can only be an attempt to continue to transform these oblasts into the mixed Ukraino-Russian territories, and later to cut them off from the Ukrainian mainland. The number of Russians has considerably grown in the Odessa oblast as well, where they constitute 24.2% of the population.

At the time when Ukraine is being colonized by foreigners, the leaders of the empire are organizing deportations of Ukrainians outside the borders of the Ukr.SSR or are purposely creating conditions which force Ukrainians to search for work in other "republics" of the USSR. In such a way Ukraine is losing a part of her peasants, chiefly from the western oblasts, from the Forest-Steppe Belt, as well as a part of workers, students and professional intelligentsia. Finding themselves outside their native land, the Ukrainian emigrants do not enjoy any rights of a national minority and therefore do not have a possibility to preserve in the long-run their native language, culture and ties to their homeland. When they are deported to other non-Russian "republics", they very often become, although against their will, an instrument of Russification of the local peoples, at a time when other non-Russians, settled in Ukraine, largely perform a similar role there. The process of Russification of Ukrainians is in particular strong on the territories of the Russian SFSR, in the Kursk, Voronezh and Bilhorod oblasts, bordering on the Ukr.SSR, and in the Krasnodar and Stavropil region, in Kazakhstan and in the southwestern Siberia. The result of this Russification policy is such that when according to the 1926 census 6,871,000 Ukrainians were registered in the RSFSR, in 1970 there were only 3,346,000. Even if the official data of the census are in part purposely falsified, they do not change the clear-cut tendency of Russia's policy in relation to the Ukrainian people.

The last and the next-to-the-last census of the USSR reveal phenomena which seriously threaten the biological and this spiritual substance of the Ukrainian nation. If the colonization of Ukrainian territories by the Russians and the Russified settlers of the non-Russian peoples of the USSR continues at the present rate in the nearest decades, and the Ukrainian self-defense against it and against deportations and migration of Ukrainians outside the borders of the Ukr.SSR will not be adequate, the territory historically inhabited by the Ukrainian people, which has seriously decreased in the time of Soviet rule, will continue to decrease.

The Russification course is being intensified in various phases of life of the Ukrainian people, including universities (with insignificant exceptions in Lviv and Kyiv) and other higher and special secondary schools. In secondary schools with Ukrainian language of instructions Russian classes are being introduced for children of local party and military bureaucrats. In practice the Ukrainian language has been driven out of public usage or has been maimed beyond recognition, turning into a strange Ukraino-Russian slang.

Theories of the so-called merger or drawing closer or consolidation of nations of the Soviet Union, which in practice lead to the denial of national, cultural and historic identity of the Ukrainians and their inclusion, together with other non-Russian peoples, in a single so-called Soviet people, which in reality is to be the Russian people, are forcefully imposed upon the Ukrainian people.

The policy of forced change in the makeup of the population of Ukraine and the Russification of the Ukrainian people, which are conducted by Russian imperialists, should be considered as planned political genocide. Ukrainians who are forced to leave Ukraine whether by way of organized recruitment or on other pretexts, should fight for the right to live and work in the land of their fathers. This is an inalienable right of every nation. The two greatest tyrants of the 20th century—Stalin and Hitler—wanted to deprive the Ukrainian people of this right by means of deportations and settlement of foreigners in Ukraine.

The policy of Russia in relation to Ukraine, the indicators of which are the results of the census, calls for intensified self-defense of the Ukrainian people not only against deportations and migration of Ukrainians and settlement of foreigners, as well as for a struggle for other natural rights of the nation. In particular, the Ukrainian people have the right to demand that all schools in the Ukr.SSR, with the exception of schools for national minorities, conduct instructions in the Ukrainian language and that the Ukrainian language be used publicly in various branches of life. Outside the borders of the Ukr.SSR, Ukrainians should enjoy the rights of national minorities. In the struggle for their existence, the Ukrainians should cultivate the spirit of national solidarity and mutual assistance, the feeling of historic and spiritual community. A member of every nation is first of all bound by loyalty to his brother in blood, tradition, language, culture and history.

