in his message to the Congress on that act, he said:

> Because I have often seen the evils of diluted command, I emphasize that each Unified Commander must have unquestioned authority over all units of his command.

This was precisely the purpose of the 1958 act, namely, to give each unified commander unquestioned authority over all units of his command.

General Abrams, of course, was the effective unified commander in Vietnam, although technically he was known as the subunified commander in Vietnam. On the organizational chart, Admiral McCain was the unified commander for the Pacific Command, in which Vietnam is located geographically. However, Vietnam was carved out of the Pacific Command and a subunified commander was created for it with General Abrams at its head.

WHAT WAS SITUATION?

Now, what was in fact the situation under General Abrams? Did he have total authority under his command? He did not. More than a decade after the passage of the 1958 act, and despite the showing by the Fitzhugh Panel that the act was not being followed, command in Vietnam was seriously split. General Abrams was the unified commander for Vietnam, but he did not exercise total command.

What existed in Vietnam under General Abrams, and what still exists today, is exactly the problem that the 1958 act and President Eisenhower intended to solve. General Abrams had operational command over air strikes, other fighting, and all combat actions in Vietnam. But he did not have authority for such matters as supply, maintenance, administration, and discipline. This authority was controlled by the military departments. General Ryan, as Chief of Staff for the Air Force, for example, had responsibility for supply and maintenance over the Air Force component commands, and this responsibility therefore passed from General Ryan directly to General Lavelle.

The point I am making here is that General Abrams knew that his authority in Vietnam was not complete, that it was split between himself and the military departments. He knew or he should have known that this violated the spirit of the 1958 Defense Reorganization Act, and if he was not familiar with that act, he should have been familiar with the report of the Fitzhugh Blue Ribbon Panel created by President Nixon which issued its report in July 1970.

Mr. President, the Senator from Iowa, just a few minutes ago, blamed this violation of orders largely on the command structure. There is something to his position, of course. But it raises this sharp question about General Abrams: Why did General Abrams not raise this question with Admiral Moorer, the Chairman of the Joint Chiefs of Staff? Why did he not point out to his superiors that the 1958 act was not being followed, that his authority was badly divided, that he did not have total and unified command over the forces in Vietnam?

I maintain that General Abrams was fully aware of this problem and that he therefore bears a heavy responsibility for not doing anything about it. Indeed, as the Fitzhugh report states:

> It is of more than passing interest to note that General Creighton Abrams, and before him General William Westmoreland, as the Sub-Unified Commander in Vietnam, chose to be his own Army Component Commander.

In other words, General Abrams would not allow another individual to act as Army component commander because he would have had to divide his authority between himself and the Army component commander, just as his authority was divided between himself and the Air Force component commander, General Lavelle. General Abrams protected his authority insofar as his own military department, the Army, was concerned, but took no steps to establish a unified command over the other military departments.

AUTHORITY OVER COMBAT ACTIVITIES

The second point I want to make about General Abrams' command, is that although he permitted his noncombat authority to be taken over by the component commanders under him, he retained unquestioned authority over combat activities. There was never any doubt about his responsibility for combat actions including air strikes. At the very least, his responsibility for combat actions means that he should have known about the air strikes directed by his component commander, General Lavelle.

So no alibi about the difficulty of the structure should stand in the way of fixing the responsibility of General Abrams for the airstrikes conducted by his subordinate, General Lavelle. There is no dispute about the fact that General Abrams should have known about it, and certainly he should have had the responsibility for it. General Abrams testified that General Lavelle "was responsible to me for all matters pertaining to the air effort which was under my responsibility as overall commander."

In this context, General Abrams' admission that he approved an airstrike on January 5, 1972, which was later determined to be an unauthorized strike, is deeply significant. That one action alone, in my judgment, represents a failure on General Abrams' part to exercise proper command in Vietnam. And I might point out again, as I have pointed out on several occasions, that an enlisted man who committed a similar violation of the rules governing his conduct would probably be court-martialed without being given a second chance.

The question is, did General Abrams know the January 5 strike was illegal under the rules he was operating by when he approved it, or did he not realize that the particular strike could not be authorized under the rules? In his testimony he seems to be saying that he did not realize the strike could not be authorized under the rules, that he simply did not interpret the rules correctly. The Joints Chief of Staff challenged the strike on the same day it was conducted, General Abrams replied to the JCS challenge on the following day, January 6, and on January 7 the JCS told General Abrams that such strikes could not be conducted any more. In General Abrams' words:

> They simply told us that we could not do it any more and that we did not have authority to do it.

Apparently, then, General Abrams is saying that he did not know the strike of January 5 could not be authorized under the rules. But is he not also therefore saying he did not know the rules of engagement well enough to carry them out correctly? Was not the responsibility for knowing those rules clearly his? As overall commander in Vietnam, should General Abrams not have been fully aware of the rules and how they were to be applied?

COMMAND FAILURE

As I say, Mr. President, it is one thing for a motorist not to know what the speed limit ordinance is. Or it is one thing for an enlisted man not to know what his orders may be, or not to know

them clearly. But certainly the commander in Vietnam should know what his orders are, in an area where overwhelming responsibility lies, and that, of course, at that time was the air war. In my judgment, these facts demonstrate a clear failure on the part of General Abrams to exercise his own operational command over combat actions.

We thus have at least two kinds of problems in the command structure in Vietnam. On the one hand, we have divided authority so that the so-called unified commander does not have total control. General Abrams had authority over combat activities, but he did not have authority over matters such as supply, maintenance, administration, and discipline. The second problem, as I see it, is that the individual who had responsibility for combat actions, General Abrams, did not properly exercise that responsibility. He himself approved an unauthorized strike in violation of the rules of engagement governing his own operational command and, of course, numerous other unauthorized strikes were made apparently without his knowledge. Both his approval of the January 5 unauthorized strike and the fact that other unauthorized strikes were being carried out without his knowledge, I say with all respect, reflect very poorly on his command abilities.

As to the first problem, the division of authority in Vietnam, the Fitzhugh panel made some specific and far reaching recommendations. Those recommendations could have been followed by the administration and the Pentagon, and had they been followed the problem we are faced with today might very well have been avoided. For the major thrust of the Fitzhugh panel's recommendations was to abide by the spirit and intent of the Defense Reorganization Act of 1958. That act, as I said earlier, was intended to set up truly unified commands so that there would be no division of authority, so that the command structure would not be confronted with what President Eisenhower termed "the evils of diluted command."

PANEL IGNORED

It is most unfortunate that the administration which created the Fitzhugh Blue Ribbon Defense Panel has seen fit to almost totally ignore the panel's recommendations regarding the organization of the combatant commands. I believe it is time for the White House to take action. More than 2 years have elapsed since the President's blue-ribbon panel recommended that the basic objective of the Defense Reorganization Act of 1958 be pursued.

The Fitzhugh panel concluded in 1970 that—

> The present combatant command structure does not facilitate the solution of many serious problems which materially affect the security of the Nation.

And the President's panel went on to say:

> The present structure of 8 unified and specified commands and a large number of subordinate unified commands has proved cumbersome, imposes too broad a span of control for a single decision point in time of peace, is excessively layered, unwieldy and unworkable in crises, and too fragmented to provide the best potential for coordinated response to a general war situation. Without exception, every crisis within the last decade that has involved the movement of forces has required both an ad hoc organizational rearrangement and ad hoc planning.

In a footnote, the Fitzhugh panel referred specifically to Vietnam as one of the crises which has involved ad hoc organizational rearrangements and ad hoc planning.

The fact that this confused situation, the division of command authority in Vietnam, has persisted for 4 years under the Nixon administration is a serious indictment of that administration's ability to control military operations in Southeast Asia.

ENFORCE THE LAW

The solution to this problem is for the administration to enforce the law now on the books, to end the fragmentation of authority that exists in Vietnam and elsewhere.

One of the Fitzhugh panel's recommendations deals explicitly with this matter. It states:

> The unified commanders should be given unfragmented command authority for their commands, and the commanders of component commands should be redesignated deputies to the commander of the appropriate unified command, in order to make it unmistakably clear that the combatant forces are in the chain of command which runs exclusively through the unified commander.

The panel further recommended "restructuring the command channels of the subunified commands." Both General Abrams and the President bear direct responsibility for not taking steps to make the necessary changes.

The second problem, the problem of the Vietnam commander not properly exercising his operational control over combat actions, does not necessarily require reorganization of the command structure. When you have an individual in charge of a specific activity and he does not, in fact, exercise his responsibility for that activity, we do not have a problem of organization or structure. In such a situation, the problem is that the man failed to carry out his responsibility.

REWARD FAILURE

How do we deal with this kind of a problem? In my judgment, we do not deal with it adequately by rewarding the man who failed to carry out his responsibility, by promoting him to the highest position we can appoint him to in the Army, making him Chief of Staff of the Army. We do not deal with it by promoting the man who failed to exercise his responsibility. We deal with it by taking disciplinary action against the individual who performed poorly.

I do not believe that all the facts are completely known in this case. The story in the New York Times yesterday, October 10, as Senator SYMINGTON pointed out earlier, reports that several other Navy officers have admitted participating in unauthorized air strikes which were not known at the time the Senate Armed Services Committee completed its investigation. This story suggests that there is still much to be uncovered and that many more unauthorized air strikes may have been conducted than those that have been disclosed up to now.

I believe it is imperative that these hearings be resumed and that all the facts be brought to light before the Senate acts upon the nomination of General Abrams.

QUESTION OF COLLUSION

I have said that, from the evidence the committee extracted, it appears that General Abrams did not know about the unauthorized raids. But I also said I had one haunting doubt about that which I wish to discuss now.

On November 8, 1971, there was an unauthorized raid on the Quan Lang Airfield which was about 180 miles north of the DMZ. This was the second of General Lavelle's unauthorized raids and it followed by a day the November 7 raid on Dong Hoi.

The point is that in December of 1971, the Navy hit this same base. It is now charged, first by Lieutenant Groepper of the Navy, that this was an unauthorized raid, that it occurred, as did General Lavelle's raids, under the guise of "protective reaction," when in fact the raid was planned.

Quan Lang was Navy territory. Admiral Moorer gave General Lavelle permission to strike in the Navy territory. That is found on page 38 of the hearings.

Pictures were taken of that raid. They were available on the 9th. He showed them to Admiral Moorer on the 9th. Lieutenant Groepper's testimony to the committee was rebutted by Lt. Charles Moore of the Navy, who claimed that the strike on Quan Lang by the Navy in December was not planned or deliberate but was legitimate protective reaction. But on Tuesday—yesterday—the New York Times, under the byline of Seymour Hersh, published an article reporting that five additional Navy pilots said the raid was "planned," that it was not protective reaction.

They said the reconnaissance plane—and I cannot understand why in the world they would lie about this, why they would be confused about it; they were involved themselves—flew "behind" the strike airplanes to take pictures, which means it was a planned strike. One pilot said that:

> Our intention was to get rid of the bombs whether or not we were fired upon.

Another officer is quoted by Seymour Hersh of the Times as saying:

> We were briefed that we were going to hit the airfield, period.

The lieutenant who said that also said that since then he had listened to the tapes of the raid to refresh his memory, to make sure he was not confused—the December 18, 1971, raid—on Quan Lang and—

> . . . discovered that there had been no enemy fire reported until the planes began diving toward the airstrip.

The evidence is now overwhelming that the Navy was planning strikes and making unauthorized strikes on precisely the same target that General Lavelle's first unauthorized strike was made.

That can hardly be a coincidence. Admiral Moorer gave General Lavelle permission to strike in the Navy zone. Later,

the Navy struck at the same target under the guise of "protective reaction" but in circumstances which now seem clear that the planes were not fired on first. It appears to be unauthorized.

The question must be raised, Could this be coincidental? Now two services appear to be doing it. They hit the same target. They did it with each other's knowledge.

That, I believe, cannot be overlooked, shoved under the rug, or shrugged off.

LAVELLE'S LETTER

There is one further haunting piece of evidence which must be added to this question. General Lavelle submitted a letter to Senator STENNIS after his testimony in which he claims, essentially, that he was part of a larger picture and that—

. . . I acted legitimately and within the framework of this guidance.

The guidance included especially what was said at a Honolulu conference to discuss means of countering enemy threats. General Lavelle wrote that the Director of the JCS indicated that—

JCS would not question our aiming points (targets) on protective reaction strikes and in the advent of adverse publicity we could expect full backing from JCS.

So the question remains unanswered as to whether or not there was collusion in the matter of the unauthorized raids. This Senator is not satisfied that it was a single act of insubordination by General Lavelle.

Both the Navy commander and the Air Force commander report to General Abrams. Both, apparently, were taking part in unauthorized raids. Was there collusion or not? I am not prepared to give either a guilty or innocent verdict. But it must be settled. For the moment, it should have a Scottish verdict of "not proven."

METHOD OF ANNOUNCEMENT

There are other haunting facts about this case as well. They concern the way it was detected and the way it was handled, as well as the acts themselves.

The fact is that no one in the chain of command blew the whistle on General Lavelle. Some 200 people knew what was going on. Neither General Slay nor Colonel Gabriel nor any of the officers under the 7th Air Force raised the issue.

It finally took a lowly sergeant to do it. And when he first raised it, it was with the noncommissioned officer just above him. From there he went to his captain. But his captain passed the buck down the line to the NCO, and told Sergeant Franks he should carry out the instructions of his NCO and continue to falsify the reports.

But why did it take a lowly but brave sergeant to raise the issue? Where were the others? And why, as the hearings clearly point out, is General Ryan, the head of the Air Force so complacent about it? He testified again and again that he has no intention of taking any action against those in the chain of command who failed to report the matter.

SLAP ON THE WRIST

When the matter finally came to the attention of the Air Force through Sergeant Franks letter to Senator HUGHES, General Lavelle was retired for personal and health reasons. The Air Force covered it up. The Pentagon covered it up. It was not until questions were asked that the whole thing came out—very late and very belatedly.

After a determination was made that 20 to 28 unauthorized raids took place, why was there not a Court of Inquiry or an investigation held under the Uniform Code of Military Justice?

If a Navy officer runs a ship aground, there is a Court of Inquiry. If an Air Force officer wrecks his plane, there is an investigation. If $300 of food goes bad in a Navy commissary, there is an inquiry. But if a general conducts his own private war, nothing happens on the part of the military. There is no inquiry. There is no investigation under the Code. There is no trial, no judicial proceedings, or commensurate punishment. Instead, the general involved is slapped on the wrist and retired at $27,000 a year, much of it tax free.

Mr. President, do you think that action will prevent some gung ho general from taking a war into his own hands in the future? Not on your life.

As I said in the beginning, the time has come to determine whether a civilian or military finger is on the trigger.

Here is a general who in the nuclear age ordered as many as 20 unauthorized raids on enemy targets. He did so at a time when delicate negotiations were going on.

Reports were falsified. The orders of superiors were defied. He countermanded the rules laid down by the President of the United States. He deliberately violated the principles of civilian control over the military.

Instead of bringing immediate charges against him, ordering his arrest, and throwing him in the brig, he was slapped on the wrist by his superiors.

WHAT TREATMENT FOR PRIVATES

If a private first class defied the orders of his military superiors he would be investigated, charged, court martialed, given a bad conduct discharge, and confined for 2 years of hard labor. But the insubordination of General Lavelle was glossed over while the general was quietly retired on a $2,500 a month pension and the military tried to cover up the event.

Does this not give a free hand to any general who ever dreamed of riding a white horse to order air strikes, surreptitious raids, and unauthorized forays in dozens of situations where the survival of civilization itself is at stake?

The appropriate military officers must begin to treat this matter with the seriousness it deserves. It is an act virtually unprecedented in modern American military annals, and, due to the terror of the nuclear age, must be answered by disciplinary action commensurate with the seriousness of the act itself.

Generals as well as privates, must obey orders. Generals, as well as civilians, must obey the law and the Constitution. The credibility of the Air Force and the issue of civilian control of the military is at stake.

But what are we to think when General Lavelle is tapped on the wrist, and his superior officer, responsible for the war in Vietnam, is promoted to Chief of Staff of the Army?

How will those actions deter unauthorized acts in the future?

HOW CAN IT BE PREVENTED IN THE FUTURE

The issue is, "How can it be prevented in the future?" When asked this question, General Ryan fell back on the answer that there just had to be more integrity in the Air Force. But not once did he propose a single administrative change to help solve this problem.

But it wll continue to go on. When Sergeant Franks raised the issue, he got nowhere in the chain of command. In fact, the Inspector General of his Tactical Reconnaissance Air Wing, was a lieutenant colonel who was openly involved in planning, carrying out, and hiding the facts about the unauthorized raids.

When the overall Air Force Inspector General first talked with Sergeant Franks, the Inspector General, instead of taking this information immediately and investigating it, criticized Sergeant Franks for not having raised the matter through channels. He said, in effect, "Why did you write that letter?" The letter to the Senator from Iowa (Mr. HUGHES) by Sergeant Franks.

But he had already got the cold shoulder from his captain. Would a sergeant dare take it up with a colonel who was involved in the situation and criticize the colonels' own action? Of course, not.

And we know, too, what has happened in the past when people raised difficult questions. The Air Force fired Ernest Fitzgerald for committing truth—for telling us truthfully there was a $2 billion overrun on the C–5A. He, as we all know, had been decorated the year before as the outstanding program analyst in the Air Force, but he was discharged because of the one action that he committed which they could not stand, his telling Congress the truth about the overruns on the C–5A.

John McGee, a Navy civilian in Thailand, wrote to me that about half the POL was being stolen there. I turned it over to the GAO. They found that McGee was right. They confirmed everything he said in the letter. But what happened?

The Navy promoted McGee's superior who had been at fault and sent McGee to the boondocks after raising a series of false issues against him.

And Lonnie Franks? He was criticized by the Air Force Inspector General. The last 10 days at his base overseas was made pretty rough for him. Instead of getting a medal, he was ostracized to Indochina.

What we need are recommendations on how this can be prevented in the future. Restoring integrity—just to use those general terms that General Ryan used—is no answer. The answer must also be found in the structure of the institution in order to ferret out unauthorized acts.

The basic place to begin is in the inspector general system. I think the Air Force and the Department of Defense, should come forward now with specific

and detailed recommendations, upon which Congress can act, to make certain that this cannot happen again.

FLABBY ADMINISTRATION

But I think it goes further than that. I believe that the administration has acted feebly in this case. In failing to assert the historical U.S. Government position of absolute control over the military, the administration has failed in its duty.

What kind of a namby-pamby, weak-kneed, panty waist administration have we, which not only failed to assert civilian control over the military but took an active part in trying to sweep it all under the rug?

I call upon the President of the United States for a ringing assertion that in the future he and the civilian authorities will exercise full and complete control of bombing and other military operations.

I call upon the President for absolute assurances that he has issued the orders and provided the mechanism that in the future will insure the receipt of regular, daily, accurate, doublechecked reports of military activities in the field.

I call upon the President and the Secretary of Defense to make clear in forceful statements that henceforth anyone, whether he be a general or admiral, involved in unauthorized bombing, failed to carry out orders, or the coverup or falsification of reports will be dealt with summarily by court-martial.

I have in my file a copy of the pertinent sections of the Uniform Code of Military Justice.

It says that any person who fails to obey any lawful general order or regulation; or is derelict in the performance of his duties; or is an accessory after the fact in that knowing that an offense has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial or punishment; or anyone "with intent to deceive signs any false record or other official document knowing it to be false," and I quote: shall be punished as a court-martial may direct. Unquote.

In the Lavelle case, we have a situation where a commander in the field took the war into his own hands. If that is not correct, then there had to be very widespread and general collusion. While it appears that the former is the case, there are enough haunting questions that it is as yet impossible to dismiss the latter.

Twenty or more unauthorized raids took place. He bombed targets contrary to the rules of engagement at a time when sensitive negotiations were proceeding. Records and reports were systematically falsified. Yet the chain of command was so weak that the superiors of General Lavelle claim they had no knowledge of events until a lowly sergeant blew the whistle.

Then weakness was piled on weakness. When the situation was verified, the Secretary of Defense, according to General Ryan's testimony, decided that General Lavelle would be quickly discharged without a court-martial. He was tapped on the wrist, retired at $27,000 a year, most of it tax free. Many have deplored this, and there has been a sense of outrage on the part of the public. Where is the Senate's sense of outrage in view of what has happened.

The failure to assert civilian control; the attempted coverup of the incidents by the announcement that General Lavelle was retired for personal and health reasons, and the failure to bring charges either against General Lavelle or those in the chain of command who took part in the falsification of records, leads me to one fundamental conclusion.

It is time for the President to make it clear beyond a peradventure of a doubt that the civilians, not the military, are running the show.

The time for men to act like men is long past. The only way to prevent unauthorized raids, the falsification of reports, and the military from taking over the war is for the civilians in the Government to assert their authority with no ifs, ands or buts.

I know that the administration should have acted. Of course, they should have acted. We all know that. That is clear. And it is also clear that they have not acted. They have not acted in 7 months. They are not going to listen to me speak and then act. They will not act until after the election. We have to act. If we do not call into serious question the nominations of the people involved when they come up, we have only ourselves to blame for the breakdown of civilian control.

This kind of thing is not easy. It is very difficult. The men on the Armed Services Committee are some of the finest Senators in this body. They are wonderful men. Many of them are very close friends of mine whom I deeply admire.

I cannot understand how they can have a unanimous recommendation that we approve the nomination of the commander who is responsible for the fact that these unauthorized raids have taken place, that the reports were falsified, and that no courts-martial action has taken place at all. Our only answer is to mildly protest and say that the Army should take care of the Army and the Navy and the Air Force should take care of their own problems. We then propose to approve the nomination.

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

Mr. PROXMIRE. I yield.

Mr. GOLDWATER. Mr. President, does the Senator from Wisconsin intend to allow us to vote on this nomination this evening?

Mr. PROXMIRE. Mr. President. I think that under the circumstances it would be desirable if we were to vote on tomorrow. I have spoken to a number of Senators who have said they wished to vote tomorrow on this nomination. I do not have any intention of delaying the nomination after tonight. I have no expectations, as I say, that this nomination will not be approved overwhelmingly. It has been the unanimous recommendation of Members of both sides of the aisle who support the administration. However, it is significantly serious that we should not come to a decision in the next half-hour or so and then let it go. We should have a further discussion. However, we can come to a conclusion on this matter tomorrow without holding up the Senate. I will not insist on a rollcall vote. If the Senator wants a rollcall vote, that is fine.

Mr. GOLDWATER. Mr. President, I do not think it is necessary to have a rollcall vote. I have sat here patiently all afternoon. I have a few short remarks to make. If the Senator desires to keep on talking, that is all right.

Mr. PROXMIRE. I was just about finished. I have a series of questions to ask the Senator from Mississippi (Mr. STENNIS). I can ask them at any time.

Mr. GOLDWATER. Mr. President, I am afraid I might get lost in the shuffle. The distinguished Senator from Wisconsin, I know, is tired and might want to sit down or maybe run around a little bit. However, if he yields to me to allow me to proceed with my remarks, I would appreciate it.

Mr. PROXMIRE. Mr. President, if the Senator wants to go ahead, it is all right. The Senator from Mississippi (Mr. STENNIS) has stepped off the floor. I hope I can get assurance that this will not be the end of the matter.

Mr. GOLDWATER. Mr. President, I have a few remarks to make. I will be glad to relieve the Senator for a few minutes, because I have matters to attend to in my office.

Mr. PROXMIRE. Mr. President, I yield the floor.

Mr. GOLDWATER. Mr. President, the Senator need not yield the floor.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may yield to the Senator from Arizona without losing my right to the floor.

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

Mr. GOLDWATER. Mr. President, I thank the Senator from Iowa (Mr. HUGHES) for bringing this matter to our attention. I thank the chairman of the committee for his very wise conduct of the hearings.

I think a lot more will come out of the hearings than what we have been talking about today. We have not had a thorough hearing on the problem of the Armed Forces, with the exception of the question of the draft, for almost 15 years.

The Senator from Virginia (Mr. HARRY F. BYRD, JR.) raised a question on the number of officers who have retired on disability. I think the whole system of retirement and the problems of the Army, Navy, and Air Force have to be gone into.

We discussed this matter at our hearings today. The Senator from Mississippi (Mr. STENNIS) told us that next year we will get into those matters.

I wanted to say a few words about General Abrams. The Army has been sorely hurt by not having a Chief of Staff for the past several months. They need a man in a command position over there that is approved by the Senate. I think there is no question that General Abrams deserves this position. He had a long and excellent record as a commanding officer in World War II. And he has been over in Vietnam for 5 years.

I hope and pray that we can down-

grade these classifications that fill a book over an inch thick—and we are talking about only one today—that have restricted our Armed Forces in Vietnam and that have restricted them to almost a ridiculous point.

I respect the command of civilians over the military as much as any other Senator. And I will say that the man in uniform respects them even more than we do. However, here we see a war being lost because the civilians in Washington have had too much to say about it.

I say that war is a last instrument of policy. We try everything else. We try economic warfare, political warfare, and propaganda warfare. And when we fail, if the President makes up his mind that we have to pursue the policy of war, we pursue a policy of war.

When President Kennedy decided what would be the instrument that we should use, then we should have decided on that and should have pursued it to a successful conclusion.

This means still the supervision of the man in uniform by the civilian. It does not mean that the civilian in Washington takes over the tactical decisions in the field in any theater of war. That is what we have done in Vietnam when we have said that they are not to attack until they are attacked by an enemy showing a hostile intention. I do not believe that any war in our history has ever been fought in such a stupid way. I believe that it happened only once before, and that was when President Truman said we could not attack above the Yalu River.

I know General Abrams. I have visited there several times. In Arizona we have a facility that handles over 25,000 calls from Southeast Asia. And I have particularly told the operators that when they hear any discussion that might indicate low morale, I would like them to inform me. Every man that I have met in Vietnam appreciates General Abrams, contrary to the reports in this country. However, if one believes everything that is in the paper, on the radio or the TV, I think that we are in a bad way. Contrary to the reports in this country, the morale over there has been kept at a very high point.

The morale has been low, I might say, among the commanders who, when they see a target that they know should be destroyed, are not allowed to attack.

I recall seeing reconnaissance photographs last year of 4,000 trucks gathered in a depot as close as we will see cars in a parking lot in Washington. And we were not allowed to destroy those trucks. Those trucks since that time have been carrying materials down three separate trails with which to kill our men and to kill the men who are our allies.

The only question that has been raised here tonight by my distinguished friend, the Senator from Wisconsin, and I can understand perfectly well his concern in this matter, is his relationship with General Lavelle and these unauthorized airstrikes, and whether he should know anything about them.

Long before the hearing I went into this to satisfy myself because I had the same general feeling that he would know about them.

I found out, first, at that time he had no command over the bombing targets, unless it was to ask the Air Force for help in a technical situation. We have a bombing committee made up of Army, Navy, and Air Force. They meet every day and decide what targets are going to be hit, they decide where RECCE photographs are needed. Where the question of Admiral Moorer came up, the Air Force wanted to hit a target in Navy territory and it was necessary to get permission of the Navy command.

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

Mr. GOLDWATER. I yield.

Mr. PROXMIRE. I want to make sure I understand the Senator. Is it not true that General Abrams did have authority over the combat activities of the Air Force; not over supplies and discipline, but over combat activities? He had direct authority over General Lavelle.

Mr. GOLDWATER. I would have to answer that in the affirmative, but it did not involve his making decisions for strikes or receiving orders for strikes any more than his orders for division commanders would require a detailed report coming back to him, unless it was of extreme importance. I do not know, but I assume if any recon photo were taken by SR–71's or our now unmanned jet aircraft—if it were on that level, and the immediate intelligence commander thought it important, he would see them.

But until the bombing restrictions were lifted, General Abrams had no direct control.

Mr. PROXMIRE. He is commander in chief. He must be at fault.

Mr. GOLDWATER. No.

Mr. PROXMIRE. He is the commander in chief. If he does not get a report from air chief, that is his responsibility and he is not exercising his authority.

Mr. GOLDWATER. If the Senator wants to pursue that down to its finest point, then the answer would have to be yes, but it would be like saying, "You are responsible for every piece of paper that goes out of your office," and I know the Senator cannot assume that responsibility, nor can I. Papers do get out of our offices that we wish did not get out of our offices.

I asked that question of General Slay, who was General Lavelle's operations officer. He was probably as close to the commanding general as anybody:

Senator GOLDWATER. Again to another point, we are going to make the reporting forms part of the record, if they are not classified when not filled in. After your experience with these forms, would you have any suggestions in the way of simplifying them to make them less bulky?

General SLAY. You mean the OPREP–4's?

Senator GOLDWATER. Yes, the OPREP–4's.

General SLAY. Sir, the OPREP–4's go to the computer. I doubt if there is anyone above the rank of sergeant or so who ever, at headquarters, who ever looks at the OPREP–4. It is in a form that the computer can digest.

Again, if you want to get nitty-gritty about it, one might say Admiral Moorer should see these 25,000 to 40,000 reports that come out of a theater in 3 or 4 months plus all strategic bombing reports and the reports of naval and land operations.