In the free world, a special task faces Ukrainian scholars and educational institutions, which can bring to the international forum the question of defense of the biological substance of the Ukrainian nation and the territory which it historically inhabits. It is the duty of the emigres to influence various circles in the free world to condemn the attempts by Russian imperialists to continue to conduct Stalinist and Hitlerite experiments with Ukrainian and other subjugated people.

H. CON. RES. 64

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the President, acting through the United States Ambassador to the United Nations Organization, take such steps as may be necessary to place the question of human rights violations in the Soviet-occupied Ukraine on the agenda of the United Nations Organization.

H. CON. RES. 161

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the President, acting through the United States Ambassador to the United Nations Organization, take such steps as may be necessary to place the question of human rights violations of the Jewish minority in the Soviet Union on the agenda of the United Nations Organization.

SENATE—*Wednesday, February 16, 1972*

The Senate met at 12 meridian and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

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

Eternal Father, as today men begin again their pilgrimage to the cross, repenting of sin and contemplating the cost of man's salvation, we beseech Thee to guide us by the wisdom of the cross, that we may learn once more that it is only in the surrender of the lower self that the higher self is born, that in the giving of life that life is found, and that death is the way to resurrection power.

Remove from us all that obscures Thy presence—the careless habit, the indifferent attitude, the disobedience of divine law, the rejection of Thy guiding light. May this penitential period bring redemptive grace to all the people. In days burdened with duties, may we ever keep our hearts open to the divine spirit and to worship while we work. Here and elsewhere, may we daily "offer unto Thee ourselves—a reasonable and living sacrifice, beseeching Thee to accept our sacrifice of praise and thanksgiving—and in the unity of Thy Holy Spirit may we ascribe all honor and glory unto Thee, world without end." Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 16, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. BYRD of West Virginia thereupon took the chair as Acting President pro tempore.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. BYRD of West Virginia) 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.)

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, February 15, 1972, be dispensed with.

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

ATTENDANCE OF A SENATOR

Hon. WARREN G. MAGNUSON, a Senator from the State of Washington, attended the session of the Senate today

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

LEAP YEAR AND EQUAL RIGHTS FOR WOMEN

Mr. SCOTT. Mr. President, the Committee on the Judiciary has just agreed to meet on February 29 to vote on the constitutional amendment granting equal rights for women.

I should like to point out that this is Leap Day in leap year when, by ancient tradition, women are expected to use the privilege of proposing marriage to men.

It is also Sadie Hawkins Day. Therefore, it should be a most memorable day when the bill is reported to us. I hope that all who are interested in it, especially our women constituents, will have due cause to celebrate Leap Day and Sadie Hawkins Day, and to move as the spirit guides them.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. TUNNEY). Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

OPTOMETRIST OF THE YEAR

Mr. FULBRIGHT. Mr. President, Dr. C. Garland Melton, Sr., of Fayetteville, Ark., was recently named "Optometrist of the Year" by the Southern Council of Optometry.

This is a fitting honor for Dr. Melton, who has been an outstanding leader in his community and in his profession for many years.

Mr. President, I ask unanimous consent that an article from the Northwest Arkansas Times of February 8, concerning Dr. Melton's honor, be printed in the RECORD.

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

DR. MELTON IS DECLARED "OPTOMETRIST OF THE YEAR"

Dr. C. Garland Melton, Sr., of Fayetteville, was named "Optometrist of the Year" by the Southern Council of Optometry at its annual Educational Congress which ended in Atlanta today. Dr. Melton's selection was announced Monday night by Dr. W. Judd Chapman of Tallahassee, Fla., a past president of the American Optometric Association and chairman of the Council's Awards Committee.

Dr. Melton was selected for outstanding professional and community achievements.

Arkansas Congressman Wilbur D. Mills received the Award of Merit. Both announcements were made at Monday evening's Awards Banquet.

Dr. Melton was named 1971 Optometrist of the Year by the Arkansas Optometric Association. A past president of the Arkansas association, he has practiced optometry in Fayetteville since 1923. He has been a member of the state and American optometric associations for 48 years, and has served as a member of the Arkansas State Board of Optometric Examiners for 30 years, having been appointed by five consecutive governors.