I know something about these reports and I know how they are made. When we get them they were written out but never kept at a command level. They were usually kept at as high as wing headquarters.

In the hearings I went on and discussed it further because during the course of the hearings the point had repeatedly been made that the Senator makes, and I understand the Senator's concern, that we have not punished deep enough, that General Lavelle received only a slap on the wrist.

First, a court-martial is not mandatory in any case. The commander determines if a man should stand court martial or not. In this case his commanding general, General Ryan, decided he should not. Being Chief of the Air Force, he also could have said that he should. The Secretary of Defense only enters this picture after the sentence has been passed. Then, the individual can appeal to the Secretary of Defense. He has no other connection with it. I wanted to make that clear because it is easy to say, "Let us punish everyone from General Slay right down the lines." There are 200 and maybe 1,200 you would have to punish.

I asked General Slay:

What you did was to follow orders?

General SLAY. Yes, sir; that is correct.

Senator GOLDWATER. That is what you have been trained to do in the military since you first did a right face?

General SLAY. Outside of high school, sir, that is all I have known.

Senator GOLDWATER. That is all that any military man knows.

Did you really have any alternative to following orders?

General SLAY. Sir, I suppose I could have sat down and if I felt strongly enough about it I could have either gone to see General Abrams or General Clay. I just—and I would be kidding you if I said I thought I would force myself to do that unless it was something of an extreme nature. I just could not force myself—it is not my mental makeup to do that.

That appears on page 311 of the hearings. It is very interesting reading for those who think we can go down the line and punish everybody who might have knowledge about this. As General Slay said—and I think anybody can understand this: When a four-star general gives a one-star general an order, and the one-star general thinks, "My golly, that is contrary to the rules of engagement," the four-star general may have permission to do it or, as he put it. "Somebody was holding his hand."

I asked him later if he had to do it over again what would he have done, and he said he would have written to General Lavelle expressing belief that the order was wrong; he would have made a personal memorandum on it for his own record, and gone ahead and executed the order.

I want to point out that once we start this going down the chain punishing everybody who had no way to know General Lavelle did not have permission, we begin to break up the military.

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

Mr. GOLDWATER. I yield.

Mr. PROXMIRE. Does the Senator believe there is no way to know they were violating the order and falsifying

reports, one truthful one and one inaccurate one? They must have known that. Are all these people ignorant of the military code of justice they operate under? It says that any person who is an accessory after the fact, and knowing an officer has committed an offense or has assisted the offender—that is exactly what these people did—were assisting in a violation of an order. After all, 200 of these men cannot be so naive and only one sergeant realizes there is a clear violation of the orders of the President of the United States. What did they think they were doing?

Mr. GOLDWATER. The Senator has been in the military and has had commands over him and probably commanded men. When you have been given orders you carry them out. You might not like it but you do it. It is like the case of this young naval Lieutenant Groepper who appeared before us at his request. He had flown 82 or 83 missions and was changed in his whole attitude toward the war by letters from his wife, who kept telling him what was going on in this country and then he started to refuse to fly missions against the North. He would fly them against the South. It was because of his refusal to fly missions against the North, in a mission involving Hanoi, that he was relieved of his wings. He did not retire; he was relieved of his wings. He was not even briefed. He finally admitted in the hearings that he heard it on a television set, but no one gave him direct orders to violate the rules of engagement.

I am not offering that as any excuse for what General Lavelle has done. I made a speech on the floor in which I said, "I do not care if he violated it once—he is guilty." I am not going to defend it, although I can understand why he did.

The Senator suggested a court-martial. I have a strong suspicion that if he were ever court-martialed—I do not care how strict the judges might be—he would be exonerated, because these rules of engagement can be stretched like rubberbands. He was guilty. When the Senator was in the service and he received an order, he performed on that order. He may not have liked it. I doubt that he was ever given one that was against the law, but he did it.

However, what I am getting at is starting this business of encouraging every enlisted man or any officer of any rate to go through channels. I think he should have reported it through channels. I would be critical of a captain who refused to buck it on up the line, but not every man down in the ranks should write to a Senator, unless it is the last resort. That is his right as an American citizen. I do not want to see us, as a step toward correcting this, do something that would involve the total destruction of discipline in our Armed Forces. It is at a sad point right now, but I would not want to add to it by calling a captain or lieutenant or general up to a court-martial, because they were doing what they were ordered to do; and I daresay most of them did not believe they were doing anything wrong, because every one of them had to memorize the rules of engagement. This is mandatory in the 7th Air Force. They are voluminous. When someone says, "Do it," they will say, "The rules say do not do it, but a four-star general has ordered it and he must know what he is doing, or he would not be a four-star general."

Mr. PROXMIRE. I can understand how mistakes might be made about radar. I can see how it can be one or two or even 28. But I cannot for the life of me understand how reports can be falsified and how a U.S. Senator can condone that and say, "After all, maybe it should not have been reported under the circumstances. You have to do something about going through channels." How is it that only one sergeant had the brains and guts and imagination to take the steps he took? Yet he had to go all the way to a U.S. Senator to do it. This is appalling. When the Senator talks about the breakdown of discipline, the fundamental question of discipline is whether or not the military is going to accept discipline from the civilian authorities of this country.

Mr. GOLDWATER. I am not going to condone what General Lavelle did. I made the first speech on the floor, to my knowledge, against what he did. I do not want to see it happen again. I hope we can come up with some answers to stop it. But I do not think we are going to stop anything when we punish people for merely obeying orders. That is not the answer.

General Lavelle was relieved of command. The Senator says he should be court-martialed. I cannot think of a worse sentence than being relieved of command, even if he does retire on 70-percent disability, which I do not happen to agree with. When one is relieved of command, it is something he is going to have to live with the rest of his life, and his friends are going to live with it, and everybody he knows is going to live with it.

Frankly, if I had been General Lavelle, I would have demanded a court-martial; and even if I had demanded it, it could have been denied, because only his commander can make that decision. I think he has been punished sufficiently. I do not want to see men down under who merely obeyed orders punished or have their careers threatened, because they were following orders.

Frankly, unless the sergeant was involved in the daily briefing or debriefing—and I was not at that particular hearing, so I do not know—I do not know how the sergeant, in looking at a form, could say, "Well, this man declares he had strikes against him." I do not know. I am not knocking the sergeant. I admire him for doing it. At the same time, the Senator asks, why did not somebody up above do it? I do not know. Again, if that had been my situation and I had been a squadron commander or a group commander and I obtained the order, I think I would have said, "Well, golly, that is in violation of the rules of engagement." I would say, "Well, they have been changed." I would not have questioned it. I do not think it is the duty of the man to question it, unless he has access to information that says they have not been changed.

Mr. PROXMIRE. The Senator has not met the principal fundamental problem here, which is that the reports were falsified, and 200 people were engaged in their falsification, and colonels, majors, captains, and lieutenants knew they were being falsified——

Mr. GOLDWATER. Not necessarily.

Mr. PROXMIRE. Was the sergeant the only one who knew?

Mr. GOLDWATER. I can imagine the situation I have described—an officer or enlisted man, not receiving an order, but having men come back, having discharged armaments, particularly the armament men, saying, "My golly, he must have been shot at or he would not have lost his armament." I can imagine, if they saw the report, saying, "Well, he was shot at." I can understand the pilot, unless he was specifically told, "I don't care if you were shot at or not"—and I think in this case they were told that—but then they must say, "I would not have given you this order by a man superior to me unless that man had orders from someone higher up and he had an order to change this."

After all, a man flying out of Toc Le, or any of those bases, is not going to be able to know what had been decided in the Joint Chiefs of Staff or the President's office or the Department of Defense; he has to rely upon the judgment of his commanders.

Mr. PROXMIRE. But when someone makes two reports, makes one report which is true and accurate that goes to General Lavelle, and makes another report that is untruthful and false which goes elsewhere, certainly there is a suspicion in anybody's mind.

Mr. GOLDWATER. In this case all those were dishonest reports. I am not saying they are not——

Mr. PROXMIRE. Does the Senator say that the man responsible for those would be exonerated in a court-martial?

Mr. GOLDWATER. I would think so, unless General Lavelle put out a written order—this is a verbal order—and someone down the line read the letter to General Lavelle and said, "I would like to see your authority for issuing this order." That would have required General Lavelle to back out. But when the commanding general of an Air Force gives a command, the man under him is going to have to assume that somebody has changed the rules——

Mr. PROXMIRE. Under the most charitable interpretation of the remarks of the Senator from Arizona, it seems to me the only way to resolve this would certainly be to have an investigation by the military, with a court martial. A court martial might well exonerate him. Maybe it would. But to let it go at this, with no further investigation, with no change in procedure——

Mr. GOLDWATER. I might say that these hearings are not ended. We made that perfectly clear. I think that from the chairman's opening remarks this morning we see that we have only lifted the sheet. This inquiry gets into many other fields.

The Senator from Wisconsin himself

has touched on the whole structure of command, the complete dominance, under Secretary McNamara, of civilian authority over military appointments.

We have not had any new weapons for 10 years because civilian authority has said we do not need new weapons.

We have an Army at its lowest ebb in history. We have a Navy that is now behind the enemy. We have an Air Force that is probably even with them. I am in perfect support of what the Senator is saying, but I am not in support of training a man to be a military man and then, when the time comes to use that military training, putting a man in gray pants over him. That is precisely what we have done.

As I say, I am not going to defend General Lavelle. I can understand how he felt. If I had to fly missions over enemy territory and I saw a buildup of trucks carrying SAM missiles; if I saw a buildup of trucks carrying ammunition; if I saw troops marching down a road; if I saw Mig aircraft on an airfield, I would be sorely tempted to shoot at them. The cheapest way to get a Mig is when it is sitting on the ground, not when it comes up and shows hostile intentions. You might not get any sort of report if that happened, and you might not be able to get back at him.

Our men have been fighting a war under rules laid down by Averell Harriman, a civilian, who in 1968 talked about a bombing halt against the North Vietnamese, but said that he would fly reconnaissance flights over their territory, and then changed the plans.

It was not until April of this year that President Nixon allowed our forces to conduct any semblance of air warfare against the enemy. I will maintain, and I will maintain all my life, if on the day John Kennedy said he would send ground troops, but instead had sent B–52's over Hanoi and Haiphong, that war would not have lasted over a weekend, or not over a week.

We have had about 8 years to build up supplies all over South Vietnam. One cannot fly over South Vietnam without seeing supplies stacked high everywhere.

We are not going to win the war in a conventional way, in my opinion. We may last longer than the enemy will. I think we have them in pretty bad shape now; but we have allowed them to get away with too much for too long, and if we will pursue the proper use of air power and not stand by in this country and try to knock it and tear it down, then I think we will get along much better.

One more point, and then I will yield the floor. I do appreciate the Senator yielding me the time.

The Senator has asked for answers. I wish we had a particular answer right now. I suggested to the chairman this morning that we now ask the Pentagon to conduct a study for maybe a couple months and then report to us what they want to do. Let the committee in the meantime continue its own study; then the two can get together and decide what should be done.

I would say the first suggestion I would have is that once the President has decided to go to war, let the war be fought, and not let civilians try to stop it.

I think a closer inspection of the units in the field by the Inspector General would be a great step forward. This would mean an enlargement of the IG staff; but if the Inspector General attended debriefing meetings, just popped in, if they thought he was coming, and he had enough intelligence to know whether he was hearing the truth or not, I think this would help.

But I have to get back to the remarks related about General Ryan. Unless we can come up with some rules we have not heard of yet, I frankly do not see any way that this can be prevented. So long as there are those who will violate the rules of the Senate, will violate the rules of Congress, will violate the rules of civilization; so long as there are people in all walks of life who will cheat and lie, I am not going to stand up here and say that military men or military organizations are completely devoid of all those temptations.

Mr. President, I am going to vote for General Abrams. I hope that his nomination will be overwhelmingly approved by this body. To me, he is one of the outstanding men I have ever known in uniform, and I have known him long enough to know him well. I have talked with him in the field, and I know what a great man he is.

I thank the Senator again for the time he has yielded to me.

Mr. PROXMIRE. Mr. President, I will not take much longer. I have a few questions to ask of the distinguished chairman.

Mr. STENNIS. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I am happy to yield.

Mr. STENNIS. Mr. President, the afternoon is almost gone, and we have had excellent discussions, but on the question of voting, I think there should be a rollcall vote on this nomination. If I have understood the Senator correctly, he would rather that we have the vote tomorrow, rather than now, because the hour is late.

Mr. PROXMIRE. Yes. A number of Senators have spoken to me, and I understand they had no idea that voting would take place today.

Mr. STENNIS. I have no complaint at all, but would it be agreeable to the Senator that we get unanimous consent now, if we can, to vote tomorrow. I point out that the cloture vote will come at 11 o'clock.

Mr. PROXMIRE. Let me say, before I agree to that—it is late in the session, and I understand we hope to adjourn on Saturday—that I would hope to get some answers to some questions. My willingness to vote would to some extent depend on that. I would feel much better if we could settle this matter now.

May I ask the Senator, on the basis of his knowledge and his chairmanship of the committee, why, in his view, did General Abrams make the mistake of authorizing a raid that was later determined by the Joint Chiefs to be in violation of the President's orders?

Mr. STENNIS. It is my opinion that this ground control radar was developed so as to present a new problem for them. We had what General Lavelle called the internetting of radar. The Senator may have heard that expression. That put our men at a greater disadvantage. They considered it, as I understood it, as an additional menace that they were confronted with, and also with the buildup that was coming on. They wanted to destroy the radars.

All I know is that, in their consultation, they decided as to the question of authority. At least, they persuaded themselves it was permitted. It seems they agreed on that, and General Abrams testified "I told them to go on and do it." He was very frank and blunt about the matter. But they did get playback, so to speak, from the Joint Chiefs almost immediately.

Mr. PROXMIRE. Here is a man who would be promoted to Chief——

Mr. STENNIS. I know, I know. Let me continue my thought. Wait just a minute. As I understood, the placing of this target was a part of the objection of the JCS. But anyway, they were trying to meet the situation and when the complaint came back from the JCS, General Abrams said that ended the battle for him, and that was the end of his action. We thought that he was telling the truth about it.

Mr. PROXMIRE. I am sure he was, and I am sure he abided by the decision of the JCS. The point is, however, why he as a commander disobeyed the orders, to begin with. Why did he not go to the Joint Chiefs of Staff and notify them? Should it not have been clear in his mind? If there was any question, why did he not go first to the Joint Chiefs of Staff and have it clarified?

Mr. STENNIS. I think a buildup occurred. There was more and more pressure and more and more concern on the part of all the military commanders over there to try to meet the growing menace of the buildup, and also the additional hazard to which this extra radar contributed.

Lavelle was very clear on this added proposition of the internetting. He said that just the existence of the internetting was grounds, he thought, for reporting what he called a hostile reaction radar.

General Abrams just decided to try it, as I see it. But the reaction of the two men, if the evidence is correct, was just the contrary after the concept was rejected.

Mr. PROXMIRE. Certainly, communication with the Joint Chiefs of Staff by General Abrams could be almost instantaneous. There is no question that he could communicate promptly and check it out and determine whether or not this judgment, which proved to be wrong, was right or wrong Is this not a reflection on a judgment of General Abrams, when he made this error?

Mr. STENNIS. It is a matter of judgment, but I think he showed his willingness immediately, and he did not play with it any more.

Mr. Woolsey, a valuable member of our staff, has handed me a memorandum with respect to the raid on Moc

Chau on January 5, to the effect that the radar they wanted to knock out was controlling Mig's over Laos which had shot down a number of U.S. aircraft. I remember that being in the testimony. That action was apart from North Vietnam, of course. It was over there, but they were after the Mig's, and the Mig's had been very daring and endangered the B–52's in that area. That was a part of the background.

Mr. PROXMIRE. What concerns me is why, having made this mistake once, he did not insist then that the orders be made so clear and so obvious, both to himself and to General Lavelle, that that kind of unauthorized action would not take place again.

Mr. STENNIS. It is a question that was raised in my mind. It was somewhat marginal. I would expect the commander to be pressing somewhat for what he thought was a reasonable interpretation, but when it was rejected, he stopped.

Mr. PROXMIRE. He stopped; that is true. But in view of the fact that Lavelle had come to him and they had authorized a raid which turned out to be against the policy of our country and in violation of the rules that had been laid down by the President, why should he not have made absolutely certain, No. 1, that General Lavelle understood what the rules were, and, No. 2, made sure that General Lavelle kept General Abrams fully informed at every step of the way, on a daily basis, of the raids that were taking place, the targets being hit, and that he had some way of determining that this general, who had made the mistake once, should not make it again?

Mr. STENNIS. The first part of the Senator's question is all right. If we were in on this matter as fellow generals and the Senator was my commanding officer, and the playback came from Washington, "No," I think that if the Senator made up his mind to obey it, he would be rather reasonable in assuming that I would, too. One does not formalize those things too much. One takes them for granted.

Mr. PROXMIRE. This is a difficult thing, but this was his deputy. They were on a very close personal basis. Why did he not say, "Jack, on all these matters I want to be kept fully informed. This is my principal duty, my obligation. We have to obey the law. I want to know every step of the way." But no communication of that kind passed between these two men.

Mr. STENNIS. The only complete explanation of it that I could give was that it could have been so plain and so evident to General Abrams that to emphasize it further himself, after the Joint Chiefs had spoken, might be just too obvious or not thought necessary. My interpretation, instead of putting the blame on Abrams, is that it was a red light to Lavelle, unmistakably, that these things were not permitted.

Mr. PROXMIRE. There are some things in this world we cannot escape, and when you are in command, it is a tough, hard, difficult assumption. It seems to me that one thing a good commander or a good executive does is to make sure that the people under him know what the orders are and then make sure that they follow those orders. This is something General Abrams did not do.

Mr. HUGHES. Mr. President, if the Senator will yield, as I recall the testimony in this matter—and I have not taken time to look it up in the record at this time—the Moc Chau raid discussions took place over a period of 2 days, in which two or three men of the staffs of both General Lavelle and General Abrams discussed the pros and cons about the internetting of the GCI radars and the fact that they had lost several planes over the course of those 2 days in northern Laos, shot down by Migs. The pressure was on them to knock out that radar. There was mixed opinion at the top staff level of the two generals as to whether or not it was within the guidelines.

They made a decision that they wanted to save the lives of the crews who were operating heavily in battle at that time in northern Laos—to knock out the radar—in the meantime writing out a full report at the same time and running it out for the JCS as to why they made this determination and felt it was authorized. Before they could get the report in, the JCS had already contacted them, not saying that they were illegal, but saying, "What happened? Under what authority did you hit the radar?" By that time, the report was finished; they sent it in; they got back a notification again, almost immediately, that "In our opinion that was outside the authorities."

General Abrams, at that time, in my opinion, shared jointly with General Lavelle a position which in North Vietnam was outside his jurisdiction, because it was in a route package different from that he commanded; but they had discussed it, and he knew it. They both shared the communication from JCS that it was not proper.

We have taken it for granted that this could not be done any more and have taken it for granted that we would have done the same thing, as a colleague of a four-star general of another branch of the service.

I am sure this is precisely what he did, because, as General Abrams testified:

> I simply didn't believe that this would happen again. I had no reason to believe it.

When you get to the point of whether he should have known and whether it his responsibility, I think those are two fair questions for anyone to ask. If he should have known and did not know, why did he not know? Under the circumstances, I think questions have to be asked. I do not think the answers are going to be entirely satisfactory to anyone. I simply believe that the circumstances happened that General Abrams did not know. Under the circumstances, I doubt that he could have known, and no one tries to dismiss his responsibility. I am saying that, in spite of that, this man did not know; he acted in good faith, and his nomination should be confirmed.

The Moc Chau radar was pointed out as a single instance on January 5. I looked carefully through the record, trying to make a determination as to what had been stricken as classified and what was not classified, so that I can discuss this matter without reading the record to do it. With respect to the discussion of the radar system, the internetting, as the Senator knows, there are signal devices within the planes themselves. When the radar is activated, a signal device gives an indication within the plane. It is easily detectable as the differences in radars, as to which one it is or both, if they are both operating at the same time.

So at a later point, when the rules of engagement were changed, as the Senator knows, the activation of the radar was considered authority to strike. As a result of that, they were dealing in technicalities, and I became convinced that the weight of the evidence was on the side of General Abrams.

Mr. PROXMIRE. I have one other question, before I ask for the procedure we can follow. As the commander, should not General Abrams, having had this experience of the correction on the part of the JCS, of a mistaken violation of the rules or a violation of the orders, have made sure that his intelligence and subordinates kept him informed, with photographic evidence, of any and all bombing strikes and report to him on a daily basis about those strikes, whether or not they were legal, so that he could monitor it and watch it?

I cannot think of any higher responsibility for a supreme commander than to be sure that the orders that are followed are the orders given by the President of the United States and the Secretary of Defense and be sure that that is done.

Mr. STENNIS. It is certainly one of his responsibilities. In his testimony, he always emphasized that his firm understanding was that these matters were within the rules of engagement. Coming particularly to the photographs, which is a matter of concern, in the first place, the photographs themselves would not disclose whether there was hostile reaction on the ground or not. We could not tell from the photographs whether there was hostile fire or radar activation or not. No. 2——

Mr. PROXMIRE. On that point, is it not true, if the photographs simply show that a truck was hit or that an oil depot was hit, this would raise a question that there was adverse reaction.

Mr. STENNIS. The testimony is rather clear that if this activity of trucks building up started, they would sometimes find that the trucks were close to a missile, or artillery weapons or supplies of some kind that were connected with a SAM site. I believe they could be entirely moved away within less than a day—moved on out, and gone. Maybe they had been there, were known to be there, and the trucks were still there but had been connected with the SAM site. They gave them a lot of trouble along that line. Later the President modified the order because the situation became so acute that, as I understand it, and this is some of Admiral Moorer's testimony—relating to how the rules were modified with respect to artillery.

Admiral Moorer said:

> So far as the inclusion of the artillery in the list in the vicinity of the DMZ, I think

that as you know President Nixon on November 10, 1970, said—this was in his TV statement—"If our planes are fired upon, I will not only order that they return the fire, but I will order that the missile site be destroyed and that the military complex around the site which supports it be destroyed by bombing."

That is my understanding of it. That is, they were leaning to the idea of destroying everything around. Presumably, some of that was done a few hours or a day later. Continuing, Admiral Moorer said:

So all we were telling them was that in the future they should consider the artillery near the DMZ with the missiles and the anti-aircraft, and as a matter of fact, later on, CINCPAC came in and we authorized him to make a full-scale attack on those guns on the 16th and 17th of February.

Mr. PROXMIRE. In retrospect we know, having looked at the photographs in April and May carefully, that there is no question about the fact they were not authorized.

Mr. STENNIS. Yes, that is true, but some of them got bombed.

Mr. PROXMIRE. Let me ask on the basis of this whole discussion and debate this afternoon, in view of this most unfortunate experience we have had, that this, to some extent, would support the suggestions of the Senator from Iowa (Mr. HUGHES), as I understand it: Can the chairman of the committee give the Senate assurance along the following lines; I would like to know how far the committee might be able to go: One, could there be hearings held on the most recent revelations about the Navy's strikes, as revealed in the New York Times this morning, the new evidence of some five pilots testifying that they engaged in unauthorized strikes?

Two, could there be hearings that would include examination of the role of photography in determining the validity of strikes, whether this could be used, and how, and the extent to which it could be a safeguard and a protection against violation.

Three, inquire into the responsibility of the commanders with respect to their subordinates. This question has been raised centrally here. While there is an overwhelming feeling that General Abrams should be found guiltless in this respect, it seems to me it raises a very serious question.

Then another question: What kind of corrective system can we have in general to overcome this kind of situation in the future.

Then two other points I wonder whether the committee could consider: One is the extent to which there could be collusion involved here by others involving both General Lavelle and General Abrams, including the remarkable coincidence of both Navy and Air Force hitting the same target with an unauthorized raid; and finally, whether there will be any real punishment—court-martial or inquiry—or whether a system could be considered and discussed under which we would have a court-martial when we have top officers in the military violating orders.

Are we going to assume that these acts can be done without any punishment other than a retirement? While the Senator from Arizona (Mr. GOLDWATER) may well have been right that this does constitute a disgrace, the overwhelming majority of the American people, and certainly the overwhelming majority of the boys in the service consider that this is really a wrist-tap for a clear violation of orders and one that would be hard to understand—perhaps Senators understand it—but perhaps very few outside of the top military department do.

My question is: To what extent can the Armed Services Committee continue to investigate this and press an investigation to see whether this kind of sad and unfortunate situation can be corrected?

Mr. STENNIS. Mr. President, first, I want to commend the Senator for his concern and also for the points that he has identified here, as area problems, and perhaps as areas where remedies are needed.

Let me preface my remarks by saying that I am not authorized by the committee as a whole to give a response to the Senator's questions. We had to come in and present this on the floor, as the Senator knows, on the evidence we had, and we did not get to project it any further.

I was planning, and the Senator from Iowa and others were interested, to see whether we could get a statement from the committee viewing the future. But we ran out of time. We met on that as late as yesterday. So I am speaking as an individual member of the committee, but one who does have some special responsibility, of course.

First, let me tell the Senator what I do not favor. I do not think that we can just pile in some more civilians—numbers of civilians—create new positions for civilians to solve this matter. A great part of this is military responsibility. It is their own responsibility within their fraternity, within their group. They are a favored group. They are selected, many of them, at the time they are 17 or 18 year old youngsters—worthy ones, too—a select group, I mean—and they are taken to the academies. They are trained. They respond. They produce some really great men and many fine men, but this is their service and it is their responsibility. If they cannot make this thing work, our committee cannot make it work. They are the wrong individual military men if they cannot make it work. So I want to keep the responsibility and the accountability on them.

I believe that this over there—the Lavelle setup—was in great part the Air Force's responsibility. That is evidenced by the fact that when they did find out something was wrong, why they took charge of it and they punished General Lavelle and they took him out of command. General Abrams did not have much to do with that, if anything.

So, I say, put it on them and keep it on them, with even clearer lines of responsibility. I would think that that can improve the knowledgeability and what the commanding officer knows.

He can have a better understanding of what is going on in his own command. I know that sometimes it is hard for a Senator to know what is going on in his own office. However, they can improve on that. And it is one of the things that I am expecting them to do.

It is just tragic here that so many of them do not know. I asked the question: "Would not the scuttlebutt tell you, if no other source told you, that something was going on there?" I asked General Ryan that question, for one. They can step that up and improve it.

One plan would be in the form of an inspector general who looks only after that. And they told me that in the old days they had an inspector who was an inspector general only. But he was more or less out of the command structure. He did not have enough clout. And he could not get things done. So they put him back in the command structure so that he would have more influence on those below him.

I understand that SAC has a system where their inspector general comes in and surprises them without any notice at all, day or night. Highly competent men make an inspection. And when there has been no report of anything wrong or anything else. It is done periodically. And I think we will challenge our military to move and make a new start on these matters. After all, this is a very difficult war to fight under the present rules and under the overall rules of disengagement. It puts them at a disadvantage. However, that is not enough of an excuse.

I hope that the services, the Air Force and the Navy—the Senator mentioned the Navy, too—and the Army, if there is anything in the Army—will do something to improve the situation.

I frankly think the hearings were thorough. Not that we are resting, but we reserved jurisdiction in the interest of our committee. However, I hope they are doing something along these lines. And then, with all candor, I hope that they will come here voluntarily and tell our committee, as the representatives of the Senate, what they found and what they are going to do about it.

We are not adversaries. The Congress and the military services are not adversaries. We are entitled to know without being policemen. I hope they come in here and place the facts on the top of the table and explain what they found and what they are going to do about it.

The Senator asked a whole lot of questions there. The Senator mentioned the matter of punishment and courts martial. I hope that they have considered that some. I am not recommending at all now that General Lavelle be court martialed. I withheld judgment on that. I think what we have done is to inquire into the whole matter of what they did. Whether it was enough is a debatable question.

Mr. PROXMIRE. Mr. President, the Senator has given me assurance, as I understand it—and I want to make sure that I did not misunderstand him—that the committee would inquire into the command with respect to subordinates and inquire into the corrective system that the commanding general has with respect to SAC. He said that they are far

more vigorous there than they seem to be elsewhere.

Mr. STENNIS. That is my understanding, yes.

Mr. PROXMIRE. Mr. President, the other assurance which I would very much appreciate receiving is whether the Senate committee would investigate the possibility of collusion between the Navy and the Air Force, in view of unauthorized raids taking place on the same target by different services within a few weeks, earlier last year. And now we have the matter of five pilots who told the New York Times of the engagement. I wonder if the committee will hold hearings into that matter.

Mr. STENNIS. Mr. President, I do not want to say now that we will rush back and call these pilots in within a few days. I hope that the services will do something about these things. We have expressly said that we have passed on, so far, what we had before us, and that we are not quitting. That is not a threat. That is just a fact of life. However, I do not know what they are going to do about it. I do not know what these witnesses will say, because there is sometimes a difference when we get a witness on the telephone.