He is a fellow of the American Academy of Optometry, and a member of the American Optometric Foundation. He served as a member of the American Optometric Association Council on Education for 16 years, during which time three new colleges of optometry were established. He is listed in the 1971 edition of "Who's Who In the South and Southwest."

Dr. Melton is a permanent member of the Board of Stewards of Fayetteville's Central United Methodist Church, where he has been a member for 48 years. He served on the Board of Education for the Fayetteville public schools for 18 years, is a past president of the Washington County Crippled Children Board, and the Fayetteville Community Chest. He has served on the Washington County Red Cross board, the Boy and Girl Scout Councils, and the Fayetteville City Hospital Board.

He is a past member of the Washington County Democratic Central Committee, has been a membr of the Fayetteville Lions Club for 48 years, is a past president of the club, and a past deputy district governor of Lions International. He is a Mason and a Shriner.

HAROLD OHLENDORF OF OSCEOLA, ARK., OUTSTANDING CIVIC LEADER

Mr. FULBRIGHT. Mr. President, one of the outstanding civic leaders in my State, Mr. Harold Ohlendorf, was recently honored by his friends and neighbors in Osceola, Ark.

Mr. Ohlendorf has made many contributions to the betterment of the Osceola area as well as the State of Arkansas. He served for 16 years as president of the Arkansas Farm Bureau Federation. He has also been active in the National Cotton Council. He has served on numerous commissions and committees and has been a director of the Osceola School Board and the Osceola Memorial and Chickasawba Hospitals.

He has also been instrumental in bringing several major industries to Osceola.

Mr. President, I am pleased to join in paying tribute to Harold Ohlendorf for his many contributions to the progress and welfare of Osceola and Arkansas. I ask unanimous consent that an article by Phil Mullen from the Osceola Times of February 10 on the Harold Ohlendorf Appreciation Luncheon be printed in the RECORD.

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

CAPACITY CROWD FOR HAROLD OHLENDORF APPRECIATION LUNCHEON FRIDAY

(By Phil Mullen)

The "Appreciation Luncheon" given for Harold Ohlendorf on last Friday was acclaimed by many as "the nicest, the most successful such affair ever held in Osceola."

Friends of the Ohlendorfs filled the Riverlawn Country Club to capacity and as the folks crowded in, Mr. Ohlendorf said several times, "I never saw so many people. I never dreamed this many people would come to a luncheon given for me."

But they did and they were not personally invited. The luncheon was announced, tickets were put on sale, and 150 were sold, which appeared to be "an even greater tribute to Mr. and Mrs. Ohlendorf."

Almost all of those in attendance were Mississippi County citizens. There were a few from out of town but out of town invitations were limited because there would have been no room.

On the program, six of Mr. Ohlendorf's oldest friends and closest associates spoke briefly in extending the community's appreciation and respect.

THE PROGRAM

Melvin Lapides, one of the co-sponsors, spoke humorously after remembering that his family and Harold's family had been close friends for years. He remembered that his late father, Louie Lapides, "used to consider Harold's corn patch as his very own and to gather what corn he needed accordingly."

Mr. Lapides presented Mr. Ohlendorf with a "gold-plated corn cob in remembrance of times past" and with a "silver-plated yo-yo to give him something to do when he gets old."

Faber White, who worked closely with Mr. Ohlendorf through the years on all of the local development programs, was unable to be present because of illness.

It was recalled that Mr. White and Mr. Ohlendorf were among those who started 20 years ago to bring more housing to Osceola. And that they were successful in several programs "because they, and other civic-minded local people, promoted these housing projects on a completely non-profit basis." The 60 unit Seminole Village, now a rental project, was mentioned as the latest success.

R. E. L. Wilson, III, also one of Arkansas' outstanding citizens, spoke on Mr. Ohlendorf's contribution to agriculture, as the 16-year president of the Arkansas Farm Bureau Federation and as a "moving force in the National Cotton Council almost from its inception."

Mr. Wilson said that Mr. Ohlendorf was "one of a small group that thought up the dollar a bale contribution for cotton research and promotion," a program that is now beginning to pay off for the cotton farmer.