We have learned that from experience. The witness says one thing on the telephone, and then if we put him under oath, his testimony varies some. However, I want the services themselves to do something. I think it is their move now.

Mr. PROXMIRE. Mr. President, it has been 7 months and they have done nothing. The only action that has been taken is by our committee. I think that the committee deserves the greatest of praise from the people of the country. If we say that it is their move and that we hope they will come in voluntarily, I must say frankly that I am not satisfied with that. I do not think that we will get anything done.

Mr. STENNIS. Mr. President, I want to make it clear that this is not an accusation or anything. After we stopped the testimony, I said to some members of the staff that this was not what I would call an exhaustive record as a lawyer. However, I believe that it would take us 6 months to run down all possible clues with quite a few investigators. And I am thinking in terms of trained investigators that know what they are doing, know the subject matter, and know how to investigate it. They would have special legal advice available to them and be aided by such staff members as we have that are well versed in the matter.

Mr. PROXMIRE. I cannot think of any way in which the committee could better spend their time. This is a matter that is most serious and it troubles many people in the country, and it should. The only reliance we have is on our committee. The House is not going to do this. If the Senate does not do it, that will be the end of it. I think it would be a real tragedy.

Mr. STENNIS. Mr. President, I am not dodging or running away from anything. I do not want to leave that impression. However, I do not want to overspeak myself on what we can do.

I refer to page 14 of my written speech today. The first, second, and third points I am referring to.

This is something that we have as a worksheet. I said that we should be provided with a full report on the operation of the Inspector General systems and other inspection systems and monitoring systems within the military services, including alternative and possible reforms.

We were calling on the Secretary of Defense to give us reports by April 30, 1973, on that subject. We did not approve this. We have not formalized it. But it was our thinking that Congress last passed legislation on this subject in 1958, the Defense Reorganization Act. The blue ribbon panel report indicates that Congress attempt in that act to overcome the problems of diluted command, forcefully set out by President Eisenhower, may not have been effectively implemented by the Department of Defense. This type of issue requires detailed study and should also be the subject of a report to the Congress. That is a problem that is in the military itself.

We also wanted a report on a specific proposal of military oversight functions, pertaining to the military again, which would be assigned to any civilian or official within the Department of Defense.

This other matter that I had pointed out was that the subordinates should be given cards or writings of some kind so that they could compare the order they received with the rules of engagement, for instance, and at least have a chance to maybe raise the question and have it considered.

Mr. PROXMIRE. I wish to raise one point before I yield to the Senator from Iowa. The Senator did agree, as I understand it, that the report issued by the committee was very brief.

Mr. STENNIS. Yes.

Mr. PROXMIRE. Time was a handicap. It was not possible to get a full report. Would it be possible after some of these inquiries, to have a more comprehensive report on this matter, even though we go ahead and act on the nomination? It is so critical to civilian control that a more complete report would be helpful.

Mr. STENNIS. Does the Senator mean a report on the problems or the Lavelle case, so to speak?

Mr. PROXMIRE. The Lavelle case, and the full implications of it.

Mr. STENNIS. Frankly, I was disappointed that we did not have more of a report for this debate.

Mr. PROXMIRE. Yes. We have 500 pages of hearings and a one-page report.

Mr. STENNIS. We had a longer proposed report and we ran into difficulties about it and could not get agreement within the time available so we had to highly condense it. I hope we can bring this together some way in a more understandable manner, but I do not know. If we get into further hearings that will take time.

I appreciate the point the Senator made.

Mr. PROXMIRE. Mr. President, I yield to the Senator from Iowa.

Mr. HUGHES. Mr. President, I thank the Senator from Wisconsin for yielding.

I want to point out on behalf of the distinguished chairman of the committee—since he is not going to praise himself—the chairman wanted a more comprehensive report and presented it to the entire committee and the committee could not agree on anything. As a result of that we wound up with the report which came out, which I do not like. I am sure the chairman does not like it, and considers it inadequate. But as I said, time was our enemy. Some members of the committee did not want any report at all, because we do not customarily give a report on a nomination. It is just put on the calendar.

So we came up with a report that the chairman of the committee and I and others on the committee felt was a very limited compromise. In fairness to the chairman I want to point that out to the Senator from Wisconsin.

Second, I want to reinforce the Senator's request to the chairman of the committee. The Senator from Iowa feels that the Pentagon has an obligation between now and January. They have been served notice here and in the hearings. Many of us are totally disenchanted by what happened so far. I am personally disenchanted along many of the lines the Senator from Wisconsin pointed out.

I think a court of inquiry should be commissioned and instructed to bring back recommendations. It would permit a complete investigation and allow those whose names have been called into question to defend themselves, present their own witnesses, and point out why they are not guilty of these things and be exonerated. If they are not given that opportunity, all of those officers in that particular command, when the time comes for promotion—and the promotions do come to the Senate—are going to have questions raised about it. Eventually all of those nominations to higher grades come to the Senate. It is in the interest of those men who have already been implicated that an inquiry be held. If they are innocent they will be found innocent and a report could be made in respect thereto to Congress and to the American people.

As far as the Navy is concerned, I think they have adequate time to realize we have only one letter and, two witnesses that came in. One of those witnesses, if he did not alter his testimony by the time he finished testifying to the committee, had added to it.

I think the Senator from Missouri pointed out clearly that when you take a lieutenant in the Navy and he winds up meeting with the Chief of Naval Operations, with the chairman of the Joint Chiefs of Staff, and with the admiral who is head of the IG system, and other commanders, all in one morning, if they did not say one other cotton-picking word—they would not have to say one thing other than "amen" and "brother" and the effect would have been the same—he would have the living daylights scared out of him by the awesome presence of this command structure. In any court of law I would not say this is intimidating a witness, but, great God, it is certainly impressing him that his answers better be right by any set of circumstances.

So I am inclined to the idea that the

sheets are not clean and none of us like the idea of airing them, but it would be a whole lot better if between now and the middle of January they do their own airing because I, for one, as a Senator from Iowa, as long as I can press to see that they have done it, if they do not do it and we have to do it for them, that is the way it will be done.

I agree right now with the Senator as far as expert investigators and the burden of the committee is concerned, but I want to assure the Senator from Wisconsin as far as my relationship with the chairman of the committee is concerned, and with my differing point of view of the establishment, I could not be more in agreement. No man in the Senate is more concerned than the chairman of the committee with respect to what happened and what they are going to do in the future to see that it does not happen again.

I assure the Senator from Wisconsin that when two men in the top command structure of this country tell me there is no guarantee it will not happen again, that runs the red flag up the flagpole and it flies straight out on a calm day, because they do have the responsibility of coming up with recommendations and seeing that their house is clean, but in my opinion we have the responsibility to come back, as the chairman indicated, and do our best on behalf of the people of this country, because that is why we are elected.

Although I do not agree with the Senator from Wisconsin in his conclusions about General Abrams, I could not agree more on the need to press this matter unless they attend to it themselves.

To me it is an unsatisfactory answer that because one man has been dismissed from his duty, and retired at 70-percent disability at his last rank, that is a sufficient reprimand, when 200 men in a command structure do not say boo about anything.

We already have entered in the RECORD the Code of Military Justice, what the law requires, and the law was broken. There is no question about that. It was broken. The rules were broken.

My sympathy is great for the general involved in this and the men involved in this, but when you are a pilot hurtling along at close to the speed of sound, with missiles going off, and your plane is loaded with bombs, I say to anyone here: Who is going to worry much about what they hit? They are going to hit it and get out because it means the difference in whether they draw another breath or not.

The responsibility is there, and it must be taken and accepted, but there is no excuse, absolutely no excuse for an officer in the military of that rank deliberately taking it upon himself, regardless of the circumstances, to disobey orders of the President of the United States, the Commander in Chief of the Armed Forces of the United States, and disobey the directives of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff. And under no excuse whatever can this ever be acceptable.

I do not believe in capital punishment, as the Senator from Wisconsin knows, so there is nothing like that on my mind. The only thing I am saying is that what has happened to date is totally unsatisfactory to the Senator from Iowa, and I hope that, in the discussion today, the people understand clearly that there are a lot of others who believe just as the Senator from Iowa does and that we are expecting that this matter will not just be quietly placed to rest in the hope that it will all blow away and that when we get back in January it will be forgotten, because it will not be forgotten.

Mr. PROXMIRE. I thank the Senator from Iowa.

Let me conclude——

Mr. STENNIS. Mr. President, if the Senator will yield, may I just add to my answer that I have just given the Senator?

In response to the questions of the Senator from Wisconsin, I want to add the following:

There are many other questions, as I said at the beginning, that need to be raised and answered.

First of all, we do not yet know enough about the conduct of the air war in Southeast Asia to make a judgment about several important matters. The questions raised in this inquiry are most serious and they must not only be answered clearly and objectively, but they must be seen to be answered in this way. Our committee, even though it has some expertise in the area of military affairs in general, cannot hope to conduct as thorough and detailed an investigation as is needed: many of the issues involving military operations require technical experts, for example. I believe we have looked into these nominations as thoroughly and carefully as any military nominations since I have been on the Armed Services Committee. But far more than that is needed. What is required is a thorough and professional inquiry into the entire subject of protective reaction strikes in North Vietnam in 1971–72 as well as the overall command and control and reporting systems for the air war in Southeast Asia. Nor should this inquiry be limited to the Air Force, but should include the Navy.

Answering the unresolved questions involves details of tactics and related subjects which deserves far more attention than could be given to them in the closing days of a Congress in the course of making a decision about the nomination of an Army commander.

The forum for such an inquiry could be established in one of several ways: a commission within the Department of Defense, reporting also to the Congress, is one possibility.

Second, Mr. President, to my knowledge, there has been no official guidance within the Department of Defense concerning the importance of truthful and accurate reporting since General Lavelle was relieved of command in late March of this year. Truthful and accurate reports are the lifeblood of military command and control. It simply must be pointed out, and pointed out forcefully, by the Department of Defense and the military services, that false reporting will not be tolerated under any circumstances. Under the Uniform Code of Military Justice military men must obey any lawful order. But an order to falsify a report, under article 107 of the code, is an unlawful order. This point should be reiterated in training, in the academies, and in whatever other ways are necessary to emphasize its importance.

Third, some of the difficulties which arose in this case may have been the result of certain ambiguities about when operating authorities and rules of engagement had been changed. One of the witnesses before the committee, Gen. Alton D. Slay, recommended that some increased formality in the establishment of rules of engagement would be desirable—such as the requirement for written changes to be written and to originate at the top command. We need to take care not to increase redtape unnecessarily, but there may be some merit in General Slay's suggestion.

Then, finally, there are several issues about which we need more information before the Congress itself can decide whether legislative or other institutional changes are desirable.

For example, one unfortunate aspect of this case is that the enlisted man who wrote to Senator HUGHES and initiated the inquiry did not have sufficient faith in the Air Force inspector general system to use it to register his complaint. His reason was a very understandable one—namely, that the inspector general of the wing was both its vice commander and a participant in some of the missions which he considered to be unauthorized. The inspector general systems in all of the services have important functions, and they should not necessarily be completely revamped because of one incident. These are matters about which the Congress simply does not have enough information at this time.

Moreover, there are other inspection systems within the Armed Forces—one well known inspection system, that of the Strategic Air Command, has functioned well for many years in a highly important and sensitive role. This is a question on which I believe the Congress should be provided a full report: the operation of the Inspector General systems and other inspection systems and monitoring systems within the military services.

A second matter about which the Congress needs more information is the overall operation of the command structure of unified and specified commands. The President's Blue Ribbon Panel Report 2 years ago was critical of the operation of the current command system. In particular, there was reference to its complex nature and the weak authority given to unified and submitted commanders such as General Abrams. Congress last passed legislation on this subject in 1958: The Defense Reorganization Act. The Blue Ribbon Panel Report indicates that Congress's attempt in that act to overcome the problems of diluted command, forcefully set out by President Eisenhower, may not have been effectively implemented by the Department of Defense. This type of issue requires detailed study and should also be the subject of a report to the Congress.

In conclusion, Mr. President, I want to suggest that the Senate act affirmatively,

now, on the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army. Holding up this distinguished soldier's nomination to serve as Chief of Staff of the Army will not help any of our armed services to overcome the serious problems which I have discussed today. Quite the contrary. I therefore strongly urge that the unanimous recommendation of the committee be approved.

I thank the Senator. One thing more about these photographs. The monitoring is really more accurate and relied on, these reports. That was the very thing that was falsified. So the reports that were circulated around, including to General Abrams' headquarters, were the false reports. The true reports were the ones that were kept within this Air Force unit. So there was a monitoring instrument there that was totally misleading itself, and was taken out of action, and that is why they made the false report.

Mr. PROXMIRE. The point I wanted to make is whether or not any system could be devised that would protect the integrity of the photographs so that unauthorized strikes could be detected or prevented in the future.

Mr. STENNIS. May I add one word, too, about the lack of a more comprehensive report? We finished a hearing on General Haig last Friday, and a report had been prepared, and we wanted to present it to the committee Monday. It was an unusual situation, not one where we just have the report pass on. So we got into it Tuesday and got into the proposition that some Members thought it was too severe on General Lavelle. It was impossible to keep General Lavelle's part out of the debate. Anyway, we ran into this situation, and some Senators were at other meetings, some were out of town, running for reelection, and by this morning I decided the best thing would be to abbreviate this report. We did not have the time to do otherwise. We had to get this matter up here.

We could have gotten a longer report, but it would have taken days. The membership did not refuse to cooperate. I do not want to leave that impression. But it would have taken time to work out, and there was no time.

Mr. PROXMIRE. Mr. President, I am willing to agree with the Senator from Mississippi and the Senator from West Virginia to a time to vote on this nomination.

Let me say, before we come to that, that the Senator from Iowa raises a fundamental point. We have had the top generals say this can happen again. We must do all we can to prevent this from happening again. If we vote on this nomination and approve of it routinely, when it involves one of the central figures in this matter, it is going to happen again, in my opinion.

So I think what the Senator from Iowa has said suggests to me that henceforth we should scrutinize the various people who are nominated for higher rank, who come before the Senate, who are in the list of 200 people, including the generals, and so forth, involved, and serve notice in that way on the Pentagon that this is not the end of it, that we expect them to do what the Senator from Mississippi and the Senator from Iowa suggested. If they do not do it, they are going to have a lot of trouble in this body. It takes only one Senator to raise these issues. In this case, while we are going to approve the nomination of General Abrams tomorrow, in the future we might delay for a long period of time—we might even kill—some of the other nominations unless we get assurance from the Pentagon—which they have not done yet—that they are going to do everything they can to prevent future direct violations of orders of the President of the United States.

I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, hopefully with the concurrence of the distinguished Senator from Wisconsin (Mr. PROXMIRE), and that of the distinguished Senator from Mississippi (Mr. STENNIS), the distinguished Senator from Iowa (Mr. HUGHES), and other Senators, that a vote on the confirmation of the nomination of General Abrams occur tomorrow immediately following the vote on the motion to invoke cloture.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. Mr. President, reserving the right to object—and I am not expecting to object—frankly, I need to make contact, if I can, with the ranking minority member of our committee. Could the Senator defer his request for just a moment?

Mr. ROBERT C. BYRD. Mr. President, I withhold my request.

Mr. ROBERT C. BYRD subsequently said: Mr. President, I now renew my request with reference to the vote on the confirmation of the nomination of General Abrams.

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

Mr. ROBERT C. BYRD. I thank the distinguished Senators whose names I have mentioned, and all Senators.

ORDER TO RESUME CONSIDERATION OF LEGISLATIVE BUSINESS AFTER VOTE ON CONFIRMATION OF NOMINATION OF GENERAL ABRAMS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, as in legislative session, I ask unanimous consent that immediately following the vote on the confirmation of the nomination of General Abrams on tomorrow, the Senate return to the consideration of legislative business.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, if Senators have nothing further to say on the subject of the nomination tonight, I ask unanimous consent that the Senate now return to the consideration of legislative business.

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

MARINE MAMMAL PROTECTION ACT OF 1972—CONFERENCE REPORT

Mr. HOLLINGS. Mr. President, I submit a report of the committee of conference on H.R. 10420, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. HART). The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10420) to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of October 2, 1972, at pp. 33220–33226.)

Mr. HOLLINGS. Mr. President, the marine mammal bill under consideration today is one of the most important pieces of wildlife legislation ever to be put to final approval by the Congress. I believe without fear of contradiction that this legislation will make the United States the leader among nations in the conservation of its wildlife and of those marine mammals under the jurisdiction of the United States.

The committee on conference worked diligently to iron out the remaining differences between the two versions of the bill. I believe the conference report (No. 92–1544) on this bill exemplifies the cooperation between the conferees to reach agreement on legislation which will be in the best interest of the animals affected.

This has been an extremely controversial bill. Lack of information, or misinformation, can easily generate strong differences of opinion. I hope that the Secretaries, in fulfilling their obligations imposed by this Nation, will quickly marshal all the available facts about marine mammals so we will know all the facts. A good case in point is the matter of the Canadian Harp seal, which will be strongly affected by this legislation, as well as the fur seal, whales and other species.

I am pleased that the House accepted the Senate amendment creating a perpetual moratorium on the taking or importing of marine mammals, subject to a strict list of exceptions—all of which were carefully considered by the conferees.

At the same time, the House also agreed to language making special provisions for native Alaskan Eskimos, Aleuts, and Indians.

I can report that the bill as approved by conference is a genuine reflection of the wishes of the Senate.

Mr. STEVENS. Mr. President, the passage of the Marine Mammal Protection Act of 1972 is of great importance to the State of Alaska. In particular, those provisions concerning the Native taking of marine mammals and the Pribilof fur

seal harvest are of great interest to the people of my State.

The provision concerning the taking of these animals by Alaska Natives is found in section 101(b). This permits taking for subsistence and also for the cottage industries—arts, crafts, clothing and marine mammal food.

I request unanimous consent that section 101(b) of H.R. 10420, the Marine Mammal Protection Act of 1972 be printed in the CONGRESSIONAL RECORD at this point in its entirety.

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

Sec. 101(b) The provisions of this Act shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes by Alaskan natives who reside in Alaska, or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: *Provided*, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce. *And provided further*, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.

Mr. STEVENS. I next request that section 108(b) which concerns the Pribilof fur seal harvest be printed in its entirety in the CONGRESSIONAL RECORD.

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

Sec. 108 (b) (1) In addition to the foregoing, the Secretary shall—

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what nation trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act or both, to make the Convention and this Act consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds—

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (1) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (H) make the Convention and this Act consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

Mr. HOLLINGS. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Carolina.

The motion was agreed to.

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. ALLEN. Mr. President, I ask unanimous consent to have printed in the RECORD a section-by-section analysis of H.R. 13915 prepared by Mr. Eli Howell of my staff, which I feel Senators may benefit from reading.

There being no objection, the analysis 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 'Equal Educational Opportunities Act of 1972.'

Section 2

Policy and Purpose

Subsection (a) declares (1) that it is the policy of the United States that all public school children are entitled to equal educational opportunity without regard to race, color, sex, or national origin, and (2) that the neighborhood is an appropriate basis for public school assignments.

Subsection (b) states a twofold purpose of the Act. (1) To authorize concentration of resources under the Emergency School Aid Act on educationally deprived children and (2) to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

Comment

SEC. 2. The statement of policy that all public school children are entitled to equal educational opportunity is the necessary predicate for creating a new cause of action which will be discussed under Title II of the bill.

The policy with respect to the neighborhood school as an appropriate basis for assignment of public school children does not conflict with U.S. Supreme Court rulings to the effect that desegregation cannot be limited to walk-in schools. The remedies provided by this bill for desegregating schools and the removal of the vestiges of the dual school system do not limit remedies to walk-in or neighborhood schools. Furthermore, a similar provision is contained in Title VII of P.L. 92-318, which reads as follows:

Nothing in this title shall be construed as requiring any local educational agency which assigns students to schools on the basis of geographic attendance areas drawn on a racially nondiscriminatory basis to adopt any other method of student assignment.

The nature of opposition to neighborhood school assignments is reflected in comments in previous United States District Court opinions to the effect that neighborhood and community schools are not "sacrosanct" or, as one judge put it, neighborhood schools, "were not decreed in heaven." For that matter, neither are the alternatives to neighborhood assignments.

Neighborhood and community schools have constituted the basis for the structure of the public school system in our nation from time immemorial. What are the alternatives? Thus far, we have experimented with assignments based on race. It is now urged that we experiment with assignments based on socio-economic class.

Both alternatives are advocated on psychological and sociological grounds. However, Justice Burger has criticized a majority ruling by the United States Supreme Court because it had put controlling weight on sociological theories, as opposed to constitutional doctrine. The Chief Justices objection is well founded. The hypotheses and theories relating to supposed benefits of racial and sociological mixes have been repudiated by authoritative conclusions based on data obtained in the evaluation of such theories.

We cannot but conclude that neighborhoods are and should be continued, as a matter of public policy, as the basis for assignments to public schools; but if this basis for assignment is to be changed, it is not within the purview of equity powers of U.S. District Court Judges to decide what is a preferable alternative and to compel a change under threat of trial for contempt of Court.

Purpose

(b) The purpose of concentrating resources is accomplished by amending Title VII of the Emergency School Aid Act in a manner set out in Title I of this Bill.

The purpose of removing all vestiges of the dual school system is accomplished by remedies set forth in Title IV of this Bill. These remedies will be discussed by way of comment on provisions of Title IV.

Section 3

Findings

Contains six congressional findings, each of which is set out separately followed by comments.

(1) The maintenance of dual school systems where pupil assignments are made solely on the basis of race, color, sex, or national origin denies the equal protection of the

laws, guaranteed by the Fourteenth Amendment.

Comment

The significance of this finding is that it defines a dual school system and equates it with state imposed segregation which is a denial of equal protection of the laws. It is hard to understand how liberals could oppose this finding.

(2) Many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in extensive student transportation for the purpose of abolishing dual school systems and eliminating their vestiges.

Comment

This finding is a statement of the obvious. However, some have questioned the conclusion that extensive transportation of students has been involved. They cite statistics to show a decline in numbers of students transported and relative safety of this transportation. Raw statistics on the subject of busing are almost meaningless.

For one thing, there has been a substantial decline in the number of pupils bused because of the population trend from rural areas to cities. Consequently, less busing is required.

Furthermore, it is not busing per se that is objected to. It is the massive busing and cross busing away from neighborhood and community schools to schools scattered throughout a city or county that is objectionable. The statistics tell us nothing of numbers of children who are bused and cross bused for the sole purpose of obtaining an arbitrary racial mix in schools.

To argue that busing of this type is as American as apple pie is nonsense. Statistics on busing are meaningless unless broken down into categories, which among other things can tell us the number of pupils bused because of arbitrary pupil assignments which deny parents and children the right to attend local neighborhood and community schools which schools are already desegregated.

For example, Chief Justice Burger has said that courts may order busing from one end of the city to another and from the core of the inner city to the perimeter of a county and vice versa. Such busing and massive cross busing was specifically authorized in the Charlottee-Mecklenburg decision.

In some instances, busing is an indirect result of court ordered closing of schools, pairing schools and grades, clustering schools, and fantastic gerrymandering of school attendance districts. This busing is objected to because of hardships imposed and because it is for the sole purpose of achieving a maximum degree of racial mix arbitrarily imposed by Federal Judges. How many children are being bused because of orders of this type? The statistics tell us nothing.

Furthermore, U.S. District Courts have ordered busing from independent school districts to county school districts. In one instance, the city of Pleasant Grove, Alabama was ordered by a U.S. District Judge to surrender its school properties to the county school board although the local school facilities were constructed and remain to be paid for by taxation voluntarily assumed by local citizens. The taxpayers of the independent city system were required to pay the cost of purchasing buses and transporting children who resided in the adjoining county system in order to maximize the racial mix in the county system. As recently as March 1, 1972, the Supreme Court in the case of Wright v Council of the City of Emporia, Virginia, upheld a decision to compel an independent city school system to merge with the county system even though both systems were desegregated. In fact, the racial composition of the separate school systems after the merger would produce a racial difference in enrollments of but one or two children in a class. In a stinging dissenting opinion by Chief Justice Burger, joined by Mr. Justice Blackmon, Mr. Justice Powell, and Mr. Justice Rhenquist, it was observed that:

Obsession with such minor statistical differences reflects the gravely mistaken view that a plan providing more consistent racial ratios is somehow more unitary than one which tolerates a lack of racial balance.

Busing statistics do not tell us how many children are transported by reason of the obsession of U.S. District Court Judges with racial ratios.

Finally, the statistics say nothing about the number of children who are bused by a yet unnamed device which I refer to as "herding." This system provides that school children be rounded up from all over the countryside. They are then transported to a corral or pick-up point. They are then reloaded on buses and transported to separate schools scattered around the area to which they are assigned by a U.S. District Court Judge. How many children are being bused pursuant to this "equitable" principle? The statistics do not say.

These examples of busing have as an overriding purpose the achievement of an arbitrary racial mix. This is the type busing which has inflamed the emotions of the people resulting in a demand for legislative relief.

Opponents of this finding would have us believe that such busing is neither excessive or extensive. They prefer to perpetuate this type of busing and to legitimate it as a proper remedy in alleged denials of equal protection of laws, to be applied in the sole discretion of a U.S. District Court Judge.

They appear to be oblivious to the fact that U.S. District Court Judges can apply these harsh remedies anywhere in the United States in the absence of protections provided by the bill.

(3) The implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amount of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided.

Comment

The above finding is derived from known facts that, with few exceptions, every educational system in the United States is short of funds. None have enough money to implement much needed improvements in educational programs and facilities. It stands to reason that any new education program which requires local educational agencies to divert large sums to new buildings or to transportation necessarily reduces financial resources available for the maintenance and improvement of educational facilities and instruction. Yet, some opponents of this bill insist that when U.S. District Courts require school systems to take on or expand extensive and costly transportation systems, it does not diminish remaining funds to maintain the quality of existing educational programs and facilities. This contention abandons common sense.

Furthermore, this argument overlooks the fact that some school systems are compelled to purchase buses in situations where local school systems have never before provided bus transportation. Consequently, more than the cost of buses is involved. Nonbusing school systems are primarily city and independent school systems. They are compelled to purchase buses, employ and train drivers, establish maintenance shops, and absorb the cost of insurance, repairs, and the cost of absolescence of equipment. It simply cannot be denied that these educational agencies are required to expend large amounts of funds thus depleting their financial resources which could be better spent in improving educational opportunities for all.

(4) Transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive.

Comments

This finding merely confirms common sense judgments. A dumbell will admit that busing can be excessive. Congress is saying that it is excessive when: *It creates a serious risk to the health and safety of children;* when it disrupts the educational process carried on in schools; and when busing significantly impinges on the educational opportunities which might otherwise be available to the bused children. Common sense dictates that the conditions described are valid regardless of the age of the child. The next finding relates only to children enrolled in the first six grades.

(5) The risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades.

Comments

This finding is based on what the United States Supreme Court has said with reference to the importance of the age of children in determining whether or not the time and distance of travel by bus transportation is excessive. Congress finds that the risk and harms are particularly great for children in the first six grades.

Finding Number 4 is that busing is excessive when it creates a serious risk to the health and safety of students. Finding Number 5 is that the risk and harms are particularly great for children in the first six grades. This last observation does not detract from the validity of finding Number 4 which designates additional elements of excessive busing which are applicable to all ages.

In evaluating the reasonableness of findings with respect to excessive busing, it should be emphasized that if Congress does not undertake to determine what constitutes excessive busing—then this decision is left to the judgment of a single United States District Court Judge, in the exercise of his discretion. No Federal Judge has the power to impose on an individual serious risks to his health and safety. It does not matter if the individual is a pupil in the first grade or the twelfth grade or if an individual is a parent, employee or whatever.

It is simply a contradiction of the meaning of the word "equity" and the history of equity jurisprudence to assert that a judge, in his discretion, may impose remedies which subject individuals to serious risks to their health and safety. Even condemned criminals are protected from such abuses of power. Why should children not have the same protection?

The same can be said with respect to the equity power of a judge to command transportation of school children if the transportation disrupts the schools and educational process. There are no powers under equity jurisdiction to do anything which violates the dictates of common sense and conscience. Court ordered transportation of school children which results in disruptions of schools and the educational process is not equity. Neither is there a power in judges to require transportation which impinges on the educational opportunities of the children involved—such orders are the antithesis of equity.

(6) Court guidelines for fashioning remedies to dismantle dual school systems have been incomplete and imperfect and have not established a clear, rational, and uniform standard for determining the extent to which the local educational agency is required to reassign and transport its *students to eliminate the vestiges of a dual school system.* (Emphasis added.)

Comment

The U.S. Supreme Court has frequently acknowledged that the guidelines provided by courts for shaping remedies to achieve a unitary school system have been "incomplete and imperfect." Furthermore, neither Congress nor the Supreme Court has established a clear and consistent definition of the phrase "vestiges of a dual school system." For that matter, there is nowhere to be found a definitive and consistent explanation of the term "unitary school system." Under the circumstances, it is rationally impossible for Congress not to find that neither local educational agencies nor U.S. District Courts have had inadequate guidance as to what is required by way of reassignment and transportation of students in order to establish a unitary school system and remove the vestiges of a dual school system.

Subsection (b) provides that the foregoing reasons make it necessary and proper for Congress to specify appropriate remedies for the elimination of the vestiges of dual school systems pursuant to the powers granted in the Constitution.

Comment

It is doubtful that opponents of this bill will seriously question any of the six findings by Congress. What they do object to is the exercise by Congress of the power to specify appropriate remedies provided in Title IV for the correction of denials of equal educational opportunities. In other words, if the bill were limited in purpose to providing remedies for correction of vestiges of a dual school system, the objections would likely melt away.

TITLE I—ASSISTANCE

Amends the Emergency School Aid Act in numerous technical details to permit a concentration of resources on educationally deprived students.

Comment

Sec. 101. Amends various sections of Title VII of P.L. 92–318, the short title being, "Emergency School Aid Act." The purpose of the amendments is to make $500 million for two fiscal years available for use on programs for educationally deprived students attending schools which enroll a high concentration of students from low-income families. Under provisions of Title VII, there is authorized to be appropriated a total sum of $1 billion for the Fiscal Year ending June 30, 1973 and $1 billion for the Fiscal Year ending June 30, 1974.

For the purpose of brevity, Title VII of P.L. 92–318 as amended, is attached as an appendix to this analysis.

Objections to these amendments have related to the contention that Congress should authorize an appropriation of much more than $500 million for each of two fiscal years, in addition to the $2 billion authorized to be appropriated under P.L. 92–318. The answer to this contention is that $6 billion is currently authorized to be appropriated for Title I programs designed to accomplish the purposes of this Title. It has not been demonstrated that additional authorizations are either necessary or desirable. Congress has appropriated only about $2.6 billion of the $6 billion authorized to be appropriated and additional authorizations are not necessary.

In any event, an objection to the bill on the ground of inadequate funding implies approval of the bill in principle.

TITLE II—UNLAWFUL PRACTICES

Section 201

Denial of Equal Educational Opportunity Prohibited

This section provides that no *State* shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin by—

(a) deliberate *segregation* by educational agencies on the basis of race, color, sex, or national origin among or within schools;

(b) failure of educational agencies which formerly practiced deliberate *segregation* to take affirmative steps, consistent with title IV, to remove the vestigates of their dual school systems;

(c) assignment by educational agencies of students to schools, other than the ones closest to their homes, where the assignment results in a greater degree of *segregation* of students on the basis of race, color, sex, or national origin than would result if the students were assigned to the schools closest to their homes which provide the appropriate grade level and type of education;

(d) discrimination by educational agencies on the basis of race, color, sex, or national origin in connection with the employment of school faculty and staffs;

(e) transfer by educational agencies of students from one school to another if the purpose and effect is to increase *segregation* of students on the basis of race, color, sex, or national origin; or

(f) failure by educational agencies to take appropriate action to overcome language barriers that impede equal participation by students in instructional programs.

Comment

Subsections (a) and (b) of this section relate to "deliberate segregation." This is an illusive term which some courts have held to be descriptive of situations where schools have been located and maintained in all white or black or predominantly white or predominantly black neighborhoods. Such schools have been held to be deliberately segregated. The reasoning is that to condone segregated schools and to refuse to remedy such segregation is equivalent to imposing it by the state.

It cannot be questioned that "deliberate segregation" is made unlawful and constitutes a cause of action for denial of equal educational opportunity as well as a denial of equal protection of the law. In support of this conclusion, it will be noticed that the word "segregation" is used in describing four separate unlawful practices. Under definitions in Title V of this bill, it is provided,

"(c) the term 'segregation' means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin and within a school on the basis of race, color, or national origin.

"(d) The term 'desegregation' means desegregation as defined by Sec. 401(b) of the Civil Rights Act of 1964."

This last section of the Civil Rights Act of 1964 defines desegregation as follows:

" 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in *order to overcome racial imbalance.*' "

The U.S. Supreme Court construed this section as follows:

"The legislative history of Title IV indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called 'de facto segregation'. . . ."

The definitions of the words "segregation" and "desegregation" used in the bill made it unmistakably clear that a cause of action is created to remedy *"de facto"* segregation, but that no cause of action lies to overcome "racial imbalance." This conclusion is reinforced by the remedies provided and the specific exception provided in Section 202, to the effect that failure to attain a balance shall not constitute a denial of equal educational opportunity or equal protection of the laws.

Subsection (c) governs pupil assignments and transfers by educational agencies so as to prevent a greater degree of segregation of students. This section applies in all schools in the United States.

The discriminations described in Subsections (d) relating to employment of school staff and (e) relating to transfer of students, and (f) relating to language barriers have nationwide application. In short, the totality of unlawful practices apply to schools in every region and section of every state in the United States.

Therefore, one can reasonably conclude that opponents of this bill are opposed to Congressional action to provide a statutory remedy for the denial of equal educational opportunities resulting from segregation as defined by this bill.

It is not my purpose nor intent to question motives of Senators. However, there are at least three and there would be four instances, if this bill is not passed by the Senate, where Senators distinguished by long and loud condemnation of racial segregation in public schools have voted to exempt their states from the application of laws designed to help eliminate segregation in all states. This seems to be another of those instances.

Section 202

Balance Not Required

"The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of *equal educational opportunity, or equal protection of the laws.*" (Emphasis added.)

Comment

It is significant that this Section does not use the term "racial balance." It merely confirms what the Supreme Court has said on this matter in the context of equal protection of the laws. More specifically, the Court said in Charlotte-Mecklenburg:

"If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse."

Section 203

Assignment on Neighborhood Basis Not a Denial of Equal Educational Opportunity

This section declares that, subject to other provisions of the title, assignments of students to schools nearest their homes which provide appropriate grade level and type of education are not a denial of equal educational opportunity or of equal protection of the laws unless the assignments are for the purpose of segregating students on the basis of race, color, sex, or national origin, or the schools to which the students are assigned are located where they are for the purpose of so segregating students.

Comment

The implications in this section are better comprehended when the content is expressed affirmatively in substance as follows:

"If a student is assigned to a neighborhood school for the purpose of segregating students, or if the neighborhood school is located on its site for the purpose of segregating students then such students are not entitled to be assigned to a school nearest their places of residence. Otherwise the assignment of students to schools nearest their places of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws."

Under this provision any school in the South constructed during the period when schools were segregated by law, and perhaps since then, could be held by a court to be located on its site for the purpose of segregating students. Therefore, this section would seem to effectively deny students in southern states the right to attend schools nearest the place of their respective residences.

Since this section contains the phrases "equal educational opportunities" or "equal protection of the laws," it would seem to apply to schools in urban areas of states outside of the South if schools were located consistent with federal policy governing FHA housing. Policies of this agency promoted racially homogeneous neighborhoods. In short, there is good reason to believe that the provisions of this section may apply throughout the United States.

TITLE III—ENFORCEMENT

Section 301

Civil Actions

An individual who is denied equal educational opportunity, as defined by the act, may institute a civil action in their appropriate U.S. District Court for appropriate relief. The Attorney General may also institute such civil actions on the behalf of any such individual.

Comment

As previously pointed out, this section creates a cause of action consistent with public policy that *all children enrolled in public schools* are entitled to equal educational opportunity without regard to race, color, sex, or national origin. As to applicability, it implements Sec. 201 which states that:

"*No state* shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin."

Section 302

Population Changes

This section provides that when a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

Comment

This section is consistent with the observation of the Chief Justice in Charlotte-Mecklenburg that:

"At one 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 decision 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."

Section 303

Jurisdiction of District Courts

The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 301.

Section 304

Intervention by Attorney General

Whenever a civil action is instituted under section 301 by an individual, the Attorney General may intervene in such action upon timely application.

Section 305

Suits by the Attorney General

The Attorney General shall not institute a civil action under section 301 before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of title II of this Act; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

Section 306

Attorneys' Fees

In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

Comment

These last sections require no elaboration.

TITLE IV—REMEDIES

Section 401

Formulating Remedies; Applicability

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, a 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.

Comment

There can be no objection to a judge in equity cases formulating an appropriate remedy to meet particular circumstances which may deny equal educational opportunities or equal protection of the laws.

This provision is useful if it will serve to inhibit U.S. District Court Judges from distorting traditional equity principles by imposing on numerous school systems the precise remedy or remedies without regard to the wide variety of circumstances and conditions in the separate school systems. After all, this is what equity is all about. This is the reason underlying the flexibility of equitable remedies and the discretionary power of judges to fine-tune decrees to meet particular circumstances.

Section 402

Types of Remedies

In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or on the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin.

(d) the creation or revision of attendance zones or grade structures without requiring transportation that described in section 403;

(e) the construction of new schools or the closing of inferior schools; or

(f) the construction or establishment of magnet schools; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 403 and 404 of this Act.

Comment

The provisions of this section are applicable only in cases where a court, department, or agency of the United States has imposed desegregation plans which, in implementation, require *transportation* of students either *directly* or *indirectly*.

Examples of orders or plans which directly require transportation is found in cases where school boards have never provided transportation of students, yet, a court order compels such boards to purchase buses and establish an entire system of transportation from scratch in order to comply with the court-ordered plans.

Examples of transportation which may be indirectly required are provided in cases where a court-ordered plan requires closing schools, clustering, pairing, or grotesque gerrymandering of school attendance districts. In such cases, the court order may say nothing about transportation of students but the effect of the order is that many children could not attend the school to which they were assigned without bus transportation.

In a case where direct or indirect busing is required, it is provided that judges shall consider and be guided by a series of remedies to be considered singly and in combination in an order of priorities. These remedies are in sequence as follows:

Briefly, judges shall consider the effectiveness of an assignment of students to the schools closest to the place of residence, taking into account problems of overcrowding and natural physical barriers, such as mountains, roads and rivers. If this remedy is inadequate, judges shall consider assignments closest to the residence of the student, taking into account only the problem of overcrowding. If these remedies are still inadequate, the court shall, consistent with United States Supreme Court mandate, permit transfers of pupils, on the basis of race, from schools in which a race of the applicant is in a majority to a school in which that race is in a minority. If this combination of remedies is still inadequate, the courts may alter attendance zones, grade structures, and require transportation to a school which is next nearest to the place of residence of the students so transported. Then the court may require the closing of inferior schools and the construction of new schools and the construction or establishment of magnet schools. Each of these remedies has heretofore been enforced under equity powers of United States District Court Judges. If this bill becomes law, the courts may now order constructions or closings under authority of statutory law. This is the first time to my knowledge that Congress has ever specifically authorized closing schools and constructing schools to implement equal educational opportunities as provided by this bill or in furtherance of implementing equal protection of the laws under the Fourteenth Amendment.

It is inconceivable to me that the above remedies are inadequate to desegregate public schools or to remove all vestiges of a dual school system. However, should these remedies be inadequate there is yet another provision which authorizes "any other plan which is educationally sound and administratively feasible," subject only to the limitation that pupils may not be transported beyond the next nearest school to their place of residence and subject to the provision that school district lines drawn by states, cities, and independent school districts may not be ignored or altered, unless it can be established that the lines were drawn for the purpose of and had the effect of segregating children in public schools by race, etc.

The effect of the catch all remedy in subsection (a) is that U. S. District Courts have

at their command every single remedy they have heretofore used, subject only to the limitation on transportation and the limitation on discretionary powers of judges to disregard attendance district lines drawn by states or under state authority such as county boundary lines as well as city and independent school district lines.

I am convinced that the school systems which serve Harlem and the District of Columbia could be desegregated by resort to the remedies specifically authorized by this bill. All a judge has to do is close enough schools and order busing to the next nearest school.

Since all the remedies provided by this section, including the remedy of "any other plan," have long been applied by U. S. District Courts, with approval of the U. S. Supreme Court, any objection to this title must necessarily relate to the limitations on transportation to the next closest school to the place of residence of pupils or to the limitation recognizing the integrity of school districts drawn under authority of state legislatures.

Opposition to these limitations implies that there is a constitutional duty of courts of equity to assign pupils to schools in a manner to require transportation beyond the school next closest to a pupil's place of residence and also a constitutional duty for local school officials to disregard school district boundaries drawn under authority of state legislatures.

In summary, there is no provision in this section which conflicts with any U.S. Supreme Court ruling, as distinguished from *obiter* in certain Supreme Court opinions in which these points were not the principle questions to be decided and which were made only in the course of argumentation.

If this bill passes, courts of equity will no longer be required to allocate financial resources of state and local governing bodies and establish a priority of expenditures, as they have done in the past under a pretense that such powers were conferred as an incident of equity jurisprudence. Hereafter, judges in these cases may do whatever they may think is required under authority of Congress. Thus, I cannot comprehend why so-called liberals oppose this bill.

Section 403

Transportation of Students

Subsection:

(a) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a 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.

(b) No court, departments or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

Comment

The question raised by subsection (a) is whether or not it does in fact limit transportation of any student to the school closest or next closest to his place of residence. For example, Section 203, which relates to assignment on a neighborhood basis, contains a proviso that one is not entitled to assignment to a neighborhood school if the school had been located on its site for the purpose of segregating students. Thus, it may be that in southern states most schools constructed up until recently can be found to have been located on their sites for the purpose of segregating students. Consequently, the nearest school, the next nearest school, and the next nearest school, and, in fact, all schools fall within the exception. The same can be said for many schools in cities and counties outside of the South where schools were located on their sites to serve all white or all black neighborhoods.

Subsection (b). This subsection embraces a U.S. Supreme Court recognition of a limitation on "equity" powers of U.S. District Court Judges. Equity does not require that children be transported at the risk of the health of the child or if it significantly impinges on the educational process. This would hold true regardless of the age of children involved.

It should be noted that this limitation applies to individuals and not to groups or classes of individuals. It is a distressing commentary on the abuse of equity powers by Federal Court judges that both the U.S. Supreme Court and Congress has found it necessary to restrain judges in order to protect a fundamental right of all human beings.

Subsection (c). Again presents the problem of trying to define such terms as "desegregated," "constitutional requirements," "unitary system," and "vestiges of a dual system."

Nevertheless, when a court of competent jurisdiction determines that a school system qualifies for designation by any one of these terms, public school agencies may not thereafter be required to submit new desegregation plans or modify court approved desegregtaion plans to accommodate residential shifts in population, *if* such new plan or modification would require transportation of students.

The language in this subsection is the same as used in Section 302, which states that population changes shall not *per se* constitute a cause of civil action to compel a new plan of desegregation. The section now under consideration, just as section 302, is consistent with Supreme Court views on the subject.

Section 404

District Lines

In the formulation of remedies under section 401 or 402 of this Act, the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

As previously mentioned, this section recognizes the integrity of school district lines drawn by a state which necessarily includes school district lines which correspond to county and municipal boundary lines and school district lines of independent school districts, the boundaries of which have been drawn under specific authority of state legislatures. It is conceivable that some independent school districts like that of Pleasant Grove, Alabama, could be found to have been drawn by the legislature for the purpose of segregating children on the basis of race, etc. In any event, equity powers of the court do not extend to a right to ignore boundary lines of political subdivisions of the state.

Section 405

Voluntary Adoption of Remedies

Nothing in this Act prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

Comment

This section needs no elaboration.

Section 406

Reopening Proceedings

On the application of an educational agency, court orders, or desegregation plans under Title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin, shall be reopened and modified to comply with the provisions of this Act. The Attorney General shall assist such educational agency in such reopening proceedings and modifications.

Comment

Cases in equity may be reopened at any time, independently of statutory authority, for the purpose of seeking modifications as may be justified by changed circumstances. This section merely authorizes reopening on application of an educational agency and provides that the Attorney General shall assist such educational agency in the reopening proceedings and in obtaining appropriate modifications.

In any case where U.S. District Court judges have gone beyond reasonable limitations on equity powers of courts, it is only reasonable and just that such orders should be reopened and modified to make them consistent with laws of Congress. A traditional principle of equity is that equity follows the law. In school desegregation cases, equity must follow first the law of the Constitution and then the federal and State statutory laws to the extent that such laws are consistent with the Constitution. The right to reopen for modification consistent with valid Federal laws is fundamental and cannot seriously be questioned. In any event, there are very few, if any, provisions in this bill which offer material relief to parents, school children, and school officials in the southern states. But I suppose we should be grateful for any form of relief that might be provided. This reopener provision is one of the crumbs of possible relief.

From the standpoint of southern states alone, if this bill were to be stripped of limitation which are already recognized by the Supreme Court as limitations on equity powers of U.S. District Courts, precious little would be left in the way of relief. From the standpoint of states outside of the South, very significant progress can be made by providing equal educational opportunities. School systems in states outside of the South may very well need the limitations in this bill in the very near future.

Section 407

Limitation on Orders

Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, be terminated if the court finds the defendant educational agency is not effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were in the past segregated de jure or de

facto. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found to be effectively excluding any person from any school because of race, color, or national origin, and this shall be so, whether or not the schools of such agency were, in the past segregated de jure or de facto.

Comment

This section presents another example of semantic difficulties but it is clear that court orders which require transportation of children to remedy a denial of equal protection of the laws, which is to say de jure segregation, shall be terminated, only to the extent that transportation is required, when an appropriate court finds that a school system is unitary. The language of this section seems to define a unitary school as one which "is not effectively excluding any person from any school because of race, color, etc.," regardless of whether a court may find, as in the Detroit case and many others, that the segregation is *de jure* or *de facto*.

It is worth noting that the termination requirement applies only to orders involving a denial of equal protection of the laws and not a denial of equal educational opportunity. It should be noted also that the orders shall be terminated only to the extent that it involves transportation.

The second sentence of this section would prohibit additional court orders requiring transportation of students unless it is found that a school agency is operating a dual school system. There is nothing in this provision which is inconsistent with the requirement of the Constitution as determined by the Supreme Court.

Section 408

Any court order requiring the desegregation of a school system shall be terminated, if the court finds the schools of the defendant educational agency are a unitary school system, one within which no person is to be effectively excluded from any school because of race, color, or national origin, and this shall be so, whether or not such school system was in the past segregated de jure or de facto. No additional order shall be entered against such agency for such purpose unless the schools of such agency are no longer a unitary school system.

Comment

This provision is distinguished from section 407 by reason of the fact that it is not limited to cases involving transportation of students. In other words, when a school is found to be operating a unitary school system, any court order requiring the desegregation of the school system shall be terminated and this applies to school systems which may have denied pupils an equal educational opportunity as well as those which have denied equal protection of the laws. No additional orders requiring desegregation shall be issued unless the schools of an agency are found to be operating dual school systems.

TITLE V—DEFINITIONS

Section 501

For the purposes of this Act—

(a) The term "educational agency" means a local educational agency or a "State educational agency" as defined by section 801(k) of the Elementary and Secondary Education Act of 1965.

(b) The term "local educational agency" means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965.

(c) The term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin.

(d) The term "desegregation" means desegregation as defined by section 401(b) of the Civil Rights Act of 1964.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

TITLE VI—MISCELLANEOUS PROVISIONS

Section 601

Section 709(a) (3) of the Emergency School Aid Act is hereby repealed.

Comment

This has reference to provisions of P.L. 92-318 which authorizes the construction of educational parks.

Section 602

Separability of Provisions

If any provision of this Act or of any amendment made by this Act, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this Act and of the amendments made by this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Passed the House of Representatives August 18 (legislative day, August 17), 1972.

Mr. CANNON. Mr. President, I am pleased that H.R. 13915 is now being debated by the Senate and that this body will have an opportunity to consider one of the most pressing problems facing millions of Americans. I only regret that this so-called busing legislation was not called up earlier so as to provide the Senate with more time for closer scrutiny and examination of the enormous problems of forced busing in our public school system. As it is, now we are faced with adopting this legislation or none at all. Opponents of the bill would have us do absolutely nothing in hopes that the problem will go away as the school year moves on. In talking to the parents in my State and particularly to those of Clark County, Nev., who are under Federal court order to bus their children. I can tell the Members of this body that this simply is not going to happen.

I feel strongly that Congress should provide the direction and guidance that is so badly needed in this area. As the distinguished senior Senator from Nevada, the Honorable ALAN BIBLE, suggested earlier in the week, Congress for much too long has simply abdicated its clear responsibility in this area to the courts. And because of this void our courts have taken it upon themselves and attempted to deal with the problem of racial segregation in the public schools. But all too often their direction and guidelines have been inconsistent, confusing, and very often unfair to thousands of schoolchildren.

The time has come for this body to assume its rightful leadership and meet this tough problem head on. I have consistently opposed forced busing and school assignment based solely upon race. I think that the bill now before us, H.R. 13915, the Equal Education Opportunities Act of 1972, deals directly with forced busing and school assignment. The provisions of this bill simply make it clear that:

Congress declares it to be the policy of the United States that all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and that the neighborhood is the appropriate basis for determining public school assignment.

This legislation goes a long way toward providing in a responsible manner the clear guidelines that have been lacking in dealing with school desegregation.

The confusion of the American people over this issue has been one of the things that has troubled me the most. We have a situation where the courts are acting in one fashion, the Congress is passing or attempting to enact legislation countermanding the court orders, and the President issues statements so ambiguous that they serve little or no useful purpose at all. Is it any wonder that the American people are confused and mystified as to just what it all means?

Let us end the confusion now by acting to remove the void that we have left open to the judicial branch of this Government. The so-called busing issue is a tough problem that must be dealt with by each Member of this body. I urge the Senate to act now and adopt legislation that will provide the American people with the kind of clear policy and guidelines so desperately needed to resolve the dilemma facing schoolchildren and parents across the Nation.

I also ask unanimous consent to have printed at the conclusion of my remarks a sampling of correspondence I have received from concerned parents in my State. You will note that their concerns and fears deal with the elimination of the neighborhood school concept and the stability, security, convenience, and cohesiveness the neighborhood school provides.

I also wish to call to the Senate's attention a statement by R. C. Lunnis, a notary public in Las Vegas, Clark County, Nev., certifying that 35,000 people in the Las Vegas area signed a petition opposing forced busing and calling for the preservation of the neighborhood schools.

I also ask unanimous consent to have printed correspondence from the attorney for the Clark County School District in Las Vegas, Nev., Mr. Robert L. Petroni. Mr. Petroni raised some points on section 406 of the bill before us, and I think this may be of interest to the Senate. At a later date I plan to raise questions on the reopening provision in section 406 at greater length. I contacted the Attorney General for his judgment on this section and a response from his office is also submitted for the RECORD.

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

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., October 6, 1972.

Hon. HOWARD W. CANNON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CANNON: This is in response to your September 28, 1972, inquiry concerning the effect of section 406 of H.R. 13915, the "Equal Educational Opportunities Act of 1972."

It is our judgment that the language of section 406, the reopening provision, applies to all court orders and is not limited to court orders which may be entered pursuant to Title VI of the Civil Rights Act 1964.

Sincerely,

RALPH E. ERICKSON,
Deputy Attorney General.

CLARK COUNTY SCHOOL DISTRICT,
Las Vegas, Nev., September 20, 1972.
Hon. HOWARD W. CANNON,
Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CANNON: I have read through the above legislation to determine how it may affect our integration case here in Las Vegas. The first matter which I wish to bring to your attention is section 406 on page 22 under Title IV—Remedies. In reading that section it is not clear as to whether or not Las Vegas would be able to reopen their case in the federal court, since our case was not commenced under Title VI of the Civil Rights Act of 1964. That section could be interpreted to mean that only in those cases where court orders were entered pursuant to Title VI of the Civil Rights Act of 1964 could there be a reopening of the proceedings.

As you will recall, our case was commenced by several plaintiffs under the direction of the NAACP and filed pursuant to the provisions of Title 28, U.S.C. section 1343, (3) and (4) as authorized by Title 42, U.S.C., section 1981 and 1983, and in addition under the due process and equal protection provisions of the Fifth and Fourteenth Amendments of the United States Constitution. The United States has never intervened in our action nor has the Civil Rights Division intervened pursuant to the Civil Rights Act of 1964. Therefore, it should be clear as to whether or not a school district in our position may reopen the proceedings and request relief pursuant to this legislation.

In comparing section 406 with the other remedy sections under Title IV of the legislation there is no reference to the Civil Rights Act of 1964, and therefore a court could very well interpret the opening proceedings of 406 as applying only in those cases brought pursuant to Title VI of the Civil Rights Act of 1964. Sections 401, 402, 403, 404, 405 and 407 all refer to courts in general and have no reference whatsoever to the Civil Rights Act of 1964. As you know, in the Supreme Court case of Swann vs. Board of Education, 91 S. Ct. 1267, and 402 U.S. 1, the Court interpreted the Civil Rights Act of 1964 as not granting new powers to the courts and not expanding the existing powers of federal courts to enforce the Equal Protection Clause. I would. therefore, like your comments on whether or not Las Vegas would be in a position to reopen the federal court's procedure in the event this legislation is enacted. We certainly do not want legislation that the courts can get around as they have done with your Education Amendments of 1972, containing the busing moratorium.

If you need any further help in this matter, please don't hesitate to call.

Very truly yours,

ROBERT L. PETRONI,
Legal Counsel.

LAS VEGAS, NEV.,
September 26, 1972.

DEAR SENATOR CANNON: I am writing to let you know *why* I disagree with the busing program just started in Las Vegas.

I feel that children in this age have enough problems to face without having to suffer the insecurity of attending school so far from home. A mother with small children such as I would find it difficult to leave home to check on some problem a child may be having at school when it is so far away. I know, I had to go to school to check on my sons progress at least twice a month last year.

I feel the busing program is an unnecessary waste of tax money. This money should be used to bring better education to the children—not children to distant schools. I also feel that schools should be operated not by too powerful Central Federal government but by local and state governments—people who love their children because they *know* them.

I am for equal opportunity for all people—no matter what their color. I feel this opportunity should be based on work put forth, talent shown and the integrity of the individual.

I hope the day will come when all men will live in peace together, but programs like busing will only bring dissatisfaction and distrust in government.

Please join with Senator Allen of Alabama in the fight against busing.

How can we expect children to solve our problems. Lets set the example and solve them ourselves.

Sincerely,

MRS. ANNE GULLER.

LAS VEGAS, NEV.,
September 24, 1972.
Hon. HOWARD CANNON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CANNON: As responsible citizens, we refuse to join in the school boycott planned for Sept. 25, 1972. Instead we choose to voice our displeasure by writing to you personally. We are strongly opposed to forced busing and believe wholeheartedly in the neighborhood school concept.

We urge you to join with your colleague in using every means available to you to bring about a change in this situation.

Although we do not believe in keeping our children home as a means of protest, we do in fact support the aims of the Bus-Out Organization to bring our children back to the neighborhood school.

Now is the time for action. You can show the people of Nevada that you are truly a Senator who can effect changes.

Respectfully,

Mr. and Mrs. R. D. HALL.

LAS VEGAS, NEV.

SENATOR HOWARD CANNON: We do not want to have our children leave our neighborhood schools to be bused many hazardous miles.

It seems obvious that the majority of the population does not want forced busing. Our school district does not want it, and you have stated your opposition to it. It is against the Civil Rights Act of 1964 which states that forced busing will not be used as a means of integration. If this is allowed to come about, we feel this country will suffer the deepest pains of racial upheaval in its history. We feel that open housing and voluntary busing will accomplish peaceful integration *if* given enough time.

In our case, Judge Bruce Thompson of Reno, Nevada, has ruled that the moratorium has no bearing on our case. How can one judge's interpretation of the law force the majority of people to do something which is against their will? Our men have fought and died around the world for over two hundred years to keep people free, to give them a choice and a voice. Yet these rights are now being denied us here in Clark County, Nevada.

We strongly favor the Anti-busing Amendment now before the Senate, and urge its swift passage.

Please step in and speak for us. We are desperate for a solution to our problem. We need your help now.

Sincerely,

Mr. and Mrs. ALBERT MCCLAIN.

LAS VEGAS, NEV.,
September 14, 1972.
Senator HOWARD CANNON,
Senate Office Building,
Capitol Hill, D.C.:

As elected members of the Nevada State Legisulature, the undersigned join in urging that you use all possible insurance and effort to bring about the speedy passage of anti forced busing legislation now before U.S. Senate. We believe it is the desire and the wish of the majority of Clark County residents, whom we represent, that children be allowed to attend their neighborhood schools and not be subjected to massive forced busing. Because of Federal Court ruling it is now absolutely essential that we have a legal basis to prevent forced busing, and we therefore urge immediate Senate passage of the House passed anti-forced busing legislation.

Senator CANNON: We are writing to ask you to do everything you can to get this busing mess straigtened up. Our children are not involved yet but they will be in a few years and we do *not* want them to be bused all over town to school. We bought our home here because we are close to schools. Our school is already integrated. There are many black families living here in our neighborhood. None of them want their children bused somewhere else any more than we do.

Again, please try to get this stopped.