Mr. Wilson interjected a great deal of humor about his old friend and said, "Harold is what I call an executive farmer. He can snooker his friends into taking more civic service jobs."

Allan Segraves also was ill and Bill Joe Edrington, president of the Osceola Board of Education, spoke of Mr. Ohlendorf's service, of more than 30 years, on the local school boards. He said, "In recent years, when we have seen the largest physical growth in the Osceola school system, and when we have faced many problems, Harold's prestige and influence have gotten us out of many a tight and his service has been invaluable to the school board."

Dr. L. D. Massey, chief of staff of the local hospital, said, "I have known Harold since he was a boy. Since the time when we had no public health facilities in this area and very little public sanitation."

Dr. Massey said Mr. Ohlendorf was among the leaders "who held meetings up and down the road" and make the hospitals projects a success, overcoming many obstacles.

The Osceola Memorial Hospital was opened in 1953 and the Chickasawaba Hospital in 1954.

Mr. Ohlendorf has served for several years on the Board of Governors of the Mississippi County Hospitals and is a former chairman of the board.

PRESENTATION MADE

Jim Williams, vice president for manufacturing of the great American Greetings Corp., flew down from Cleveland, Ohio to be on the program. He recalled that it was "12 years ago when Harold and the other local leaders started talking to us about locating a plant in Osceola."

That plant did come here in 1961 and has become the largest plant under one roof in Arkansas, employing some 1500 people.

Mr. Williams presented a letter of appreciation and high regard from the top officials of AG and he said, "Harold, you have been of such great help to us that we have thought of putting you on the payroll. But we knew you would work for free so we left it that way."

Mr. Williams also presented to Mr. Ohlendorf a beautiful painting. He said, "Our president, Mr. Irving Stone, had one of our top artists do this painting for you and Mrs. Ohlendorf."

Charlie Lowrance, one of this area's most respected and best liked citizens, spoke briefly, from the floor, about "my neighbor, Harold Ohlendorf." Mr. Charlie also managed to be humorous as well as sentimental and extended his highest regard to Mr. Ohlendorf.

THE PLAQUE

Mayor Dick Prewitt made the final talk. He had a beautiful engraved wall plaque to present to Mr. Ohlendorf. It expressed the community's appreciation for Mr. Ohlendorf's "Many contributions to the progress and welfare of our community" and it was signed by: Mayor and City Council, Osceola Chamber of Commerce, Mississippi County Hospitals, Osceola Board of Education, Mississippi County Farm Bureau and Mississippi County Library Board.

THE RESPONSE

In his response, Mr. Ohlendorf was almost overwhelmed with sentiment. But then he managed to recall some humorous incidents, particularly on the trips made to Virginia, Massachusetts and Ohio by himself, the late Mayor Ben Butler, J. C. Buchanan and Dane Fergus—those trips that were a part of bringing the industries here from Crompton, Osceola Shoe and American Greetings.

Mr. Ohlendorf predicted that Osceola "is on the brink of more growth and more progress" and said, "Do you realize that when we get our Osceola river terminal that we will be a seaport?"

He said, "I am greatly honored by what you have done today and it is the most wonderful experience of my life. I accept these compliments in the names of the many other people who did as much as I did in all of these programs of progress."

He also said, "I accept these honors also in the names of the people who make these programs work, the nurses, doctors and staff members of the hospitals; the teachers and administrators and staff members of the schools; the employees and management of the industries; the civic leaders of today, and the public officials, who are working as hard as we did to make this community an ever better place to live and work."

Mr. Ohlendorf and one of their pretty daughters, Mrs. Dennis Rowe, were present to share the appreciation spotlight.

DEATH OF EDGAR SNOW, AMERICAN JOURNALIST

Mr. FULBRIGHT. Mr. President, it is a tragic coincidence of history that Edgar Snow should die upon the eve of the President's visit to China.

Mr. Snow was the first American writer to publish an accurate and perceptive article about the present leaders of China, the men wtho led the revolution through its most difficult days.

Along with John Service, John Paton Davies, Raymond Ludden, Colonel Barrett, and a few other members of the American Embassy in 1944, Mr. Snow gave our Government an accurate analysis of the situation in China.