Thank you,

Mr. and Mrs. CHARLES L. MAGRUDER.

LAS VEGAS, NEV.,
September 24, 1972.
Hon. HOWARD CANNON,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CANNON: This letter is to add my family's voice to the urgings of many asking the Senate to act on the Anti-Busing legislation.

In my opinion, Busing away from neighborhood schools is an unnecessary expense. Better to spend these monies on improved facilities or other pressing needs, i.e., hot lunches.

If a family does not believe in boycotts or other demonstrations, pressures are added to a childs school burden and it is my sincere feeling it is the obligation of the Congress to bring about a settlement of this issue.

Thank you for your attention.

Sincerely,

CAROLYN CHRISTY.

Mr. TAFT. Mr. President, when the Supreme Court decided *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), and set forth the separate but equal doctrine, Justice Harlan stated in his dissent that—

The law regards man as man, and takes no account of his surroundings or of his color, when his civil rights, as guaranteed by the Supreme law of the land, are involved.

He stated prophetically that—

In my opinion, the judgment this day rendered, will in time, prove to be quite as pernicious as the decision made by this Tribunal in the *Dred Scott* case.

The separate but equal doctrine did act as a pernicious force in our society, separating black from white and demeaning the quality of American citizenship. Our Nation stood as a house divided until *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954). In that landmark decision the Court held that—

In the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

The following year, the Court set guidelines for appropriate relief. The district courts were instructed to take such proceedings as might be necessary to admit the parties to the cases to public schools on a racially nondiscriminatory basis, "with all deliberate speed."

Unfortunately, "massive resistance,"

"interposition," "freedom of choice plans," and other arguments were used to circumvent the ruling of the Court.

Despite the courts' attempt to implement the Brown decision, the pace of desegregation was slow. By the 1963–64 school term, the 11 States of the old Confederacy had only 1.17 percent of their black students in schools with any white students. This was a decade after Brown was decided. It was understandable that the courts would become impatient with the pace of desegregation under the "all deliberate speed" formula. In *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964), the Court said that—

> There has been entirely too much deliberation and not enough speed in enforcing the Constitutional rights which we held in *Brown* v. *Board of Education, supra*, had been denied Prince Edward County Negro children.

Consequently, the courts abandoned the "all deliberate speed" formula and proceeded to require unitary school systems. In *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), the Court held that the Board was required to formulate a new plan, in light of other courses which were open to it, such as zoning, and convert to a system without white schools and black schools, "but just schools."

In *Alexander* v. *Homes County Board of Education*, 369 U.S. 19 (1969), the Court held that:

> Continued operation of segregated schools under a standard of allowing "all deliberate Speed" for desegregation is no longer constitutionally permissible.

In many parts of the Nation, transportation patterns were utilized to perpetuate systems of segregated schools. It is regrettable that some of those who are now speaking out against forced busing were not equally vocal when massive busing was used to perpetuate the effects of dual school systems—one for blacks and one for whites. Because children were bused away from the schools in their neighborhoods to more distant schools where all the children would be of their own race, the Courts were led to consider the use of buses to integrate the schools of the South.

In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Court was faced with the question of what procedures should be utilized in eliminating all remaining segregation in a large urban area. The Court did not ban one-race schools outright. But the Court did say that,

> In a system with a history of segregation, the need for remedial criteria of sufficient specificity to assure school authority's compliance with its constitutional duty, warrants a presumption against schools that are substantially disproportioned in their racial composition.

The Court held that the constitutional command to desegregate schools "does not mean that every school in the community must always reflect the racial composition of the school system as a whole."

With respect to busing the Court observed that,

> Bus transportation has been an integral part of the public education system for years.

The Court then approved a plan whereby the children of Charlotte would be bused approximately 7 miles per day as opposed to 15 miles average busing under the previous plan.

Consequently, we are today faced with a situation in which the courts have approved busing where de jure segregation has been found to exist, but apparently no court has approved busing where only de facto segregation has been found to exist.

In my mind the distinction between de facto and de jure segregation is no longer tenable and simply invites courts to make de jure findings in what might, in fact, be de facto situations.

While there has been a great debate about busing, the issue is really far broader than busing and goes to the question of how school zones are drawn, and how pupils are assigned to schools.

In my judgment, transportation should not be used as vehicles for undoing the effects of segregated housing and economic discrimination. We have enough problems in education without thrusting this burden upon our school systems. For that reason, I do not believe that children should be bused abnormal distances out of their neighborhoods solely for the purpose of achieving racial balance.

In *Deal* v. *Cincinnati Board of Education*, 369 F. 2d 55 (6 Cir. 1966) Cert. denied 389 U.S. 847 (1967), the Court said:

> We read *Brown* as prohibiting only enforced segregation. * * * We hold that there is no constitutional duty on the part of the Board to bus Negro or white children out of their neighborhoods or to transfer classes for the sole purpose of alleviating racial imbalance that it did not cause, nor is there a like duty to select new school sites solely in furtherance of such a purpose. * * * Although boards of education have no constitutional obligation to relieve against racial imbalance which they did not cause or create, it has been held that it is not unconstitutional for them to consider racial factors and take steps to relieve racial imbalance if in their sound judgment such action is the best methoid of avoiding educational harm.

I believe that this is sound law. Similarly, I do not believe that busing is the answer in de jure situations. Instead, I believe that the courts should grant relief by changing school district boundaries or otherwise where discrimination by school officials has been shown to exist. The courts cannot become oblivious to the question of color where as Justice Burger noted in Swann, they are confronted by a "loaded game board". But we can and must recognize that the busing of schoolchildren, where it does not serve any educational purpose other than achieving racial balance, should not be undertaken simply to effect this racial balance.

Hopefully, some day Americans will all be accepted without regard to their color, their religion, or their national origin. But that day seems likely to be postponed by turning to a claimed remedy under which children are being transported back and forth across our cities solely because of their race.

Regrettably, I do not believe that H.R. 13915, in its present form, is in any way an acceptable answer to this problem.

No Senate committee has considered this bill. No Senate hearings have been held.

It contains provisions which are of dubious constitutionality, and if enacted, would present administrative nightmares.

The "next closest school" concept contained in section 403(a) is almost certainly unworkable and untested. It would aim to integrate schools solely in city neighborhoods where blue-collar whites live closest to black neighborhoods, leaving white suburbs sacrosanct.

The reopener provision of section 406 would undercut existing court orders and HEW title VI plans. This would permit the reopening of court orders going all the way back to 1954. It would inject turmoil and hostility and uncertainty into communities which have been peaceably abiding by long established court orders.

Nearly 500 law professors have joined in a public statement opposing the bill on constitutional grounds.

In his testimony before the House Judiciary Committee on March 2 relative to a proposed constitutional amendment, Prof. Alexander M. Bickel of Yale University Law School, made the following statement with which I concur:

> I am no partisan of busing for racial balance. I take the Court in the *Brown* case to have held that it is unconstitutional, as it is assuredly wrong and ultimately evil, to force the separation of children in the schools along racial lines. The question before the country now is, to my mind, rather a different one. It is, whether we think it wise or necessary to force the mingling of children in the schools in proportions that reflect approximately the ratio of blacks to whites in the total population of an area.
>
> Busing is inconvenient. What is more important, it runs counter to a widespread parental desire, which cannot fairly be brushed aside as mere racism, for a sense of community in the schools. The feeling, shared I believe by many blacks as well as whites, is that the population of a school, while not necessarily homogeneous, should have a sufficiently cohesive majority, to whose aspirations and needs the school can be responsive. A geographic element enters in since parents rightly feel that it is physically difficult, if not impossible, to maintain a connection with a school, and make their needs and wishes felt in it, if the school is 15 miles away.
>
> There is evidence that under certain conditions the education of black children is improved when they are sent from a segregated school situation into one with white children. But it is highly doubtful that the attainment of racial balance by busing is the only or always necessarily the most effective way to improve the education of black children. Considering the disadvantages that admittedly attend it, busing is often, therefore, not the wisest measure to adopt. However, since we are not prepared to close private schools or to incorporate them into the public system, or prepared to restrict the freedom of residential choice which the middle class enjoys, busing, after all its disadvantages have been incurred, not infrequently fails to achieve its end of maintaining racially balanced schools.
>
> So a great deal of the unpopularity of busing seems to me justified. But in some areas, busing is essential if any desegregation at all is to be achieved, and in many areas, segregation itself was, of course, maintained by busing. I would think it wrong, therefore, for Congress by constitutional amendment to forbid busing, and thus to hamper the

continuing work of desegregation, just as it nears completion. And quite aside from recent busing orders, I would think it disastrous to roll back the desegregation that has been achieved, undo the great work of 17 years . . .

I do not believe that this measure in its present form is a responsible way to deal with this difficult question.

There are many complex administrative and constitutional problems associated with the present bill. It would not recognize that all Americans are to be offered equal educational opportunity without regard to their race, their religion, or their national origin. We must recognize that we cannot forget our differences so long as people are being singled out for special schools or busing on the basis of their race. Finally, we must remove from our courts the temptation already evident in many decisions to make de jure findings of discrimination in de facto situations.

The time has come for us to affirm positively the equality of all Americans. We must strike down all laws, regulations, and administrative actions which treat us differently because of our race, our religion, or our national origin. The time has come to breathe new life into words written by our Founding Fathers, that we as Americans are all created equal. To adopt this bill in its present form would only impede that process, create administrative nightmares, create constitutional challenges, create racial turmoil, and postpone the day when we as Americans can recognize that we are, in fact, one people.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills of the Senate, each with an amendment, in which it requested the concurrence of the Senate:

S. 493. An act to authorize and direct the Secretary of Agriculture to classify as a wilderness area the national forest lands adjacent to the Eagle Cap Wilderness Area, known as the Minam River Canyon and adjoining area, in Oregon, and for other purposes; and

S. 2411. An act to establish the Cumberland Island National Seashore in the State of Georgia, and for other purposes.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 16654) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1973, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FLOOD, Mr. NATCHER, Mr. SMITH of Iowa, Mr. HULL, Mr. CASEY of Texas, Mr. PATTEN, Mr. MAHON, Mr. MICHEL, Mr. SHRIVER, Mr. CONTE, Mr. ROBINSON of Virginia, and Mr. BOW were appointed managers on the part of the House at the conference.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 9554. An act to change the name of the Perry's Victory and International Peace Memorial National Monument, to provide for the acquisition of certain lands, and for other purposes;

H.R. 13067. An act to provide for the administration of the Mar-A-Lago National Historic Site, in Palm Beach, Fla.; and

H.R. 17034. An act making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bill:

H.R. 9756. An act to amend the Merchant Marine Act, 1936, as amended.

The enrolled bill was subsequently signed by the Acting President pro tempore (Mr. GRIFFIN).

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred, as indicated:

H.R. 13067. An act to provide for the administration of the Mar-A-Lago National Historic Site, in Palm Beach, Fla.; to the Committee on Interior and Insular Affairs.

H.R. 17034. An act making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes; to the Committee on Appropriations.

TRIBUTE TO FORMER SENATOR PRESCOTT BUSH OF CONNECTICUT

Mr. JAVITS. Mr. President, earlier this week, a very dear friend of mine and a former Senator, Prescott Bush, of Connecticut, passed away; and I have not had an opportunity until now to speak a word of praise and of respect for the memory of Prescott Bush.

He served here with very great distinction. He was known as a really outstanding authority on monetary affairs, banking, and brokerage, in which he engaged most of his business life. He was a most erudite man and a fine gentleman in every sense of the term.

Notwithstanding the diversity of our origins and the diversity of our views, we found an enormous area of work to be done in the interests of the economic stability of the country and its money and credit systems, in which we worked together, and he showed a most enlightened attitude.

The thing that I loved the most about Prescott Bush was his very open mind; it was never closed, notwithstanding a lifetime of training in the particular areas in which he had worked.

He was a very dear friend and took note of little things which make life more worth living and beautiful.

I remember that when I, on one occasion, decided not to run for mayor of New York, which received an enormous amount of public notice in New York, he marshaled a number of my colleagues who very graciously, the very next day after I had made the announcement in New York that I could not stand for mayor, expressed their pleasure that I would continue in the Senate. They may have been sorry later, but it was a very gratifying occasion for me, and indicated the delicacy of feeling of this very masculine man, who was a great golfer, a great sportsman, and a fine human being in every way.

So, Mr. President, I would like to give this message to George Bush—his very distinguished son, our Ambassador and representative to the U.N.—to his family and his friends: that he is remembered most happily as a very distinguished Senator and a very wonderful human being by one of his colleagues here, who had the privilege of serving with him and working with him in the U.S. Senate.

DEATH OF FORMER SENATOR GEORGE ROBINSON SWIFT, OF ALABAMA

Mr. ALLEN. Mr. President, one of the most outstanding public figures in Alabama's history was the Honorable George Robinson Swift of Atmore, Ala., who was born at Swift's Post Office in Baldwin County, Ala., on December 19, 1887, and who died on September 10, 1972, rich in honors and high in the regard of his fellow citizens.

Perhaps the crowning achievement of his political life was his service in the U.S. Senate from Alabama from June 15, 1946, to November 5, 1946, under appointment from his longtime friend and political associate, Gov. Chauncey Sparks, to fill the vacancy caused by the death of Senator John H. Bankhead II. Senator Swift did not stand for election in the elections that year and he was succeeded by my distinguished senior colleague, Mr. SPARKMAN.

Senator Swift had had a distinguished career in Alabama politics before coming to the U.S. Senate, having served in the Alabama House and Senate and as Alabama highway director, a post he held at the time of his appointment to the U.S. Senate. After serving in the U.S. Senate, his returned to serve again with distinction in the Alabama State Senate.

My father, the late G. C. Allen of Gadsden, Ala., served in the State legislature with Senator Swift during the administration of Governor B. M. Miller, 1931–35, and they were dear friends. It was during this time that I, as a teenager, had the privilege of meeting Senator Swift, and coming to admire him. The admiration that I had for him continued and grew throughout his lifetime. During the years, 1947–51, I had the privilege of serving with Senator Swift when I served in the Alabama Senate.

Senator Swift was a Christian gentleman, an able statesman, a patriotic American, a conservative, Southerner to the core, who believed in sound business practices in and out of government, fiscal responsibility, free enterprise and individual initiative and resourcefulness.

I regarded his views highly and benefited from his wise counsel and advice through the years.

Our country needs more men of the philosophy and patriotism of Senator Swift.

Time has taken its toll during the years and fewer than half a dozen Sena-

tors now serving were in the Senate when Senator Swift served here but he is remembered—and highly regarded—by those who were here at that time.

Thousands knew him affectionately as "Robin" Swift, but as his junior looking up to him on his high level of achievement and patriotic service to his State and Nation, I have always called him—and will ever remember him as—Senator Swift.

AMERICAN REVOLUTION BICENTENNIAL COMMISSION

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 13694.

The PRESIDING OFFICER (Mr. GRAVEL) laid before the Senate H.R. 13694, an act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended, which was read twice by its title.

Mr. HRUSKA. Mr. President, I ask unanimous consent for the immediate consideration of the bill.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. HRUSKA. Mr. President, there is presently pending at the desk H.R. 13694 as passed by the House, which would authorize appropriations in amount of $3,356,000 for expenses of the American Revolution Bicentennial Commission to February 15, 1973. Of this amount, $1.2 million would be for grants to the State bicentennial commissions.

Section 2 of H.R. 13694 authorizes a program of project grants to nonprofit groups—including States and subdivisions thereof—to assist in developing worthwhile bicentennial projects. Section 2 also authorizes the Commission to accept donations or bequests for a specific grantee recipient for a specific bicentennial program or project or grant such donation or bequest, plus an amount not to exceed the value of the donation or bequest provided that the recipient agrees to match the combined value of the grant for such bicentennial program or project.

On October 10 of this year the Senate passed and sent to the House S. 3307, a bill which would authorize appropriations for the Commission for fiscal 1973 in amount of $6.7 million of which not to exceed $2.4 million would be for grants in aid to the States. In lieu of the Senate passed bill, the House in its wisdom on September 28, 1972, passed their bill limiting the appropriation for the Commission to $3,356,000 until February 15, 1973.

The unusual House action was occasioned by certain charges made against the Commission which are now being investigated by the General Accounting Office and the staff of the House Judiciary Committee. It was the view of the chairman of the House Judiciary Committee that the important work of the American Revolution Bicentennial Commission should continue, pending completion of these investigations and that the Congress should have an opportunity early in the next session to consider further funding for the American Revolution Bicentennial Commission in the light of the completion of the reports of the General Accounting Office and the staff of the House Judiciary Committee.

In the meantime, the Commission is to proceed with the development of its programs for the Bicentennial Commission commemoration.

The intent of H.R. 13694 as explained by the chairman of the House Judiciary Committee on the floor of the House on September 28, that the $3,356,000 out of which $1.2 million was for grants to the State bicentennial commission and the remaining $2,156 million will permit the continuation of the American Revolution Bicentennial Commission to spend at its current going rate and the implementation of activities already undertaken by the Commission during the current fiscal year.

In view of the imminent adjournment of the Congress I deem it imperative that the Commission be allowed to continue its implementation of its programs toward the bicentennial celebration in 1976 and that it is necessary that the House-passed bill be favorably considered here in the Senate and sent down to the White House for the President's signature in order that the Commission may continue in its planning for the celebration in 1976.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 13694) was passed.

CLASSIFICATION AS A WILDERNESS AREA CERTAIN LANDS IN OREGON

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 493.

The Presiding Officer laid before the Senate the amendment of the House of Representatives to the bill (S. 493) to authorize and direct the Secretary of Agriculture to classify as a wilderness area the national forest lands adjacent to the Eagle Cap Wilderness Area, known as the Minam River Canyon and adjoining area, in Oregon, and for other purposes which was to strike out all after the enacting clause and insert:

That the areas proposed for addition to the Eagle Cap Wilderness as generally depicted on a map entitled "Proposed additions to the Eagle Cap Wilderness", dated August 1, 1972, which is on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture, are hereby designated for addition to and a part of the Eagle Cap Wilderness, Wallowa and Whitman National Forests, Oregon, which addition comprises an area of approximately 72,420 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 Eagle Cap Wilderness as revised by this Act with the Interior and Insular Affairs Committees of the United States Senate and 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 additions to the Eagle Cap Wilderness provided by this Act shall be administered as a part of the Eagle Cap Wilderness 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. Within five years from the date of enactment of this Act, the Secretary shall review those lands depicted on the map referenced in section 1 of this Act as the "Wilderness Study Area" comprising about 32,000 acres, commonly referred to as the Lower Minam, and shall report to the President, in accordance with subsections 3(b) and 3(d) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(b) and (d)), his recommendation as to the suitability or nonsuitability of any area within the above area for preservation as a wilderness and any designation of any such area as a wilderness shall be accomplished in accordance with said subsections of the Wilderness Act.

Mr. ROBERT C. BYRD. Mr. President, the amendment of the House to S. 493 designates 72,420 acres in the Wallowa and Whitman National Forests, Oregon, as an addition to the existing Eagle Cap Wilderness and provides for the review and study of some 32,000 additional acres for their wilderness potential and future wilderness designation. The Senate-passed bill would have created a separate wilderness in approximately the same area of 80,000 acres.

Mr. President, because the differences between the two bills are not substantial enough to require a conference between the two Houses, I move, on behalf of the distinguished Senator from Oregon (Mr. HATFIELD), that the Senate concur in the amendment of the House to S. 493.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

AMENDMENT OF MINING AND MINERALS POLICY ACT OF 1970—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on S. 635, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 635) to amend the Mining and Minerals Policy Act of 1970, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of October 3, 1972, at pp. 33474–33476.)

Mr. ROBERT C. BYRD. Mr. President,

the differences between the Senate-passed bill and the House amendment were mainly differences in legislative drafting and the format of the national program of mining and minerals resources research provided for by this legislation.

Mr. President, I am satisfied that the agreement reached by the conference committee is a reasonable compromise.

On behalf of the Senator from Washington (Mr. JACKSON), I move the adoption of the conference report.

The report was agreed to.

ORDER FOR CERTAIN HOUSE BILLS TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, as in legislative session, that the following bills messaged over from the House of Representatives be held at the desk temporarily for later disposition: H.R. 8756, H.R. 9554, and H.R. 13694.

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

RESCISSION OF ORDERS FOR RECOGNITION OF SENATORS BENNETT AND GRIFFIN TOMORROW

Mr. ROBERT C. BYRD. Mr. President, as in legislative session, I ask unanimous consent that the orders for the recognition of Mr. BENNETT and Mr. GRIFFIN tomorrow be vacated.

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

CONTROL OF TIME ON CLOTURE MOTION TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time—the 1 hour—for debate on the motion to invoke cloture on tomorrow be divided between and controlled by the distinguished Senator from Alabama (Mr. ALLEN) 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 of rule XXII.

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

ORDER FOR ADJOURNMENT UNTIL 8:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 8:30 a.m. tomorrow.

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

EXTENSION OF PERIOD DURING WHICH THE NUMBERS FOR CERTAIN GRADES IN THE AIR FORCE MAY BE INCREASED

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 1173, H.R. 14542.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 14542) to amend the Act of September 26, 1966, Public Law 89-606, to extend for four years the period during which the authorized numbers for the grades of major, lieutenant colonel and colonel in the Air Force may be increased, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. CANNON. Mr. President, H.R. 14542 is a bill to extend Public Law 89-606 to enable the Air Force to continue its current officer promotion program for 4 years. I would like to briefly explain what this bill is all about.

This bill really boils down to one question—Do we want to continue to provide Air Force officers approximately the same promotion opportunities as are being provided to their contemporaries in the other services? Air Force officers are already somewhat behind officers in the other services, but if this bill fails, they will be promoted about 3 to 5 years later than these officers. The issue is simply one of maintaining equity for the Air Force.

The origin of the problem is the Officer Grade Limitation Act—OGLA—of 1954. The 1954 law provided separate tables for each service, limiting by grade the number of field grade officers. However, in 1953 just prior to enactment of the OGLA, only 18 percent of the Air Force officers had over 12 years of service, compared to 32 percent in both the Army and Navy. Because of this relatively junior officer force in terms of years of active duty, the 1954 law intentionally authorized substantially fewer colonels and lieutenant colonels for the Air Force officer grade distribution than it did for the Army and Navy. These more restrictive limits for the Air Force were intended to prevent young officers from progressing too rapidly to the senior grades. While the need for this special provision for the Air Force was understood, the Congress clearly recognized that the 1954 Air Force tables would have to be adjusted as the officer force matured, until the Air Force eventually caught up with the Army and Navy.

What has happened since 1954? Basically two things—first, the officer force matured—the Air Force now has about 34 percent of its officers with over 12 years of service; and second, the Congress granted five relief measures for the Air Force, beginning in 1959, thus obviously acknowledging what everyone had earlier recognized—that the 1954 law was inadequate for the Air Force, and intentionally so.

This proposed extension of the 1966 relief will do no more than continue reasonable career advancement opportunities for Air Force officers. The Air Force has been able to achieve and maintain stabilized promotion phase points for the past 6 years, even though these points are 1 to 3 years later than the other services. Air Force officers understand the present system and accept these somewhat slower promotions. However, failure to pass this bill will create a gross inequity for the Air Force officer by widening the gap to 3 to 5 years. The more immediate impact of no extension of relief would be a moratorium on all field grade promotions for 1 year and the demotion or elimination of 3,000 field grade officers. The combined effect of these results would be disastrous to the morale of the Air Force officer and totally discouraging and demoralizing to the young lieutenants and captains who are considering an Air Force career. If we have any concern at all for the dedicated Air Force officers who have been and continue bearing the brunt of the Vietnam conflict, we cannot permit the disastrous effects which would occur if we do not pass this bill.

I understand that the Senator from Wisconsin has an amendment that he proposes to offer.

Mr. PROXMIRE. Mr. President, I do have an amendment.

Mr. STENNIS. Mr. President, before the Senator offers his amendment, will he yield to me?

Mr. PROXMIRE. I yield.

Mr. STENNIS. Mr. President, this bill as reported unanimously by the committee would extend for 4 years, until June 30, 1976, the relief for the Air Force from the limitations of the Officer Grade Limitation Act of 1954. Some form of temporary relief has been granted the Air Force in five different acts beginning in 1959.

The need for this bill is clear and overwhelming. The only argument is how long should the relief be extended.

Without any relief the result will be clear. There will be no promotions at all to the grade of major, lieutenant colonel, or colonel in the Air Force during fiscal year 1973. Moreover, about 3,000 officers would have to be either demoted or released from active service. Such result would be unconscionable.

What this bill does by authorizing the additional numbers on a temporary basis is to permit the Air Force to promote its officers to these three field grades at approximately the same points in service and at the same percentages as the Army and the Navy. The committee report discusses this in some detail.

Mr. PROXMIRE. Mr. President, my amendment would add, at the end of the bill, a new section as follows:

SEC. 2. The Secretary of Defense shall submit to the Congress not later than May 30, 1973, a comprehensive written report regard-

ing limitations on the number of officers who may serve in various commissioned grades in the Army, Navy, Marine Corps, and Air Force. The Secretary shall include in such report such recommendations as he deems appropriate for legislation to establish new permanent limitations on the number of officers who may serve in such commissioned grades.

The remainder of the amendment reads:

On page 1, line 6, strike out "June 30, 1976" and insert in lieu thereof "September 30, 1974".

I send the amendment to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

Mr. PROXMIRE. Mr. President, since I have read the amendment, I ask unanimous consent that the reading of the amendment be waived.

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

Mr. PROXMIRE's amendment is as follows:

On page 1, line 6, strike out "June 30, 1976" and insert in lieu thereof "September 30, 1974".

At the end of the bill add a new section as follows:

SEC. 2. The Secretary of Defense shall submit to the Congress not later than May 30, 1973, a comprehensive written report regarding limitations on the number of officers who may serve in various commissioned grades in the Army, Navy, Marine Corps, and Air Force. The Secretary shall include in such report such recommendations as he deems appropriate for legislation to establish new permanent limitations on the number of officers who may serve in such commissioned grades.

WHY THE PRESENT EXCESSIVE NUMBER OF HIGH RANKING OFFICERS IN THE MILITARY SERVICES SHOULD NOT BE ALLOWED FOR ANOTHER 4 YEARS—INTRODUCTION

Mr. PROXMIRE. Mr. President, the bill H.R. 14542 is a bill which would continue the scandalous situation which provides more high ranking military officers today than at the height of World War II.

The problem of the "grade creep" has been going on for a very long time. Since 1959, Congress has been urging the Department of Defense to do something about it. Instead, every 4 years we get a bill to extend the problem for another 4 years.

If this bill passes in its present form, it will be 1976 before anything is done about it. And my view is that at that time the services will come back and ask for another extension.

What I propose is a compromise. I propose an amendment to this bill which would extend the present law for a little over 2 years—from June 30, 1972 when it expired to September 30, 1974.

My amendment also requires the Secretary of Defense to submit to the Congress not later than June 30, 1973, a comprehensive written report regarding limitations on the number of officers who may serve in various commissioned grades in the Army, Navy, Marine Corps, and Air Force.

I want to note that carefully. My amendment applies not just to the Air Force, but to all the services. The Air Force is not the only guilty party in this matter. In fact, they may be somewhat less guilty than others. But because the Air Force was the last service to be established they had a situation which was more temporary than the other services.

Consequently, when the numbers were established, the grades for the Air Force were temporary. There extension is before us while the other services have no similar degree of urgency. But I want to make it clear that my opposition to the "grade creep" goes beyond the Air Force to all the services, and that my amendment threats them all alike.

My amendment further provides that the Secretary shall include in such a report such recommendations as he deems appropriate for legislation to provide new permanent limitations on the number of officers who may serve in the commissioned grades.

This bill, and my amendment, can therefore become an instrument to help bring long overdue change and reform. If we pass this bill in its present form, there is really no hope at all for reform.

If it passes with my amendment, then the log jam will be broken, recommendations will be made, and we may get a permanent solution to the problem.

SCANDALOUS SITUATION

Let me outline for the Senate and give just a few facts about the present scandalous situation.

A year ago the House Appropriations Committee had this to say in their report on the defense appropriation bill:

The Committee reviewed in depth the promotion practices and the officer grade structure of the Armed Services. The review revealed that there are more three and four star generals and admirals in uniform today than there were at the height of World War II, when there were over 12 million men and women in uniform. Even more startling is a comparison of the number of individuals serving in the grades of Colonel, Lieutenant Colonel and Navy Captain or Commander.

The report then went on:

Today (1971) there are 900,000 fewer officers in uniform than there were in 1945 but we have 6,000 more Colonels, Navy Captains and Commanders.

MORE COLONELS AND EQUIVALENT NOW THAN IN 1945

Mr. President, that was and is an outrageous situation. The figures indicate that on June 30, 1945, there were 51,956 colonels, lieutenant colonels, Navy captains, and commanders.

On June 30, 1971, there were 57,819 such officers, or 6,000 more than in 1945. But in 1971 there were only 2,714,727 total personnel or about one-fifth the number in 1945. We are, therefore, in a situation which can be called one of all chiefs and no Indians.

I ask unanimous consent that the table entitled "Officer Grade Structure" from the House report be printed at this point in the RECORD.

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

OFFICER GRADE STRUCTURE

Rank	WW II June 30, 1945	Korea June 30, 1952	Today June 30, 1971
General or Admiral	38	25	45
Lieutenant General or Vice Admiral	101	65	145
Major, and Brigadier General, or Rear Admiral	1,929	1,052	1,145
Subtotal	2,068	1,142	1,330
Colonel or Captain	14,989	12,490	17,388
Lieutenant Colonel or Commander	36,967	38,927	40,431
Subtotal	51,956	41,417	57,819
Total officers	1,260,109	375,829	371,416
Total enlisted	10,795,775	3,245,310	2,329,754
Total personnel	12,123,455	3,635,912	2,714,727

1964 VERSUS 1972

Mr. PROXMIRE. Mr. President, what happened between 1964—one of the first extensions of the legislation we are debating—and 1972? In fiscal year 1964 when this legislation was passed on a "temporary" basis, the Air Force had 5,350 colonels in a force of 130,626 officers.

But at the end of fiscal year 1972, the Air Force had nearly 1,000 more colonels, or 6,268 even though the total number of officers declined by 9,404 to a total of 121,222.

COMPARISON WITH KOREAN WAR

The fiscal year 1972 report of the House Appropriations Committee, based on the table I have already presented in the RECORD, makes some devastating comparisons between the high-ranking officers on duty as of June 30, 1971, and June 30, 1952, at the height of the Korean war.

Here is what that report said:

An equally interesting comparison can be drawn by comparing our strength during the Korean War with our officer strength today (1971). At the peak of the Korean War we had 3.6 million men in uniform and today we have only 2.7 million. However, we have 190 more Generals and Admirals today than we had at the height of the Korean War. Even more amazing is the fact that today we have over 16,000 more Colonels and Navy Captains and Commanders than when we had a million more men in uniform.

MORE COLONELS AND NAVY CAPTAINS NOW THAN IN 1945

How do the number of full colonels and Navy captains compare today with the number in World War II?

At the end of World War II, there were 14,989 colonels and captains in a force of 12.1 million men.

As of June 30, 1972, there were 16,020 colonels and Navy captains—or 1,031 more—in a total force of 2,180,000 men.

LIEUTENANT COLONELS AND COMMANDERS—1945 VERSUS 1972

The comparison between the number of lieutenant colonels and commanders in 1972 with the number in 1945 is only slightly less worse than the comparison of full colonels and Navy captains.

On June 30, 1945, we had 36,967 such officers with a force of 12.1 million men. Today, with a force of 2,180,000 men we

have 36,730 or only 237 fewer in a total military force of almost 10 million fewer personnel.

HOUSE APPROPRIATIONS COMMITTEE COMPLAINS AGAIN IN 1973

What the House Appropriations Committee said on the grade creep in their fiscal year 1972 report apparently had no effect. In the report on the fiscal year 1973 defense appropriation bill, they had to say it again. Let me read the key paragraphs from that report:

GRADE CREEP (INCREASE IN AVERAGE GRADE LEVEL)

For the past couple of years the Committee has closely reviewed the promotion practices and grade structure of the Armed Services. Last year the Committee made some comparisons of the numbers of high ranking officers in the current Force with World War II and the Korean War levels. The Report showed that there are more three and four star generals and admirals in uniform now than there were at the height of World War II when there were over 12 million men and women in uniform compared with about 2.4 million in uniform today. Also, there has been extensive growth in the number of colonels. Today there are some 900,000 fewer officers in uniform than there were in 1945, but we have about 5,000 more colonels, lieutenant colonels, Navy captains and commanders.

This year the Committee concentrated on making comparisons of the Armed Services grade structure with the pre-Vietnam (fiscal year 1964) grade structure. The Department of Defense Military Manpower Report reveals that the fiscal year 1973 force has relatively more officers and enlisted men of higher grades than the fiscal year 1964 Force did. This increase in the average grade level is referred to as "grade creep" and is estimated to cost about $1.3 billion in fiscal year 1973.

ARMY

For example, in 1964 the Army had about 970,000 men in uniform. In fiscal year 1973 the Army will be about an 840,000 man force, or 130,000 fewer men on active duty. Despite this reduction in personnel on active duty, there will be nearly 600 more colonels, 400 more lieutenant colonels, and 2,000 more majors, but 10,000 fewer second lieutenants. The enlisted strength and force changes are even more startling. There will be an increase of 1,200 E–9's, up nearly 30 percent in 8 years, an increase of 3,700 E–8's, an increase of some 12,300 E–7's. While the upper enlisted grades show these large increases despite a declining force size, the lower enlisted grades reflect equally startling decreases in numbers. For example, there will be 161,000 fewer E–3's—private first class, and some 30,000 fewer E–2's, and about 18,000 fewer E–1's.

NAVY

In 1964 the Navy had an active duty force of about 660,000 compared with about 600,000 in fiscal year 1973. Despite the reduction of 60,000 personnel, there will be 9 more vice admirals, 4 more rear admirals and about 400 more captains and commanders while the number of lieutenant (jg's) and ensigns declines by nearly 10,000. The number of E–8's and E–9's increases about 2,300 while the number of E–1's, 2's and 3's declines by some 48,000 between fiscal year 1964 and fiscal year 1973.

MARINE CORPS

The Marine Corps' 1964 strength was about 190,000. The fiscal year 1973 strength is about 198,000, or an increase of 8,000. While the overall strength of the Marine Corps has thus increased since 1964, the number of higher ranking personnel, as a percentage of the force, has increased far more rapidly. For example, the number of generals grew from 60 to 72, 33 colonels were added 119 lieutenant colonels, and nearly 600 majors, while the number of first lieutenants and second lieutenants decreased. The same situation exists with respect to Marine enlisted personnel. Since 1964 there has been a doubling in the number of E–9's, or an increase of 735 E–9's, 993 E–8's, 2,225 E–7's, and nearly 3,800 E–6's, while the number of privates first class has declined by 8,900, privates by 200, lance corporals by 900.

AIR FORCE

The problem of grade creep with respect to the commissioned force has probably not been as great as in the other Services except in the grade of colonel where an increase of about 1,000 has occurred despite a decline in the officer force of about 10,000 personnel. It is in the Air Force's enlisted structure where considerable grade creep has occurred despite a decrease of about 130,000 enlisted personnel between 1964 and 1973. The number of E–7's, E–8's and E–9's increases over 13,000 while the number of E–1's, E–2's, and E–3's declines by about 141,000. The Air Force testified to the fact that they would like to reduce the top six enlisted grades to 65.2 percent of the enlisted force. These grades currently make up 72 percent of the enlisted force. However the Air Force proposed manpower program for fiscal year 1973 will drop this percentage less than one percentage point over a two-year period.

REASONS FOR "GRADE CREEP"

There are some valid reasons why some grade creep has occurred. The principal reason for this is that technological sophistication has created a demand for higher skilled individuals who cannot be retained at lower grades.

The Department of Defense in a letter from the Secretary has responded to the Committee's Report of last year on the growth in the number of generals and colonels. Their case clearly has some merit; however, it becomes a question of degree. The Department refers to the increased need for higher senior grade officers arising from the expanded nuclear and conventional military capability of the Soviet Union and the Peoples Republic of China, the need for increasing the tempo and effectiveness of defense research and development as well as a greater reliance on sophisticated weapons and support systems. However, for the most part it is the lower ranking personnel who are charged with maintaining, flying and operating these new weapon systems. The Defense Reorganization Act of 1958 created requirements for additional flag officers and the establishment of the unified commands and the Defense agencies as part of the process of strengthening the office of the Secretary of Defense. However, most of these additions were made prior to 1964 and do not in any way justify grade increases since 1964.

It has been argued that grade creep was necessary in that military compensation, especially in the lower grades, was inadequate and that rapid promotions were a necessary result. The recent pay raises provided to lower ranking personnel have eliminated that argument. It has also been asserted that the rapid promotion process and the grade creep which follows is needed to provide for the All Volunteer Force and keep morale high. This argument is not very sound either in that it is in the upper grades where the grade creep occurs and the Military Services have little trouble in maintaining the required manpower in the upper officer and enlisted grades.

SLOWING DOWN GRADE CREEP

In December 1970 the President, through the Office of Management and Budget, announced a program directed toward reducing the average grade for civilian government personnel and gaining control of the grade escalation (creep) in the General Schedule. This program resulted in reducing the average grade level for civilians in the fiscal year 1973 Federal Budget. In June 1972 further instructions were issued to the Executive Departments encouraging them to take full advantage of the expected substantial acceleration of retirements during June to achieve lower grade levels. *Similar steps must be taken by the Military Services to hold military grade levels in check.*

While the Services of this Committee could just arbitrarily reduce the number of higher level positions, such a step would have little immediate effect from a monetary standpoint since the personnel who hold these positions have certain tenure rights. Thus, the only realistic way to remove some of the grade creep from the forces is to allow the number of personnel holding these upper level grades to come down through retirements at the same time slowing down promotions to these grades.

When this suggestion is made, the Services generally respond with words to the effect that such a program would be bad for morale. While there may be some morale problems, the fact remains that in almost all cases average time in grade since 1964 for promotion to the next higher grade has been significantly reduced and the average time in service upon promotion to a given grade has been reduced since 1964.

For example, an Army officer on the average will reach the grade of major after 9 years of service in fiscal year 1973 compared to 12 years of service in fiscal year 1964, a lieutenant colonel will make that grade after 14.5 years on the average in 1973 versus 17.5 years in 1964, and a full colonel will reach his grade about one year earlier than he would have in 1964. For Army enlisted grades the average time in service upon promotion to the next higher grade for an E–6 has come down from 11 years in 1964 to 7 years in 1973. The time in service to E–5 has been reduced very sharply and significantly from 5.8 years in 1964 to 1.8 years in fiscal year 1973. The time in service to E–7 has come down from 16.1 years in 1964 to 13.8 years in fiscal year 1973. For Army enlisted personnel, the average time in grade for promotion to the next higher grade has also decreased significantly for many grades. Time in grade for promotion to E–5 has decreased from 3.5 years in 1964 to one-half of a year in 1973.

All of the other Services have experienced a similar situation although not as pronounced as the Army's.

Fiscal year 1973 offers an excellent opportunity to attack this grade creep problem without any overall harm to any of the Military Services since the Services are generally planning to make more promotions in fiscal year 1973 than they did in fiscal year 1972. In order to encourage some slow down in the rate of promotions, the Committee is deleting $12,000,000 from the Army request, $10,000,000 each from the Navy and Air Force and $3,000,000 from the Marine Corps request.

The Committee considers this to be just a token reduction to emphasize the Committee's concern with grade creep and the rapidly increasing cost of military personnel. It should also be noted that the Committee does not expect to entertain reprogramming actions or supplemental budget requests to fund excess high ranking officers in fiscal year 1973. In fiscal year 1972 the Congress provided about $11,000,000 over and above what would normally have been required to fund the Navy personnel appropriation to pay for captains, excess to the Navy's requirements. Thus, if projected retirements do not materialize, immediate steps must be taken to reduce promotions instead of coming back

to the Congress with requests to fund excess high ranking officers.

The Committee expects that the average strength during the fourth quarter of fiscal year 1973 for each of the officer grades of O-5 and above will not exceed the fiscal year 1972 end strength for that grade. The Committee gave serious consideration to placing similar restrictive language in the bill which would have established totals by grade for fiscal year 1973. Instead of restrictive language the Committee decided to give the Military Services one more year to take some positive action toward reversing the grade creep trends.

Finally, with respect to grade creep, the Army wants six more three star general positions funded in 1973. This would be in addition to the approximately 44 three star generals who were on active duty during fiscal year 1971 when the Army had a total of over 1.2 million men in uniform. The Committee is well aware of the fact that the Army had many more three star generals in 1972 than it did in 1945 when the Army was 10 times larger.

Four of the six positions for which the new lieutenant generals are being requested are only being rotated among the Services and are not new positions. Two of the positions could be described as new, the Director of the newly created Defense Mapping Agency and the Deputy to the new Assistant Secretary of Defense (telecommunications). The other four positions are in the office of the Director, Defense Research and Engineering, the Defense Intelligence Agency, Assistant Secretary of Defense for International Security Affairs, and the Defense Nuclear Agency. These are old positions that just happened to be filled by Army personnel at the present time. When officers from the other Services left those positions, the other Services did not cut back on their authorized number and funding for lieutenant generals. In fact, some of these positions have been filled by Army officers in the past and the Army's turn has come up again. Accordingly, the Committee had deleted $150,000 needed to fund four of the six new lieutenant general positions.

WHERE ARE THE SECOND LIEUTENANTS?

The situation has gotten so much out of hand that according to the report on this bill, as of June 30, 1973 there will be:

First, more lieutenant colonels in the Air Force than there will be second lieutenants—14,589 against 12,676. There will be almost twice as many majors as second lieutenants—22,649 against 12,676;

Second, in the Army there will be 12,451 lieutenant colonels and only 8,000 second lieutenants; and

Third, in the Navy there will be almost as many commanders as ensigns—8,503 to 8,897—and almost twice as many lieutenant commanders as ensigns—15,354 to 8,897.

That is "grade creep" with a vengeance.

RATIOS OF OFFICERS TO ENLISTED MEN

It is not only the ratio of high ranking officers to low ranking officers that has gotten out of hand. The total number of officers to enlisted men is now greater than it has been in the history of the United States.

I asked the Library of Congress to provide me with the figures of the proportion of officers to enlisted men at different times in our history, particularly during the wars in which the United States has fought. Here are the facts they provided me.

WAR OF 1812—1 OFFICER FOR 17 MEN

In the War of 1812, namely in the year 1814, which was the peak period, there was a total of 2,806 officers in all services. At the same time there were 44,052 enlisted men. In the total number of officers and men of 46,858, the officers made up 5.99 percent of the total, or about one officer for every 17 men.

MEXICAN WAR—ONE OFFICER FOR 15 MEN

In the war with Mexico, at its peak in 1848, there were 4,048 officers and 56,260 enlisted men. In the total of 60,308 officers and men, the officers were 6.7 percent of the total or about one officer for every 15 men.

There were no accurate figures for the Civil War.

SPANISH-AMERICAN WAR—ONE OFFICER FOR 19 MEN

At the peak of the Spanish-American War in 1898 there were 12,046 officers and 223,739 enlisted men. In the total force of 235,785, officers made up 5.1 percent of the total. This was a ratio of one officer for every 19 enlisted men.

WORLD WAR I—ONE OFFICER FOR EVERY 18.5 MEN

On June 30, 1918, which was about the peak period during World War I, there were 155,600 officers and 2,741,600 enlisted men. In the total force of 2,897,167 the officers made up 5.4 percent of the total or one officer for about every 18.5 enlisted men.

WORLD WAR II—ONE OFFICER FOR EVERY NINE MEN

On June 30, 1945, there were 12,123,000 men under arms. Of these, 1,260,000 were officers and 10,863,000 were enlisted men. This is a ratio of one officer for every nine men or a situation in which officers composed 10.39 percent of the total.

KOREAN WAR—ONE OFFICER FOR EVERY NINE MEN

During the Korean war we had 3,635,912 men under arms. Of this total, there were 375,829 officers and 3,260,083 enlisted men as of June 30, 1952.

The officers were 10.3 percent of the total or one officer for every nine enlisted men.

PROJECTED RATIO—JUNE 30, 1973

At the end of the current fiscal year, the services expect to have 2,146,783 men and women on active duty. Of this number, 285,365 will be officers. This is a ratio of one officer for every 6.5 enlisted men or a situation in which officers make up 13.3 percent of the total.

In the case of the Air Force, there will be one officer for every five enlisted men.

In the Army, there will be one officer for every 7.3 enlisted men.

In the Navy, where the ratio is somewhat better, there will be one officer for every eight enlisted men.

HISTORICAL ABOMINATION

The grade creep is not merely the question of too many high ranking officers compared with low-ranking officers. That is certainly the case.

But it is also a question of too many officers, period. The ratio of one officer for every five men in the Air Force is certainly a far cry from the historic ratio of one officer for every 15 to 20 enlisted men.

FAR MORE OFFICERS THAN PLANES IN AIR FORCE

Today in the Air Force there are more than 12 officers—not officers and enlisted men, but officers—for every airplane. It has 124,000 officers and 10,000 planes. In fact, there are twice as many colonels and lieutenant colonels as there are total planes and intercontinental missiles in the Air Force.

CONGRESSMAN PIKE'S VIEWS

When this bill was in the House, Congressman OTIS PIKE wrote what I consider to be devastating minority views on the bill. Because he put it so well, let me read those views to the Senate. I ask unanimous consent that his views be printed at this point in the RECORD.

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

MINORITY VIEWS OF CONGRESSMAN OTIS G. PIKE ON H.R. 14537

The Air Force, according to the most recent figures available, has 9,676 planes. To fly these 9,676 planes, it had, as of February 29th of this year, 124,124 officers, including 14 4-star generals, 40 3-star generals, 152 2-star generals and 212 1-star generals. It had 6,307 colonels, 15,228 lieutenant colonels, and 23,962 majors.

The bill which we have before us had just one purpose—to allow the Air Force to continue to have for an additional four years more colonels, lieutenant colonels, and majors, than are allowed by the basic law passed by Congress, the Officer Grade Limitation Act of 1954.

The last time we excused the Air Force from complying with the basic law was in 1966. Thanks to the exemption given them by Congress in 1966, the Air Force in the ensuing five years, managed to accomplish the following: While cutting the total number of officers by 4,805, they, nevertheless, were able to create 39 more lieutenant colonels, 170 more colonels, and 1,672 more majors. The Air Force today has 1,031 more colonels, 4,510 more lieutenant colonels, and 2,177 more majors than permitted by an officer force of 125,000 under the Officer Grade Limitation Act of 1954.

All of the services since World War II have undergone a grade creep which has at times become a grade gallop, but none of our services has galloped further than the Air Force. In all of the Department of Defense, 13% of our men in uniform are officers—13% of the Army are officers, 12% of the Navy are officers, 10% of the Marine Corps are officers, but 17% of the Air Force are officers. Within this already enlarged officer structure, the Air Force has 37% of its officers in the grades of colonel, lieutenant colonel, and major, compared to only 29% of the Army and 33% in all the services combined.

Secretary of the Air Force Seamans testifies before the Armed Services Committee this year that the Air Force has 4,400 field grade officers (colonel, lieutenant colonel, and major) assigned to other than Air Force activities. Many of these activities may require such rank, many undoubtedly do not.

We are all aware of the handsome, charming and articulate 2-star general who serves as the head of Legislative Liaison for the Air Force, telling us what the Air Force wants us to know. This may or may not be an essential function, but I suspect that it is more essential than many of them.

Fewer of us, however, are aware that the Air Force has more lieutenant colonels than second lieutenants, and almost twice as many majors as second lieutenants.

While a great deal of testimony was heard in the Committee to the effect that it is the colonels, lieutenant colonels, and majors of the Air Force who are fighting the war in

Vietnam, the statistics are as follows: 20% of the Air Force's casualties in the war in Vietnam from January 31, 1961 through July 31, 1971, were enlisted men, 15% of their casualties were majors, only 3% were lieutenant colonels, and less than 1% were colonels. All the rest were lieutenants and captains.

The Air Force claims that they have to have more high ranked officers because their equipment is so complex and sophisticated. Yet asked to name the most sophisticated equipment in the Air Force Secretary Seamans named the Mark II avionics system of the FB–111 aircraft and admitted it was maintained by enlisted men and operated by lieutenants and captains. This is not a bill for the benefit of the enlisted men, lieutenants and captains.

The Air Force has other incentives than a bloated rank structure by which it can retain and does retain its higher ranked officers.

The testimony before the Committee was to the effect that the majority of the colonels are excused from flying, but still draw flight pay. The question was asked of General Dixon, "Do you think it is a proper procedure to continue to pay flight pay to people who are not flying?" General Dixon replied, "I think it is a proper procedure."

The serious issue which transcends this bill is the fact that not the Air Force alone, but throughout our entire military establishment we have more and more brass and fewer fighting men. We have more and more fat and less and less muscle.

A great place to make a small beginning toward the very difficult task of reversing this situation would be with this bill right here, right now, by voting it down.

PENTAGON DRAGS ITS FEET

Mr. PROXMIRE. Mr. President, this situation is long overdue for reform. But it continues to drag on and the Pentagon has been less than active in promoting a solution.

It began with a permanent law in 1947. That was superseded by a one-line temporary provision later. That was followed by the Grade Limitation Act of 1954. Since that time there have been numerous extensions.

The last time around, the House attempted to make the present scandalous situation permanent. But the distinguished Senator from Georgia, Mr. Russell, who was, during his career, the chairman of the Armed Services Committee and President pro tempore of the Senate, urged that the extension be made temporary in order that some reforms could be made.

He did that because the number of high ranking officers in all three services was excessive. He wanted to make certain that by the end of the period the Pentagon would come forward with a permanent plan for the number of high-ranking officers in all of the services. In fact, it is my understanding that at that time the Pentagon promised to have their proposals ready in a year or two.

But that has not happened and the bill before us extends the present wholly unsatisfactory situation for another 4 years. This is especially true because neither the Army nor Navy needs legislation in the interim.

H.R. 14542 GIVES THE BALL GAME AWAY

If this bill passes in its present form, Congress will give up the only bargaining chip it has. And in an age of "bargaining chips," it is time Congress created a few and used a few to serve the public interest.

If we let this go through in its present form, Congress will be throwing in the towel. We are proposing to bargain from weakness. If this bill passes, nothing will happen.

The military have made nothing more than the most casual promises to have a study ready—perhaps next year—5 years after Senator Russell urged a change. And with the Navy and the Army sitting pretty with more or less permanent legislation, and the Air Force content for 4 years, you can bet your bottom dollar that nothing will happen and that nothing will be done about this problem again next year.

As Congressman MAHON, chairman of the House Appropriations Committee said on the floor when this bill passed the House on July 25, 1972:

> An extension of another 4 years will serve as an excuse for further delaying a permanent revision of the Officer Grade Limitation Act when action should be taken within the next year to revise the officer grade structure.

I agree with the chairman of the House Appropriations Committee. Unless this bill can be amended to provide for a much shorter extension, an extension which will both require the Pentagon to report and provide a deadline under which Congress must act, this bill should not pass.

Mr. CANNON. Mr. President, let me now address specifically the proposed amendment offered by the Senator from Wisconsin.

What he proposes is that we grant an extension not of 4 years, but of 2 years and 3 months—to September 30, 1974. He suggests this amendment because he wants to put the pressure on the Pentagon to come forward with defensewide legislation to revise the officer grade structure of all the services. Thus he includes in his amendment a requirement that the Secretary of Defense submit a comprehensive written report on this matter, including recommendations for legislation, not later than May 31, 1973.

As you may know, the Senator from Wisconsin originally proposed a 1-year extension and a requirement for a report not later than March 31, 1973. During the past few days there have been numerous discussions with the Senator from Wisconsin, the chairman of the Armed Services Committee, and representatives of the Department of the Air Force. The result has been acceptance on all sides of the amendment proposed today—extension to September 30, 1974 and a requirement for a report not later than May 31, 1973.

I know that the Air Force would like a 4-year extension so it could do its long-range personnel planning and so its officers could feel more certain of future career opportunities and I know that the Senator from Wisconsin would like to exert more pressure on the Department of Defense. But I am satisfied that this is a good and reasonable compromise for everyone—it does put the pressure on the Pentagon to get proposed legislation over here, while at the same time it gives some breathing room to the Air Force.

This bill is urgently needed by the Air Force so that it can resume the promotions it has suspended and can go on with its planning. As I said earlier, this bill boils down to one question—do we want to continue to provide Air Force officers approximately the same promotion opportunities as their contemporaries in the other services have? It is simply a question of equity—and I urge that we adopt the amendment and pass this bill.

Mr. STENNIS. Mr. President, the Senator from Wisconsin (Mr. PROXMIRE) has offered an amendment which does two things. First, it will grant the extension of temporary authority to September 30, 1974, and it would require the Secretary of Defense to submit a report to the Congress by May 30, 1973 on recommended tables of distribution for all three services—Army, Navy, and Air Force.

Mr. President, I think the amendment proposed by the Senator from Wisconsin is entirely reasonable and I urge its acceptance by the Senate.

I think the objective of the Senator's amendment is clear—that is to force a legislative review within some reasonable time of the appropriate grade distribution for the numbers of officers for all three Services. The time, until September 30, 1974, will cover almost the entire next Congress and should be sufficient to do this job.

Let me emphasize, however, that this will be no simple task. It will involve a review of the requirements for all of the senior grades for each military service. We can well understand what arguments this issue will involve.

In addition, it will involve a reconsideration of the promotion laws, with all their complexity, for all the services. The Senate should know that the promotion laws have not been reviewed by the Congress in any depth in 25 years. Not since the Officer Personnel Act of 1947 was enacted has there been any basic change to the officer promotion system. This law, for the most part, deals only with permanent promotions insofar as the Army and Air Force are concerned. The entire temporary promotion system in these two services which has evolved over the years is governed almost entirely by regulation.

The Senate should also know that in the next Congress we will be faced with reviewing the military retirement system in depth, including the physical disability system. This alone could well be a 2-year job.

I set forth this information, Mr. President, in order to make a clear record of the job which the committee faces on personnel legislation in the next Congress. With respect to the pending bill, however, I urge its immediate enactment, as amended, in order that Air Force career officers may receive their appropriate promotions.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 14542) was read the third time, and passed.

THE RICHARD BREVARD RUSSELL OFFICE BUILDING

Mr. ROBERT C. BYRD. Mr. President, the Senate earlier today adopted Senate Resolution 296, to designate the Old Senate Office Building as the "Richard Brevard Russell Office Building." I said at the time the resolution was adopted that I had a prepared statement but that, because the hour of controlled debate had arrived, with reference to the motion to invoke cloture, I would forgo presenting the statement until later today.

I introduced Senate Resolution 296 on April 25, 1972, at which time Georgia's two fine Senators, Mr. TALMADGE and Mr. GAMBRELL, joined as cosponsors. The purpose of the resolution, as it was introduced, was to authorize the designation of the Old Senate Office Building as the "Richard Brevard Russell Office Building," and to authorize and direct the Senate Committee on Rules and Administration to place appropriate markers or inscriptions at suitable locations within the Old and New Senate Office Buildings to commemorate and designate the naming of these buildings, and provide that any expenses incurred in connection therewith be paid from the contingent funds of the Senate.

The resolution, as originally introduced, provided only for designation of the Old Building as the Russell Building. However, the resolution was amended by Senator COOK in the Rules Committee to also provide for designation of the New Senate Office Building as the Dirksen Building.

Mr. President, Senators will recall that I also offered a resolution several months ago to provide for the installation in the Senate reception room, along with the portraits of the five Senators already there, a portrait of Senator Russell. It was the feeling of the Rules Committee, however, that consideration ought to be given to following the same procedure that was followed earlier in the selection of the previous five Senators. Recognizing the logic of following the same procedure as in the earlier decisions, with respect to the reception room portraits, and following the precedent of the House of Representatives in designating its three office buildings as the Longworth, Cannon, and Rayburn Office Buildings, I then offered Senate Resolution 296—in which Senator TALMADGE and Senator GAMBRELL joined as cosponsors—to designate the Old Senate Office Building as the Russell Building.

Mr. President, I believe that one's colleagues can best testify to a Senator's greatness. I have found that memories do not long persist around here, and I have also found that the lives of men who have served in this body are short at best. When I became a Member of the Senate in January 1959, there were 98 members of this body—Hawaii not being a State at that time. Of the 98 Senators who made up the membership of this body in January 1959, only 33 remain today who served as Senators prior to my own election to this body. We know that by January 1973, at least four of those Senators who were here in January 1959 will no longer be in the Senate. So, it is easy to see that it will not be long before all those of us who were contemporaries of Senator Russell and who served with him here in the Senate will be gone.

I do not believe that we should let the years pass without making our own judgment as to the stature of a Senator who, by all standards, was a man of true greatness. The Old Senate Office Building is already over 60 years old, and if we do not now dedicate its name to the memory of one of the greatest Senators in this century—and possibly of all time—it may never come to pass, because other Senators who follow after us and who did not know Senator Russell will have their own ideas. And, as a matter of fact, the building may otherwise continue always to be known as the Old Senate Office Building.

Mr. President, I do not think any man who has ever served in this body contributed more of his intellect, his knowledge, and his extraordinary skills, to enhance and protect the integrity of the Senate which he so deeply revered. I do not feel that any tribute this body could pay to the late Richard Brevard Russell would be too great in view of his 38 years of love and dedication to the U.S. Senate and to his country.

I do appreciate and respect the views of the distinguished senior Senator from Michigan. He is sincere in all that he says, and I admire him for this. However, having served on the Armed Services Committee when Senator Russell was chairman of that committee, having served on the Appropriations Committee when Senator Russell was chairman of that committee, and having admired Senator Russell for his great dedication to duty, his great dedication to his country, and his great dedication to the Senate which he so deeply loved it is my belief that we will do the right thing in naming the Old Senate Office Building in memory of him.