Our Government rejected their advice, and our people have paid, and will continue to pay, an incalculable price for that mistake in judgment. By such decisions is the destiny of great nations determined.

I had the pleasure of visiting with Mr. Snow in Washington in 1966, and we exchanged some letters. He was a soft-spoken, mild-mannered, unassuming man without pretense or affectation. It is a tragedy that just as his judgment is being vindicated, he is taken from the scene.

My sympathy goes out to his family.

Mr. President, I ask unanimous consent to have printed in the RECORD a short obituary on Mr. Snow, published in the Washington Post.

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

EDGAR SNOW SAW RISE OF RED STAR

(By Stanley Karnow)

Edgar P. Snow, the American journalist who introduced the Chinese Communists to the world, died yesterday of cancer at his home near Geneva, Switzerland. He was 66.

His illness forced him to abandon plans to cover President Nixon's visit to Peking next week for Life magazine.

Mr. Snow scored the great journalistic coup of his career in 1936, he interviewed Chinese Communist leader Mao Tse-tung, then an obscure figure living with his ragged forces in China's northwestern province of Shensi.

The long series of interviews with Mao and other prominent Chinese Communists, combined with his observations of their activities, went into Mr. Snow's "Red Star Over China," a book now considered to be a classic work on 20th-Century China.

Mr. Snow interviewed Mao, Premier Chou En-lai and other key Chinese Communists on several subsequent occasions. His last meeting with Mao, a five-hour session, took place in Peking on Dec. 18, 1970.

In an account of that encounter published in Life magazine on April 30, 1971, Mr. Snow reported that Mao had told him that President Nixon "should be welcomed" to Peking because the problems dividing China and the United States "would have to be solved" at a Sino-American summit meeting.

Although the White House knew by then from secret communications that Mr. Nixon would be invited to China, the Snow account served to confirm Peking's decision to open talks with the President. It was therefore viewed by the administration as an important signal.

Another significant hint that the Chinese were interested in a reconciliation with the United States was apparent on Oct. 1, 1970, when Mr. Snow was photographed with Mao watching China's National Day parade. The photograph was published in Peking's official People's Day over a caption stating that China sought friendship with the American people.

Because of his close contacts with Mao, Mr. Snow was often regarded as an apologist of the Chinese Communists. But he was never ideologically committed to the Communists as were such American writers as Agnes Smedley or Anna Louise Strong.

John K. Fairbank, head of Harvard's East Asian Research Center and the dean of U.S. China specialists, has called Mr. Snow "an activist, ready to encourage worthy causes rather than be a purely passive spectator." Fairbank has also portrayed Snow as a "zealous factual reporter, able to appraise the major trends of the day and describe them in vivid color for the American reading public."

Born in Kansas City, Mr. Snow began his journalistic career as a reporter on the Kansas City Star. In 1928, when he was 23, he embarked upon a trip around the world but went no further than Shanghai. There he found work as an editor on the China Weekly Review, an English-language publication managed by an American.

Westerners resident to Shanghai and China's other coastal cities in those days seldom ventured into the Chinese interior. But in the early 1930s, Mr. Snow traveled through northwestern China while that region was suffering from famine, and that experience reportedly left him with strong feelings about the country's inequalities.

Although his knowledge of the Chinese language was rudimentary, he also befriended many Chinese, some then prominent and others later to gain fame.

While in Shanghai, he mingled with numerous Chinese intellectuals and writers. He knew Mme. Sun Yet-sen, the American-educated widow of the founder of the Chinese Republic. Now known by her maiden name, Soong Ching-ling, she is currently China's deputy chief of state.

Mr. Snow and his first wife Nym Wales, who was then a writer, moved to Peking in 1932. There Mr. Snow lectured at Yenching University, an American-subsidized institution, and became acquainted with Chinese students then active in opposing Japanese aggression.

Harassed by the police, one of these students took refuge in the Snow apartment and later served as Mr. Snow's interpreter during his interviews with Mao. Today he is Huang Hua, chief of the Chinese delegation at the United Nations.