EXTENSION OF TIME FOR FILING CONFERENCE REPORT ON H.R. 8395

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished senior Senator from California (Mr. CRANSTON) may have until midnight tonight to file a conference report for printing on H.R. 8395.

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

ORDER FOR RECOGNITION OF SENATORS ALLEN AND ROBERT C. BYRD TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, following the recognition of the Senators previously enumerated, the following Senators be recognized, each for 15 minutes: Mr. JAMES B. ALLEN and Mr. ROBERT C. BYRD.

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 on tomorrow, following the completion of the orders for the recognition of Senators, if there be any time remaining prior to the hour of 10 a.m., such 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.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the distinguished senior Senator from Vermont (Mr. AIKEN) has asked what the program will be tomorrow, and I am pleased to state it as follows:

The Senate will convene at 8:30 a.m.

After the two leaders have been recognized under the standing order, the following Senators will be recognized, each for the time stated and in the sequence stated: Mr. FANNIN, 15 minutes; Mr. HANSEN, 15 minutes; Mr. WILLIAMS, 15 minutes; Mr. Moss, 15 minutes; Mr. ALLEN, 15 minutes; Mr. ROBERT C. BYRD, 15 minutes.

If there is time remaining following the orders aforementioned prior to the hour of 10 a.m., such time will be utilized for the transaction of routine morning business, with statements therein limited to 3 minutes.

In any event, at 10 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 11 a.m., the mandatory quorum call will start. As soon as a quorum is established, the yea-and-nay vote will be automatic, and should occur beginning circa 11:15 a.m.

In any event, following the vote on the motion to invoke cloture, the Senate will go into executive session and, without further debate, will vote by rollcall on the confirmation of the nomination of General Abrams.

Immediately following that rollcall vote, the Senate will return to legislative session. If cloture has been invoked, the unfinished business will be before the Senate until it is disposed of.

The picture is not clear as to what will develop if cloture is not invoked. It can be said, however, that the supplemental appropriations bill will be ready for action on the Senate floor by tomorrow afternoon. In other words, the Appropriations Committee will have met, will have marked up the bill, and will have reported it to the floor.

Other than the foregoing, I can only repeat what has been said earlier; namely, that the debt limitation bill will be ready by the latter part of the week; that several lesser measures are on the calendar which may or may not be called up, depending upon the circumstances; that conference reports will be coming up at any time; and that yea-and-nay votes will occur daily from here on, through Saturday.

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.

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 7 p.m., the Senate adjourned until tomorrow, Thursday, October 12, 1972, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 11, 1972:

U.S. COAST GUARD

The following rear admirals of the U.S. Coast Guard to be commander, Pacific area and commander, Atlantic area, U.S. Coast Guard with the rank of vice admiral, while so serving:

Rear Adm. Mark A. Whalen, Pacific Area.

Rear Adm. Benjamin F. Engel, Atlantic Area.

U.S. AIR FORCE

The following officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be lieutenant general

Maj. Gen. Robert E. Pursley, [redacted] FR (Colonel, Regular Air Force) U.S. Air Force.

U.S. ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Fred Kornet, Jr. [redacted], Army of the United States (lieutenant colonel, U.S. Army).

Maj. Gen. Donald Harry Coles, [redacted], U.S. Army, for appointment as senior U.S. Army member of the Military Staff Committee of the United Nations, under the provisions of title 10, United States Code, section 711.

The Army National Guard officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. Charles Watts Fernald, SSN [redacted] Adjutant General's Corps.

To be brigadier general

Col. Alfred Frederick Ahner, SSN [redacted] Adjutant General's Corps.

Col. John James Womack, SSN [redacted] Adjutant General's Corps.

The Army National Guard of the United States officer named herein for promotion as a Reserve commissioned officer of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3385:

To be brigadier general

Col. Joseph Richard Jelinek, [redacted], Army National Guard of the United States.

IN THE AIR FORCE

The following-named officers for promotion in the U.S. Air Force, under the appropriate provisions of chapter 839, Title 10, United States Code, as amended.

Lieutenant colonel to colonel

MEDICAL CORPS

Armstrong, Raymond G., [redacted]
Ball, Thomas P., Jr., [redacted]
Barber, Dennis D., [redacted]
Barnes, Walter C., Jr., [redacted]
Bellamy, Henry M., Jr., [redacted]
Bonner, Robert H., [redacted]
Brekken, Alvin L., [redacted]
Brown, William K., [redacted]
Cargill, Louis H., [redacted]
Chong ,Vernon, [redacted]
Curtis, Kenneth, W., Jr., [redacted]
Curtis, Sidney H., [redacted]
Dann, Theodore A., [redacted]
Dehart, Roy L., [redacted]
Derby, Dennis R., [redacted]
Deverell, William F., [redacted]
Erickson, Clark A., [redacted]
Ferrari, Victor J., Jr., [redacted]
Gomezdisdier, Rafael M., [redacted]
Gonzalez, Joe V., [redacted]
Goodnow, Robert W., [redacted]
Gregory, Joseph E., [redacted]
Griggs, George A., [redacted]
Hale, Albert S., Jr., [redacted]
Halsell, John T., III, [redacted]
Harris, James B., [redacted]
Harris, Richard C., [redacted]
Hermann, Elmer R., Jr., [redacted]
Hill, Richard P., [redacted]
Holl, Carl W., Jr., [redacted]
Holliday, William B., [redacted]
Jackson, Francis M., [redacted]
Johnson, John A., Jr., [redacted]
Jones, Frederic G., [redacted]
Jones, Frederick R., [redacted]
Kiplin, Lydell C., [redacted]
Klugman, Yale L., [redacted]
McGowan, Ronald L., [redacted]
McIntosh, Duncan A., [redacted]
Meader, Willard L., [redacted]
Nielsen, Andrew A., [redacted]
O'Brien, Eugene T., [redacted]
Olson, Robert M., [redacted]
Pappin, James D., [redacted]
Perry, Carlos J. G., [redacted]
Pollard, Richard A., [redacted]
Pollock, Joseph J., [redacted]
Randall, George E., [redacted]
Rogers, John R., [redacted]
Romberger, Wesley E., [redacted]
Sawyer, Charles H., [redacted]
Schechter, Eliot, [redacted]
Schneider, Robert A., [redacted]
Silberman, Irwin A., [redacted]
Skinner, Odis D., [redacted]
Sloan, Alexander M., [redacted]
Speicher, Carl E., [redacted]
Spinelli, Francis R., Jr., [redacted]
Spoor, Daniel H., [redacted]
Starrett, Jack R., [redacted]
Stecker, Raymond H., [redacted]
Stowe, Fred R., Jr., [redacted]
Threadgill, Joseph M., [redacted]
Thurston, Charles S., [redacted]
Tilles, Jerome, [redacted]
Wachs, Theodore J., [redacted]
Weeks, Leroy E., [redacted]
Wright, John H., Jr., [redacted]
Zimmerman, Frank W., Jr., [redacted]

DENTAL CORPS

Bales, David J., [redacted]
Barton, John A., Jr., [redacted]
Blackman, Ronald B., [redacted]
Colaizzi, Frank A., [redacted]
Costley, Albert W., Jr., [redacted]
Debello, Anthony N., [redacted]
Dejmek, Homer W., [redacted]
Doyle, Bernard J., [redacted]
Frome, William J., [redacted]
Furr, Robert E., [redacted]
Geracci, James P., [redacted]
Greco, George W., [redacted]
Hanson, Harold O., [redacted]
Harris, Bernard C., [redacted]
Hastings, Jack G., [redacted]
Henry, Richard A., Jr., [redacted]
Hicks, Rodeheaver H., [redacted]
Hungerman, Paul J., [redacted]
Jacoby, James K., [redacted]
Kiser, George C., [redacted]
Kleinman, Preston R., [redacted]
Krolls, Sigurds O., [redacted]
MacDonald, Charles I., [redacted]
McCarthy, Paul H., [redacted]
Muth, Eugene R., [redacted]
Nease, William J., [redacted]
Scott, Robert H., [redacted]
Strunk, Robert R., [redacted]
Testa, William J., [redacted]
Torchik, George P., [redacted]
Wooten, James W., [redacted]
Young, John M., [redacted]

Major to lieutenant colonel

MEDICAL CORPS

Acostamelendez, Antonio E., [redacted]
Adelmann, Eugene R., [redacted]
Alexander, Raymond H., [redacted]
Anderson, Edgar R., Jr., [redacted]
Armbrustmacher, Vernon W., [redacted]
Aston, James K., [redacted]
Bailey, Edward J., [redacted]
Baker, Robert N., [redacted]
Battaglia, Carl J., [redacted]
Beck, Roger A., [redacted]
Blankenship, Robert M., [redacted]
Borden, Lester L., [redacted]
Boydstun, James A., [redacted]
Brada, Donald R., [redacted]
Bradley, Harold F., [redacted]
Brath, William F., [redacted]
Brazil, Harold H., [redacted]
Britt, Darryl B., [redacted]
Bryson, Andrew L., [redacted]
Buethe, Robert A., Jr., [redacted]
Byers, Glen M., [redacted]
Callen, Kenneth E., [redacted]
Carnighan, Robert H., [redacted]
Carpenter, Warren L., [redacted]
Clark, Carl M., [redacted]
Cline, Robert E., [redacted]
Coletti, John M., Jr., [redacted]
Conrad, Larry L., [redacted]
Corcoran, James F., [redacted]
Crow, Joe W., [redacted]
Culton, John W., [redacted]
Davis, Charles M., [redacted]
Dean, David F., [redacted]
Debessonet, David A., [redacted]
Deford, James W., [redacted]
Diaco, Joseph F., [redacted]
Dichsen, Donald V., [redacted]
Dorey, Lee R., [redacted]
Dryden, Richie S., [redacted]
Dyer, William M., Jr., [redacted]
Eady, John L., [redacted]
Ehemann, Larry J., [redacted]
Ellenbogen, Charles, [redacted]
Emeis, William E., [redacted]
Fielding, Steven L., [redacted]
Finger, Elliott R., [redacted]
Fox, Raymond M., Jr., [redacted]
Gaffney, Clyde M., [redacted]
Galbert, Michael W., [redacted]
Geller, Albert S., [redacted]
Gibson, Gordon L. M., [redacted]
Gilpin, Eugene L., [redacted]
Gohman, James D., [redacted]
Hansen, Paul T., [redacted]
Haynes, Max G., [redacted]
Heffron, John P., [redacted]
Hemming, Val G., [redacted]
Hemsell, David L., [redacted]
Henges, David F., [redacted]
Holmes, Scott L., [redacted]
Howard, Jack B., [redacted]
Hudson, Joseph S., [redacted]
Jackson, Arnold J., [redacted]
Johnson, Albert, Jr., [redacted]
Johnson, Don E., [redacted]
Jordan, Ashby M., [redacted]
Kantack, Paul W., [redacted]
Keller, James W., [redacted]
Kish, Leslie S., [redacted]
Krege, John W., [redacted]
Legowik, John T., [redacted]

Maier, Robert C., xxx-xx-xxxx
Mathews, Theodore S., xxx-xx-xxxx
McGee, James W., IV, xxx-xx-xxxx
Megibow, Alan D., xxx-xx-xxxx
Michaelson, Edward D., xxx-xx-xxxx
Miller, James B., xxx-xx-xxxx
Moseley, John C., xxx-xx-xxxx
Munson, Herbert G., xxx-xx-xxxx
Murphy, James G., xxx-xx-xxxx
Murphy, Matthew P., II, xxx-xx-xxxx
Pala, Stanley J., xxx-xx-xxxx
Parker, Edward H., Jr., xxx-xx-xxxx
Pfeifer, William F., xxx-xx-xxxx
Pike, Benjamin F., xxx-xx-xxxx
Pittman, James A., xxx-xx-xxxx
Plager, Stephan D., xxx-xx-xxxx
Plybon, Benjamin L., xxx-xx-xxxx
Podoloff, Donald A., xxx-xx-xxxx
Ragsdale, Vernice D., xxx-xx-xxxx
Ramsay, James G., Jr., xxx-xx-xxxx
Rather, Edwin P., xxx-xx-xxxx
Riveracorrea, Hector P., xxx-xx-xxxx
Rodriguezcolon, Juan, xxx-xx-xxxx
Sanders, Lawrence T., xxx-xx-xxxx
Sanfelippo, Peter M., xxx-xx-xxxx
Schull, Jerry L., xxx-xx-xxxx
Shanklin, Kenneth D., xxx-xx-xxxx
Shochat, Stephen J., xxx-xx-xxxx
Signorino, Charles E., xxx-xx-xxxx
Simerville, James J., xxx-xx-xxxx
Singal, Sheldon, xxx-xx-xxxx
Singer, Karl L., xxx-xx-xxxx
Singleton, Charles M., xxx-xx-xxxx
Smith, Dwight D., xxx-xx-xxxx
Smith, Melvin D., xxx-xx-xxxx
Smith, Robert B., xxx-xx-xxxx
Sonntag, Richard W., Jr. xxx-xx-xxxx
Spence, Michael B., xxx-xx-xxxx
Sproles, Elij T., III, xxx-xx-xxxx
Stadler, Frank, III xxx-xx-xxxx
Staker, Lynn L., xxx-xx-xxxx
Stoner, John C., xxx-xx-xxxx
Taylor, William M., xxx-xx-xxxx
Tchou, Howard P., xxx-xx-xxxx
Terry, Ward M., xxx-xx-xxxx
Thomas, Hollis A., Jr., xxx-xx-xxxx
Thompson, Barry H., xxx-xx-xxxx
Thorshov, Jon R., xxx-xx-xxxx
Tomasovic, Jerry J., xxx-xx-xxxx
Troxler, Raymond G., xxx-xx-xxxx
Wagner, Grant H., xxx-xx-xxxx
Wagner, James D., II, xxx-xx-xxxx
Walker, Ronald E., xxx-xx-xxxx
Ward, James G., xxx-xx-xxxx
Watters, John A., Jr. xxx-xx-xxxx
Wild, James H., xxx-xx-xxxx
Willis, Marshall R., xxx-xx-xxxx
Yrizarryyunque, Jose M., xxx-xx-xxxx
Zeiner, George B., xxx-xx-xxxx

DENTAL CORPS

Abbott, George G., xxx-xx-xxxx
Aberth, George H., Jr., xxx-xx-xxxx
Almon, John V., xxx-xx-xxxx
Ammerman, Thomas J., xxx-xx-xxxx
Aslanis, James T., xxx-xx-xxxx
Ausich, Joseph E., xxx-xx-xxxx
Bailey, Ronald W., xxx-xx-xxxx
Banks, Rill G., xxx-xx-xxxx
Barton, Ralph T., xxx-xx-xxxx
Benkel, Bernard H., xxx-xx-xxxx
Beutler, Ralph K., xxx-xx-xxxx
Blasetti, Angelo B., xxx-xx-xxxx
Bloss, James L., xxx-xx-xxxx
Blumenfeld, Walter L., xxx-xx-xxxx
Bock, Joseph F., Jr. xxx-xx-xxxx
Boke, Bruce R., xxx-xx-xxxx
Bourne, William F., xxx-xx-xxxx
Brandt, Robert L., xxx-xx-xxxx
Brown, Garth W., xxx-xx-xxxx
Brown, Leo M., xxx-xx-xxxx
Brown, Velpo B., xxx-xx-xxxx
Brunsvold, Michael A., xxx-xx-xxxx
Bryk, Clarence C., xxx-xx-xxxx
Bump, Robert L., xxx-xx-xxxx
Camamo, Joseph A., xxx-xx-xxxx
Carroll, Daniel F., xxx-xx-xxxx
Chalfin, Charles W., xxx-xx-xxxx
Coffee, Larry L., xxx-xx-xxxx
Cooper, Harvey E., xxx-xx-xxxx
Couper, John T., xxx-xx-xxxx
Cowan, Robert D., xxx-xx-xxxx
Coyne, Arthur B., xxx-xx-xxxx
Davis, Frederic C., xxx-xx-xxxx
Depew, Theodore E., Jr., xxx-xx-xxxx
Deyampert, Porter L., xxx-xx-xxxx
Dix, Robert L., xxx-xx-xxxx
Dohaney, Martin J., Jr., xxx-xx-xxxx
Dukart, Rodney C., xxx-xx-xxxx
Edwards, Jack, xxx-xx-xxxx
Farnie, John E., xxx-xx-xxxx
Fliss, Sheldon D., xxx-xx-xxxx
Forgach, John J., xxx-xx-xxxx
Forrest, William R., xxx-xx-xxxx
Foulke, Clark N., xxx-xx-xxxx
Francis, Michael R., xxx-xx-xxxx
Gallagher, Richard A., xxx-xx-xxxx
Gardner, Jerry D., xxx-xx-xxxx
Gault, Clovis G., xxx-xx-xxxx
Gilliland Robert F., xxx-xx-xxxx
Giuliani, Richard L., xxx-xx-xxxx
Gough, Robert W., xxx-xx-xxxx
Gray, Gary G., xxx-xx-xxxx
Green, Paul F., xxx-xx-xxxx
Gullatt, Theodore, Jr., xxx-xx-xxxx
Hale, Robert H., xxx-xx-xxxx
Hammelman, James A., xxx-xx-xxxx
Hammer, Wayne S., Jr., xxx-xx-xxxx
Haroz, Carl T., xxx-xx-xxxx
Hartman, Kenton S., xxx-xx-xxxx
Hellier, Charles E., xxx-xx-xxxx
Hersho, Robert M., xxx-xx-xxxx
Hoffman, David D., xxx-xx-xxxx
Holgate, Robert S., xxx-xx-xxxx
Holmes, Philip J., xxx-xx-xxxx
Hope, Gary B., xxx-xx-xxxx
Hubbuch, Behrle W., Jr., xxx-xx-xxxx
Idema, William A., xxx-xx-xxxx
Ingari, John S., xxx-xx-xxxx
Jarvis, Raymond J., xxx-xx-xxxx
Jerman, Albert C., xxx-xx-xxxx
Jones, Thomas M., xxx-xx-xxxx
Kay, Wiliam D., xxx-xx-xxxx
Keaton, Wilfrid M., xxx-xx-xxxx
Keuper, Jack B., xxx-xx-xxxx
Killingsworth, Charles R., xxx-xx-xxxx
Kirby, David B., Jr., xxx-xx-xxxx
Kizzie, Anderson, xxx-xx-xxxx
Klepetko, Ronald F., xxx-xx-xxxx
Kunberger, George L., xxx-xx-xxxx
Kutz, Paul L., xxx-xx-xxxx
Large, David C., xxx-xx-xxxx
Lee, Kenneth E., xxx-xx-xxxx
Long, William H. xxx-xx-xxxx
Loughlin, Dan M., xxx-xx-xxxx
Lundgren, Richard P., xxx-xx-xxxx
Maestrelli, Raymond C., xxx-xx-xxxx
Masi, Victor A., xxx-xx-xxxx
Maust, Jay R., xxx-xx-xxxx
McCormick, James E., xxx-xx-xxxx
McDaniel, Raymond K., xxx-xx-xxxx
McLees, James K., xxx-xx-xxxx
Meyer, Asher M., xxx-xx-xxxx
Molnar, Georg, xxx-xx-xxxx
Moore, John N., Jr., xxx-xx-xxxx
Morgan, Gary H., xxx-xx-xxxx
Morley, Ronald B., xxx-xx-xxxx
Nemchick, Harold E., Jr., xxx-xx-xxxx
Noderer, William H., xxx-xx-xxxx
Olesen, Harold P., xxx-xx-xxxx
Osburn, Richard C., xxx-xx-xxxx
Parttridge, John C., xxx-xx-xxxx
Perez, Richard S., xxx-xx-xxxx
Pixley, Phillip J., xxx-xx-xxxx
Plies, Stanley M., xxx-xx-xxxx
Plutzke, Anthony E., xxx-xx-xxxx
Polte, Hanswalter W., xxx-xx-xxxx
Pullen, Wayne G., xxx-xx-xxxx
Rhea, Joseph C., Jr., xxx-xx-xxxx
Riley, Guy L., xxx-xx-xxxx
Rivard, Rodney A., xxx-xx-xxxx
Roehrig, Kenneth L., xxx-xx-xxxx
Rosen, Ronald, xxx-xx-xxxx
Salzmann, Jacob A., xxx-xx-xxxx
Sandoval, Elivinio, xxx-xx-xxxx
Savers, Norman C., Jr., xxx-xx-xxxx
Scholes, Edwin, Jr., xxx-xx-xxxx
Scott, Andrew S., xxx-xx-xxxx
Sellers, William R., xxx-xx-xxxx
Senia, Ennio S. A., xxx-xx-xxxx
Shaver, Bruce E., xxx-xx-xxxx
Siparsky, Martin S., xxx-xx-xxxx
Skaer, Wilbur C., Jr., xxx-xx-xxxx
Smith, Howard E., xxx-xx-xxxx
Spencer, Leonard J., xxx-xx-xxxx
Spielman, Warren R., xxx-xx-xxxx
Stamps, John T., xxx-xx-xxxx
Stepler, Ronald G., xxx-xx-xxxx
Streeter, Arthur H., xxx-xx-xxxx
Sudinsky, Theodore R., xxx-xx-xxxx
Tatum, Thomas H., xxx-xx-xxxx
Thompson, Michael W., xxx-xx-xxxx
Townsend, Herbert K., Jr., xxx-xx-xxxx
Usseglio, Robert J., xxx-xx-xxxx
Vanvooren, Claude P. G., xxx-xx-xxxx
Waldbillig, Tom T., xxx-xx-xxxx
Wasserman, Sheldon, xxx-xx-xxxx
Wellins, Stanley L., xxx-xx-xxxx
Wilcox, James W., xxx-xx-xxxx
Wilensky, Alan J., xxx-xx-xxxx
Wilkinson, Raymond F., xxx-xx-xxxx
Williams, Earl O., xxx-xx-xxxx
Wilson, Theodore T., xxx-xx-xxxx
Windeler, Alfred S., Jr., xxx-xx-xxxx

IN THE AIR FORCE

The following-named officers for promotion in the Regular Air Force, under the appropriate provisions of chapter 835, Title 10, United States Code, as amended. All officers are subject to physical examination required by law.

Captain to Major

LINE OF THE AIR FORCE

Abbott, Donald L., xxx-xx-xxxx
Abel, David R., xxx-xx-xxxx
Adams, Charles D., xxx-xx-xxxx
Adams, Derrell J., Jr., xxx-xx-xxxx
Adams, Gordon D., xxx-xx-xxxx
Adams, John R., xxx-xx-xxxx
Adams, Marvin A., xxx-xx-xxxx
Adams, Richard R., xxx-xx-xxxx
Affholder, David J., xxx-xx-xxxx
Agard, Gary L., xxx-xx-xxxx
Aho, Wallace E., xxx-xx-xxxx
Akers, Brian L., xxx-xx-xxxx
Albo, Charles W., xxx-xx-xxxx
Albright, Ray E., xxx-xx-xxxx
Alden, Gary L., xxx-xx-xxxx
Alderman, Duaine E., xxx-xx-xxxx
Aldrich, Fred E., xxx-xx-xxxx
Alexander, Kenneth B., xxx-xx-xxxx
Alfieri, Guiseppe, M. C., xxx-xx-xxxx
All, William D., xxx-xx-xxxx
Allen, Don K., xxx-xx-xxxx
Allen, Emmett E., Jr. xxx-xx-xxxx
Allen, John R., xxx-xx-xxxx
Allen, John R., Jr., xxx-xx-xxxx
Allen, Richard H., xxx-xx-xxxx
Alley, James R., xxx-xx-xxxx
Allison, Robert F., xxx-xx-xxxx
Allison, Robert G., xxx-xx-xxxx
Allred, Leron H., xxx-xx-xxxx
Alsup, Willie III, xxx-xx-xxxx
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Senia, Ennio S. A., xxx-xx-xxxx
Smith, Howard E., xxx-xx-xxxx
Stamps, John T., xxx-xx-xxxx
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Andruczk, Robert C., xxx-xx-xxxx
Barry, William E., xxx-xx-xxxx
Berry, Frank W., Jr., xxx-xx-xxxx
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Cook, James H., xxx-xx-xxxx
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Baker, Olive M., xxx-xx-xxxx
Bullington, Lyda A., xxx-xx-xxxx
Campbell, Thomas R., xxx-xx-xxxx
Christiansen, Shirley A., xxx-xx-xxxx
Cowling, Norene E., xxx-xx-xxxx
Craft, Kathryn L., xxx-xx-xxxx
Demeaux, Jeanne R., xxx-xx-xxxx
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Draves, Jacqueline L., xxx-xx-xxxx
Emmerth, Margaret C., xxx-xx-xxxx
Fox, Marjorie R., xxx-xx-xxxx
Guthridge, Evelyn V., xxx-xx-xxxx
Hale, Diann A., xxx-xx-xxxx
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Hester, Patricia S., xxx-xx-xxxx
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Morton, Carol A., xxx-xx-xxxx
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Amesbury, John F., xxx-xx-xxxx
Brady, Gene F., xxx-xx-xxxx
Buss, Mervin F., xxx-xx-xxxx
Cornelius, Ronald E., xxx-xx-xxxx
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Park, Clinton R., xxx-xx-xxxx
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Schmitt, Richard G., xxx-xx-xxxx
Tatera, Bernard S., xxx-xx-xxxx
Walker, William J., Jr., xxx-xx-xxxx
Witzgall, Fred L., xxx-xx-xxxx

The following-named Air Force officers for reappointment to the active list of the Regular Air Force, in the grade indicated, under the provisions of section 1210 and 1211, title 10, United States Code.

LINE OF THE AIR FORCE

To be lieutenant colonel

Earle, City C., xxx-xx-xxxx

To be major

Curtis, Billy R., xxx-xx-xxxx

Billy R. Curtis, xxx-xx-xxxx for appointment in the temporary grade of lieutenant colonel, under the provisions of section 8444, title 10, United States Code, with date of rank to be determined by the Secretary of the Air Force.

Richard H. Delmonico, xxx-xx-xxxx for appointment in the Regular Air Force, in the grade of captain, under the provisions of section 8284, title 10, United States Code, with a view to designation as a medical officer under the provisions of section 8067, title 10, United States Code, with a date of rank to be determined by the Secretary of the Air Force.

The following persons for appointment as a Reserve of the Air Force (Medical Corps) in the grade of lieutenant colonel, under the provisions of section 593, title 10, United States Code and Public Law 92–129, with a view to designation as a Medical Officer under the provisions of section 8067, title 10, United States Code:

Gams, Richard A., xxx-xx-xxxx
McAlister, Bradwell R., xxx-xx-xxxx

Robert L. Slaughter, xxx-xx-xxxx for appointment as a Reserve of the Air Force (Medical Corps) in the grade of lieutenant colonel, under the provisions of section 593 and 8351, title 10, United States Code, and Public Law 92–129, with a view to designation as a medical officer under the provisions of section 8067, title 10, United States Code.

The following officers for promotion in the Air Force Reserve, under the provisions of section 8376, title 10, United States Code and Public Law 92–129.

Major to lieutenant colonel

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Hinton, Richard D., xxx-xx-xxxx
Howell, George L., Jr., xxx-xx-xxxx
Nichols, Spencer L., xxx-xx-xxxx
Potock, Walter J., xxx-xx-xxxx
Supple, Michael J., xxx-xx-xxxx
Trammell, James E., xxx-xx-xxxx
Weber, Willis E., xxx-xx-xxxx
West, Robert L., xxx-xx-xxxx

MEDICAL CORPS

Alexander, David G., xxx-xx-xxxx
Madere, Sherman G., xxx-xx-xxxx

IN THE AIR FORCE

The following-named officers for promotion in the Regular Air Force, under the appropriate provisions of chapter 835, Title 10, United States Code, as amended. All officers are subject to physical examination required by law.

First lieutenant to captain

LINE OF THE AIR FORCE

Aarons, Ronald D., xxx-xx-xxxx
Abbes, Douglas C., xxx-xx-xxxx
Abbott, Sherwood S., xxx-xx-xxxx
Abel, Raymond E., Jr., xxx-xx-xxxx
Abel, Thomas R., xxx-xx-xxxx
Abels, J. Arthur, xxx-xx-xxxx
Abendschein, Frederick E., xxx-xx-xxxx
Abernathy, Charles R., xxx-xx-xxxx
Abernethy, Theodore J., Jr., xxx-xx-xxxx
Abney, Billy W., xxx-xx-xxxx
Acke, Edward H., xxx-xx-xxxx
Adair, Harmon L., Jr., xxx-xx-xxxx
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Adams, Gerald R., xxx-xx-xxxx
Adams, Harold B., xxx-xx-xxxx
Adams, Henry A., III, xxx-xx-xxxx
Adams, James D., xxx-xx-xxxx
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Adkins, Joel E., xxx-xx-xxxx
Agnew, John T., xxx-xx-xxxx
Ahern, John J., Jr., xxx-xx-xxxx
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Anderson, Harlan L., xxx-xx-xxxx.
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Atchley, Gordon W., xxx-xx-xxxx.
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Austin, Charles E., xxx-xx-xxxx.
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Avant, James R., Jr., xxx-xx-xxxx.
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Bacon, William G., xxx-xx-xxxx.
Baden, Frederick E., xxx-xx-xxxx.
Badger, Robert C., xxx-xx-xxxx.
Bafundo, George R., xxx-xx-xxxx.
Bagley, Larry C., xxx-xx-xxxx.
Bailey, Edward P., Jr., xxx-xx-xxxx.
Bailey, Frank L., xxx-xx-xxxx.
Bailey, Joseph R., xxx-xx-xxxx.
Bailey, Richard W., xxx-xx-xxxx.
Bain, Gary H., xxx-xx-xxxx.
Bair, Charles A., Jr., xxx-xx-xxxx.
Baity, Mickey W., xxx-xx-xxxx.
Baker, Bob E., xxx-xx-xxxx.
Baker, Carl L., xxx-xx-xxxx.
Baker, Don L., xxx-xx-xxxx.
Baker, George L., xxx-xx-xxxx.
Baker, Herbert G., xxx-xx-xxxx.
Baker, James H., III, xxx-xx-xxxx.
Baker, Robert W., xxx-xx-xxxx.
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Baldwin, Ralph H., III, xxx-xx-xxxx.
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Baldy, Paul J., xxx-xx-xxxx.
Ball, Norman K., xxx-xx-xxxx.
Ball, Willis H., III, xxx-xx-xxxx.
Balmanno, William F., xxx-xx-xxxx.
Banachowski, Chester A., xxx-xx-xxxx.
Bandy, Robert R., xxx-xx-xxxx.
Bangeman, Mark P., xxx-xx-xxxx.
Bannon, Thomas A., xxx-xx-xxxx.
Baratelli, Philip J., xxx-xx-xxxx.
Barber, Thomas J., xxx-xx-xxxx.
Barbezat, Eugene L., xxx-xx-xxxx.
Barclay, Victor W., xxx-xx-xxxx.
Barnes, Barney E., Jr., xxx-xx-xxxx.
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Barnes, Michael P., xxx-xx-xxxx.
Barnhardt, James W., Jr., xxx-xx-xxxx.
Barr, Charles M., xxx-xx-xxxx.
Barr, Robert E., xxx-xx-xxxx.
Barr, Tommy D., xxx-xx-xxxx.
Barratt, Frederick J., xxx-xx-xxxx.
Barrett, Donald R., xxx-xx-xxxx.
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Barrett, John R., xxx-xx-xxxx.
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Barrilleaux, James L., xxx-xx-xxxx.
Barry, Edward G., xxx-xx-xxxx.
Barry, Maurice H., xxx-xx-xxxx.
Bartness, Patrick M., xxx-xx-xxxx.
Barton, Melvin W., xxx-xx-xxxx.
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Bartos, Henry S., xxx-xx-xxxx.
Base, John R., xxx-xx-xxxx.
Bashant, Ronald W., xxx-xx-xxxx.
Basinski, Gary J., xxx-xx-xxxx.
Bass, Charles A., xxx-xx-xxxx.
Bassham, Cecil N., xxx-xx-xxxx.
Batsel, Michael L., xxx-xx-xxxx.
Batten, Arthur D., xxx-xx-xxxx.
Bauer, James F., xxx-xx-xxxx.
Bauer, John E., xxx-xx-xxxx.
Bauman, Robert B., xxx-xx-xxxx.
Baxter, Ronald L., xxx-xx-xxxx.
Beal, John F., xxx-xx-xxxx.
Beall, Clarence W., III, xxx-xx-xxxx.
Beam, Jack E., III, xxx-xx-xxxx.
Beams, William A., xxx-xx-xxxx.
Beard, Faye L., xxx-xx-xxxx.
Beasley, Jay N., xxx-xx-xxxx.
Beatty, Jerry L., xxx-xx-xxxx.
Beaty, Joseph K., xxx-xx-xxxx.
Bebber, Gary D., xxx-xx-xxxx.
Beck, Dennis G., xxx-xx-xxxx.
Beck, Frank P., xxx-xx-xxxx.
Beck, Michael O., xxx-xx-xxxx.
Beck, Robert J., xxx-xx-xxxx.
Becker, Donald A., xxx-xx-xxxx.
Becker, Gerald E., xxx-xx-xxxx.
Beggs, Richard G., xxx-xx-xxxx.
Beierschmitt, Gerald A., Jr., xxx-xx-xxxx.
Belew, William R., Jr., xxx-xx-xxxx.
Belisle, Robert J., Jr., xxx-xx-xxxx.
Bell, Frederick M., xxx-xx-xxxx.
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Bencks, Edward G., xxx-xx-xxxx.
Bender, Jack S., III, xxx-xx-xxxx.
Benedict, Andrew H., xxx-xx-xxxx.
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Bennes, James M., xxx-xx-xxxx.
Bennett, Bryan L., xxx-xx-xxxx.
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Benson, Howard F., Jr., xxx-xx-xxxx.
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Berg, Mark L., xxx-xx-xxxx.
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Bernhardt, James H., xxx-xx-xxxx.
Berry, Danny L., xxx-xx-xxxx.
Berry, William G., Jr., xxx-xx-xxxx.
Berta, William C., xxx-xx-xxxx.
Berube, Howard A., xxx-xx-xxxx.
Best, Douglas E., xxx-xx-xxxx.
Best, Stoddard L., xxx-xx-xxxx.
Bethurem, Richard C., xxx-xx-xxxx.
Betourne, Gary P., xxx-xx-xxxx.
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Bevan, Wayne R., xxx-xx-xxxx.
Bewley, Carroll E., xxx-xx-xxxx.
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Birch, Craig A., xxx-xx-xxxx.
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Patrick, John H., xxx-xx-xxxx
Richart, Paul F., xxx-xx-xxxx
Samf, David A., xxx-xx-xxxx
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DENTAL CORPS

Alexander, Glen W., xxx-xx-xxxx
Brennan, Mark E., xxx-xx-xxxx
Cohen, Robert B., xxx-xx-xxxx
Ewing, Evan Y., xxx-xx-xxxx
Eyman, Russell G., xxx-xx-xxxx
Finkbeiner, Richard L., xxx-xx-xxxx
Hallmon, William W., xxx-xx-xxxx
Hickory, John E., Jr., xxx-xx-xxxx
Killian, William F., xxx-xx-xxxx
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Miller, Donald L., xxx-xx-xxxx

MEDICAL CORPS

Arnold, Colin B., xxx-xx-xxxx
Borrero, Jose L., xxx-xx-xxxx
Bullock, Jerry L., xxx-xx-xxxx
Cadora, Donald F., xxx-xx-xxxx
Dematte, Eugene M., xxx-xx-xxxx
Fragala, Mario R., xxx-xx-xxxx
Hill, McArthur D., xxx-xx-xxxx
Hodgerland, David L., xxx-xx-xxxx
Janco, Robert L., xxx-xx-xxxx
Keegan, Kirk A., Jr., xxx-xx-xxxx
Knauf, Daniel G., xxx-xx-xxxx
Koliner, Charles M., xxx-xx-xxxx
Lentz, Carl W., III, xxx-xx-xxxx
Maffet, Charles K., xxx-xx-xxxx
Mills, William C., III, xxx-xx-xxxx
Morgan, Howard W., Jr., xxx-xx-xxxx
Page, Carey P., xxx-xx-xxxx
Sanderson, John N., xxx-xx-xxxx
Seith, William F., Jr., xxx-xx-xxxx
Shepler, Thomas R., xxx-xx-xxxx
Tappan, James G., xxx-xx-xxxx
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Aldridge, Patricia D., xxx-xx-xxxx
Baiocchetti, Loreto A., xxx-xx-xxxx
Bernard, Carolyn F., xxx-xx-xxxx
Bouchard, Roberta C. C., xxx-xx-xxxx
Brinson, Phyllis A., xxx-xx-xxxx
Cadieux, Arthur J., xxx-xx-xxxx
Caldwell, Joe E., xxx-xx-xxxx
Conley, Margaret A., xxx-xx-xxxx
Cook, Rosa L., xxx-xx-xxxx
Cummings, Myra F., xxx-xx-xxxx
Fadusko, Jeanne A., xxx-xx-xxxx
Forbes, Janyce L., xxx-xx-xxxx
Garner, Patricia C., xxx-xx-xxxx
Gebhart, Eileen G., xxx-xx-xxxx
Gokee, Henry F., xxx-xx-xxxx
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Hagens, Robert L., xxx-xx-xxxx
Huber, Priscilla J., xxx-xx-xxxx
Hughes, Ellen A., xxx-xx-xxxx
Jackson, Melissa R., xxx-xx-xxxx
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Jones, Frances P., xxx-xx-xxxx
Link, Vincent H., xxx-xx-xxxx
Lunceford, Marilyn Y., xxx-xx-xxxx
Maier, Janet T., xxx-xx-xxxx
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Myrick, Barbara A., xxx-xx-xxxx
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Phelan, Mary L., xxx-xx-xxxx
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Rinne, Michael S., xxx-xx-xxxx
Runda, Mary A., xxx-xx-xxxx
Ruska, Elisabeth A., xxx-xx-xxxx
Ryan, Elizabeth K., xxx-xx-xxxx
Salmons, Freddie E., xxx-xx-xxxx
Semrad, Louis, Jr., xxx-xx-xxxx
Shaver, Barbara A., xxx-xx-xxxx
Shutts, Monica A., xxx-xx-xxxx
Swallow, Linda L., xxx-xx-xxxx
Tharpe, Mary E., xxx-xx-xxxx
Vancavage, Caroline J., xxx-xx-xxxx
Vorhes, Paul W., Jr., xxx-xx-xxxx
Weir, Nancy L., xxx-xx-xxxx
Wenzel, Sandra L., xxx-xx-xxxx
Whitcomb, Elizabeth J., xxx-xx-xxxx
Willis, Juanita W., xxx-xx-xxxx
Workman, Connie D., xxx-xx-xxxx
Yoder, Rebecca Sue, xxx-xx-xxxx
Zimmerman, Bridget E., xxx-xx-xxxx
Zweck, Robert L., xxx-xx-xxxx

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Balesky, Joseph V., xxx-xx-xxxx
Bloomquist, Carroll R., xxx-xx-xxxx
Breault, George A., xxx-xx-xxxx
Brown, Charles W., III, xxx-xx-xxxx
Burchfield, Larry R., xxx-xx-xxxx
Chappelle, Raymond J., Jr., xxx-xx-xxxx
Christian, Charles B., Jr., xxx-xx-xxxx
Coleman, Steven L., xxx-xx-xxxx
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Garcia, Joe, xxx-xx-xxxx
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Holmes, Roy W., xxx-xx-xxxx
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Rendudet, Donald D., xxx-xx-xxxx
Ryan, Donald F., xxx-xx-xxxx
Stith, John A., xxx-xx-xxxx
Wilson, Carl W., xxx-xx-xxxx
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Adkins, Terry O., xxx-xx-xxxx
Bloomberg, Mark S., xxx-xx-xxxx
Cornwell, Joseph M., xxx-xx-xxxx
Pletcher, John M., xxx-xx-xxxx
Scott, Michael V., xxx-xx-xxxx
Shafer, Richard L., xxx-xx-xxxx
Skalka, Dennis R., xxx-xx-xxxx
Stokes, Mark H., xxx-xx-xxxx
Vandellen, Adrian R., xxx-xx-xxxx
Wansky, Michael A., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

Alter, William A., III, xxx-xx-xxxx
Arnold, Barbara P., xxx-xx-xxxx
Auchter, Saundra A., xxx-xx-xxxx
Bowen, Victor G., xxx-xx-xxxx
Brannon, Larry D., xxx-xx-xxxx
Campbell, James M., xxx-xx-xxxx
Clark, Mary F., xxx-xx-xxxx
Clegern, Robert W., xxx-xx-xxxx
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Goodson, Richard A., xxx-xx-xxxx
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Petersen, William B., xxx-xx-xxxx
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Smith, Jack R., xxx-xx-xxxx
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Weber, Leo R., xxx-xx-xxxx
Wells, Robert L., xxx-xx-xxxx
Wood, David G., xxx-xx-xxxx

Second lieutenant to first lieutenant

LINE OF THE AIR FORCE

Accetta, Joseph S., Jr., xxx-xx-xxxx
Alexander, Robert W., xxx-xx-xxxx
Anderson, Richard C., xxx-xx-xxxx
Andrews, Larry A., xxx-xx-xxxx
Anselmi, Michael S., xxx-xx-xxxx
Asher, Robert B., xxx-xx-xxxx
Autrey, Charles T., xxx-xx-xxxx
Bell, William E., xxx-xx-xxxx
Bernard, James L., xxx-xx-xxxx
Bolz, Richard E., xxx-xx-xxxx
Borky, John M., xxx-xx-xxxx
Bowers, James F., Jr., xxx-xx-xxxx
Brockmeier, James D., xxx-xx-xxxx
Brunkow, Roger V., xxx-xx-xxxx
Bryant, Fred L., xxx-xx-xxxx
Carter, Gregory S., xxx-xx-xxxx
Casamayou, Louis J., xxx-xx-xxxx
Chapman, Jack W., Jr., xxx-xx-xxxx
Cimino, John J., xxx-xx-xxxx
Clark, Albert L., xxx-xx-xxxx
Conrad, Lawrence W., xxx-xx-xxxx
Cornell, Gregg L., xxx-xx-xxxx
Crump, James D., xxx-xx-xxxx
Daub, Gene C., xxx-xx-xxxx
Doehling, Robert E., xxx-xx-xxxx
Doty, Robert A., xxx-xx-xxxx
Dwight, Nelson W., Jr., xxx-xx-xxxx
Eblen, Larry H., xxx-xx-xxxx
Eplett, Richard J., xxx-xx-xxxx
Ezzell, Joseph L., Jr., xxx-xx-xxxx
Fischer, Richard F., xxx-xx-xxxx
Fry, Stanley D., xxx-xx-xxxx
Galer, Lawrence A., xxx-xx-xxxx
Garrett, Bowman S., Jr., xxx-xx-xxxx
Gilchrist, Ronald C., xxx-xx-xxxx
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Haggard, Freddy M., xxx-xx-xxxx
Hamrah, Ronald M., xxx-xx-xxxx
Harmon, Norman D., xxx-xx-xxxx
Harris, Clyde E., II, xxx-xx-xxxx
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Hatcher, Thomas D., xxx-xx-xxxx
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Ledwell, David T., xxx-xx-xxxx
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Lundell, Edward A., xxx-xx-xxxx
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Mason, Aubrey G., xxx-xx-xxxx
Maturi, Jon A., xxx-xx-xxxx
McCallin, Donald R., xxx-xx-xxxx
McIntire, Carl A., III, xxx-xx-xxxx
Medler, Andrew P., xxx-xx-xxxx
Mehan, Ronald G., xxx-xx-xxxx
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Montgomery, Jimmie R., xxx-xx-xxxx
Morris, Richard P., xxx-xx-xxxx
Nelson, Freddie W., Jr., xxx-xx-xxxx
Nelson, Michael K., xxx-xx-xxxx
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Pittman, Robert G., xxx-xx-xxxx
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Spencer, Melvin L., xxx-xx-xxxx
Stegman, Gary C., xxx-xx-xxxx
Stevens, David R., xxx-xx-xxxx
Talbot, Terry R., xxx-xx-xxxx
Thompson, Michael W., xxx-xx-xxxx
Tittle, John G., Jr., xxx-xx-xxxx
Torgeson, Michael G., xxx-xx-xxxx
Trefethen, Michael W., xxx-xx-xxxx
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Westfall, Charles G., Jr., xxx-xx-xxxx
Winn, Joseph E., xxx-xx-xxxx
Zukatis, Albert W., xxx-xx-xxxx

NURSE CORPS

Rettig, Cathryn J., xxx-xx-xxxx

MEDICAL SERVICE CORPS

Gillham, Rober A., Jr., xxx-xx-xxxx
Tremblay, William G., xxx-xx-xxxx
Reecer, Philip E., xxx-xx-xxxx
Jeffrey, James R., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

Porter, Paul F., xxx-xx-xxxx
Lefon, Carter C., xxx-xx-xxxx
Cross, Thomas E., xxx-xx-xxxx

The following-named officers for promotion in the Air Force Reserve, under the appropriate provisions of chapter 837, title 10, United States Code, as amended, and Public Law 92–129.

Lieutenant colonel to colonel

LINE OF THE AIR FORCE

Anderson, Dempsey A., xxx-xx-xxxx
Bacon, Raleigh D., Jr., xxx-xx-xxxx
Becklund, Thornton E., xxx-xx-xxxx
Bloise, Jose A., xxx-xx-xxxx
Burzynski, Norman S., xxx-xx-xxxx
Chambers, Wess P., xxx-xx-xxxx
Finley, Howard H., xxx-xx-xxxx
Flores, Belisario D. J., xxx-xx-xxxx
Gelet, Joseph A., xxx-xx-xxxx
Gemeny, John G., xxx-xx-xxxx
Hall, Charles C., xxx-xx-xxxx
Harned, Donne C., xxx-xx-xxxx
Hebrank, Raymond E., xxx-xx-xxxx
Horn, Connell E., xxx-xx-xxxx
Larkins, Howard E., xxx-xx-xxxx
Litwa, Albert P., xxx-xx-xxxx
Mattingly, Bernard F., xxx-xx-xxxx
McCulloch, Gerald I., xxx-xx-xxxx
McDonald, Chandler R., xxx-xx-xxxx
Nelson, Warren G., xxx-xx-xxxx
Spencer, Ralph, Jr., xxx-xx-xxxx
Suder, John A., Jr., xxx-xx-xxxx
Thompson, Paul M., xxx-xx-xxxx
Winn, Homer B., xxx-xx-xxxx

DENTAL CORPS

Marstrell, John V., xxx-xx-xxxx

MEDICAL CORPS

Anderson, Gerald G., xxx-xx-xxxx
Franks, John J., xxx-xx-xxxx

The following officers for promotion in the Air Force Reserve, under the provisions of section 8376, title 10, United States Code and Public Law 92–129.

Major to lieutenant colonel

LINE OF THE AIR FORCE

Boyd, Billie F., xxx-xx-xxxx
Bristol, William P., xxx-xx-xxxx
Brubaker, Richard I., xxx-xx-xxxx
Coats, David H., xxx-xx-xxxx
Gross, Gifford A., xxx-xx-xxxx
Cross, William C., xxx-xx-xxxx
Davis, James M., xxx-xx-xxxx
Fusco, Frank R., xxx-xx-xxxx
Garcia, George T., xxx-xx-xxxx
Krasovic, Edward R., xxx-xx-xxxx
McNett, John A., xxx-xx-xxxx
Ordway, Richard N., xxx-xx-xxxx
Ray, Delloyd A., xxx-xx-xxxx
Richmond, John R., xxx-xx-xxxx
Sennett, John W., xxx-xx-xxxx
Smith, Dallas L., xxx-xx-xxxx
Spranger, Gary R., xxx-xx-xxxx

MEDICAL CORPS

Hegre, Andrew M., Jr., xxx-xx-xxxx

NURSE CORPS

DeBellis, Rose M., xxx-xx-xxxx

The following Air Force officers for reappointment to the active list of the Regular Air Force, in the grade indicated, from sections 1210 and 1211, Title 10, United States Code:

LINE OF THE AIR FORCE

To be captain

Abramson, Raymond L., xxx-xx-xxxx
Lustra, Emanuel, xxx-xx-xxxx

To be first lieutenant

Mixon, Edwin B., Jr., xxx-xx-xxxx
Poore, William B., xxx-xx-xxxx

IN THE MARINE CORPS

The following-named women officers of the Marine Corps for permanent appointment to the grade of colonel:

Mary E. Bane
Ruth J. O'Holleran

The following-named women officers of the Marine Corps for permanent appointment to the grade of lieutenant colonel:

Eleanor E. Davies
Jo A. Kilday

The following named officers of the Marine Corps for temporary appointment to the grade of lieutenant colonel:

Robert T. Adams
John B. Airola
William A. Allanson
Harold J. Alwan
Alton L. Amidon
Ronald C. Andreas
Donald M. Babitz
Charles D. Bailey
Edgar M. Bair
Daryl E. Baker
Owen C. Baker
Kent C. Bateman
James D. Beans
Donn C. Beatty
Wayne V. Bjork
William H. Bond., Jr.
Edward H. Boyd
Richard G. Braun
Gene E. Brennan
Daniel W. Brown
Richard H. Brown
Randolph M. Browne III
James F. Bugbee
Robert L. Cantrell
George L. Capwell, Jr.
Frederic S. Carr, Jr.
Michael D. Cerreta, Jr.

Howard Chapin
John F. Charles
Albert K. Charlton
Richad F. Chenault
Howard A. Christy
Fred L. Cisewski
James S. Coale
David D. Colcombe
Paul M. Cole
Donald B. Conaty
Jeremiah P. Connors
Richard C. Conway
Donald G. Cook
James G. Cowart, Jr.
Logan A. Crouch
Denver T. Dale III
Charles E. Daniels, Jr.
Hollis E. Davison
John F. Delaney
James G. Dixon
Tom R. Doman
Walter J. Donovan, Jr.
Edmund H. Dowling
William B. Draper, Jr.
Carl H. Dubac
Peter T. Duggan
Jon T. Easley
Fred L. Edwards, Jr.
Wallace H. Ekholm, Jr.
Leo R. Elwell, Jr.
Richard H. Esau, Jr.
Daniel C. Escalera
Leonard W. Fahrni
James E. Felker
Harris J. Fennell
William D. Fitts III
Dennis C. Fitzgerald
Herbert M. Fix
Pasquale J. Florio
George R. Frank, Jr.
Carroll R. Franklin
Paul E. Fraser, Jr.
Joseph A. Frasier III
John D. Friske
James S. Gahagan
Robert E. Garcia
Harry H. Gast, Jr.
James I. Gatliff
William R. Gentry
James A. Getchell
Hendrik A. Gideonse
Charles D. Goddard
Thomas A. Goldsborou
Joe L. Goodwin
Lloyd E. Goodwine
James T. Gordon
Richard J. Gowdy
Robert W. Greene
Henry O. Grooms
Thomas W. Hancock, Jr.
Milton D. Harnden
James T. Harrell III
John G. Hart III
Franklin H. Heins
Joseph P. Hoar
Richard C. Hoffman
John G. Hooper
Malcom T. Hornsby, Jr.
Gerald R. Houchin
Harold L. Hunter
Harold V. Huston
Larry T. Ingels
Walter M. Jastrzemski
Sven A. Johnson
Gordon R. Johnston
Duncan H. Jones
Stanley E. Jones
Richard A. Joralmon
Jim R. Joy
Larry A. Kaufman
Jesse N. Keathley
Robert D. Kelley
Cloyd H. Klingensmith
James V. Knapp
Frank P. Knight
George A. Knudson
Raymond M. Kostesky
James M. Kruthers
John P. Landis
Kenneth W. Langford
Robert L. Lawrence
Pierre L. Lefevre
John M. Lilla
Russell Lloyd
Frederick A. Locke
John E. Lockie
Howard L. Long
Arthur P. Loring, Jr.
David R. Mabry
Alan C. Macaulay
William W. Mackey
Roy M. Marks
John O. Marsh
John A. Martin
Josephus L. Mavretic
James M. Mead
Clarence E. McDaniel
William J. McGrath
Huey P. L. Miller
James K. Miller
Justus C. Miller
Robert C. Miller
Robert J. Modrzejewski
Brian D. Moore
David J. Moore
Fred H. Mount
Robert D. Mulcahy
Michael J. Mulrooney
Richard H. Oates
Richard J. O'Brien
Martin E. O'Connor.
Ralph B. Orey
Richard C. Ossenfort
Jerry D. Peterson
Richard Petroff
James M. Pierce
David M. Pirnie
John B. Pozza
John T. Radich
Herbert J. L. Reid
Robert D. Reid
Thomas W. Rich, Jr.
Ronald G. Richardson
Reginald H. Ridgely III
David S. Rilling
Benny D. Rinehart
James L. Roach
George N. Robillard, Jr.
William J. Rodenbach
Henry W. Roder
Robert P. Rogers
Richard D. Ross
Edwin Sahaydak
Conrad J. Samuelsen
James R. Scafe
James M. Schmidt
Marvin E Schwaninger
Hugh L. Scott III
John P. Senik
Roger L. Shafer
Danny A. Sharr
Robert W. Shaw
James L. Shelton
Robert F. Sheridan
Richard T. Shigley
James S. Shillinglaw
Lionel V. Silva
Roger E. Simmons
Francis Simon
Robert N. Simpson
Barry F. Skinner
James L. Skinner
Phillip G. Slough
Gareth W. Smeltzer
Ellis F. Smith
Richard H. Stableford
Orlo K. Steele
Victor D. Steele
Michael E. Stein
James R. Sweeney
Bernard H. Thomas
Jack C. Thompson
Joseph C. Thorp
Charles S. Tubbs
John Vannortwick
Vincent A. Vernay
Michael G. Wadsworth
Caleb N. Wall
Larry N. Ward
George F. Warren
Leland O. Waymire
John L. Watson
Richard J. Webb
John F. Weeks
George H. Welsh
Charles M. Welzant
Frank H. Whitton
Larry R. Williams
Charles A. Wimmler
James M. Winberg
Robert J. Winglass
Donald Wojcik
Billy D. Womack
John R. Wuthrich
Lauritz W. Young
Alvin M. Younger

The following-named officers of the Marine Corps Reserve for temporary appointment to the grade of lieutenant colonel:

Robert J. Blum
Peter A. Love
Richard Sancho

The following-named women officers of the Marine Corps for permanent appointment to the grade of major:

Judybeth D. Barnett
Ruby J. Chapman
Della J. Eiden
Dianne L. Marsh
Susan M. Mason
Sara J. Pritchett

The following named women officers of the Marine Corps for permanent appointment to the grade of captain:

Carol A. Barber
Mary C. Berry
Marcia A. Biddleman
Shirley L. Bowen
Mary K. Chetkovich
Holly A. Crocker
Carol S. Crooker
Sharon F. Daugherty
Nancy A. Davis
Mary F. Edmonds
Linda A. Essex
Elsie M. Evans
Pamela J. Galvin
Cheryl A. Garbett
Kathryn A. Jacob
Merle C. King
Nancy J. Lewis
Rosalia S. Muza
Palma M. O'Donnell
Teryl L. Peterson
Evelyn Riveraagost
Mary G. Wilson
Kathleen Wright

NEW ENGLAND REGIONAL COMMISSION

Russell Field Merriman, of Vermont, to be Federal Cochairman of the New England Regional Commission, vice Chester M. Wiggin, Jr.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 11, 1972:

DIPLOMATIC AND FOREIGN SERVICE

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 of the United States of America to the Republic of Chad.

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

U.S. ADVISORY COMMISSION ON INFORMATION

George H. Gallup, of New Jersey, to be a member of the U.S. Advisory Commission on Information for the term expiring January 27, 1975.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION

The following-named persons 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:

William B. Jones, of California.
R. Miller Upton, of Wisconsin.
Louise Gore, of Maryland.
Jaquelin H. Hume, of California.
Benjamin F. Marsh, of Ohio.

The following-named persons 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:

E. Dorothy Dann Bullock, of Pennsylvania.
Henry David, of the District of Columbia.
Pierre R. Graham, of Illinois.
James C. Haahr, of Minnesota.
Chauncy D. Harris, of Illinois.

HOUSE OF REPRESENTATIVES—*Wednesday, October 11, 1972*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the folowing prayer:

Lead me, O Lord, in Thy righteousness, make Thy way straight before my face.—Psalms 5: 8.

Almighty God, whose love never fails, whose laws never falter, and those light never flickers, in this sacred moment we turn from the differences which divide us to find our unity of spirit in Thee. In all sincerity we would make our minds receptive to the truth and our hearts responsive to the leading of Thy gracious spirit. Make our sympathies broad, our outreach wide, our goal high, and our faith in America deep and true.

Help us to pray not only Thy kingdom come but Thy kingdom come in me; not only to ask that Thy will be done but that Thy will be done in me; not only to say forgive us but forgive us as we forgive others. So may we walk along the highway to a world where peace reigns, where justice rules, where human rights are regulated, and where our earth is crowned with brotherhood from sea to shining sea.

We pray in the spirit of the Master. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Leonard, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On October 3, 1972:

H.R. 4634. An act to direct the Secretary of the Army to release on behalf of the United States a condition in a deed conveying certain land to the State of Oregon to be used as a public highway;

H.R. 8215. An act to provide relief for certain prewar Japanese bank claimants;

H.R. 14267. An act to provide for the disposition of funds appropriated to pay a judgment in favor of the Delaware Tribe of Indians in Indian Claims Commission Docket