When he conceived the idea of seeking out Mao, Mr. Snow later recalled, virtually nothing was known of the Chinese Communist leader. Chiang Kai-shek's Nationalists—and Soviet sources as well—had pronounced him dead even though reports filtering out of the Communist-held zone repeatedly related his exploits.

In early June, 1936, punctured with inoculations against smallpox, typhoid, cholera, typhus and the plague, Mr. Snow boarded a dilapidated train in Peking and headed into the Chinese interior. Carrying credentials given him by Chinese friends, he made his way through the Nationalist lines and reached the remote Communist headquarters.

Mr. Snow remained there for three months, spending hours listening to Mao tell him the story of his life and development as a revolutionary. The biography still stands as the most authoritative account of Mao's life in any language.

Mr. Snow also interviewed the other Chinese Communist leaders, among them Chou En-lai, Lin Piao and Peng Teh-huai. He gathered detailed notes as well on the Communists' celebrated Long March, in which they broke out of Nationalist encirclement and trekked 6,000 miles across China to their Shensi Province redoubt.

He took notes, too, on the Communists' land reform, taxation and educational systems, describing the agrarian quality of Chinese Communism as distinct from the Soviet model.

Emerging in October, 1936, he wrote a series of newspaper articles on his experience and finished his book, "Red Star Over China," in June, 1937. The conclusion of the book would prove prophetic. It said:

"The movement for social revolution in China may suffer defeats, may temporarily retreat, may for a time seem to languish, may make wide changes in tactics to fit immediate necessities and aims, may even for a period be submerged, be forced under-

ground, but it will not only continue to mature; in one mutation or another it will eventually win . . ."

Mr. Snow's book had an immediate impact in China and around the world. Thousands of copies were reprinted by the Communists, since the book contained the first authentic biography of Mao. It also became a manual for guerrillas in several countries eager to learn of Mao's methods.

During and after World War II, Mr. Snow worked as a correspondent for the Saturday Evening Post in many parts of the world. After the Communists took power in Peking, he visited China three times.

On one of these visits, in 1965, Mr. Snow had a significant interview with Mao in which the Chinese leader hinted that he was contemplating the Cultural Revolution. In the interview, Mao criticized Chinese youth for their lack of revolutionary spirit, thus foreshadowing the creation of the Red Guards, who were conceived to perpetuate the Maoist ideal.

Mr. Snow attempted to visit China during the Cultural Revolution, but was refused authorization. He later attributed the refusal to the temporary rise of radical elements in Peking's Ministry of Foreign Affairs.

However, he was permitted to spend six months in China in 1970, and after that visit reported on the ferment caused by the Cultural Revolution. He also revealed the maneuvers that would lead to the Chinese invitation to President Nixon.

One of the key disclosures in an article he published in Life in April, 1971, was the fact that senior Chinese officials believed that the Nixon administration planned to withdraw U.S. troops from Vietnam.

Although he published several books, Mr. Snow never matched "Red Star Over China"—the work that thrust him into prominence and therefore served as the basis of his later production.

He is survived by his wife, the former actress Lois Wheeler; a son, Christopher, and a daughter, Sian.

PRESIDENT NIXON'S VISIT TO CHINA

Mr. FULBRIGHT. Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "President Nixon and China," written by James Reston, and published in today's New York Times.

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

PRESIDENT NIXON AND CHINA

(By James Reston)

WASHINGTON, February 15.—President Nixon is now on the verge of his historic voyage to China, and a lot of serious men are raising some questions about it. Former Under Secretary of State George Ball is saying that summit meetings in general are bad. The President's own former Ambassador to the United Nations, Charles Yost, is saying that summit meetings can be useful, but maybe this one to China will lose more in Japan and Russia than it will gain in Peking.

Well, it is too late for theories, since the journey is on; and anyway, it could be that the President's instinct to go to China, whatever the diplomatic doubts, whatever the political motives, whatever the dangers in Moscow and the rest of Asia, was right.

It is not quite fair of the Democratic Presidential candidates to charge Mr. Nixon with going to Peking solely for domestic Presidential political reasons. No doubt he thought of the effect of the China visit in election terms, and timed it just before the first Presidential primary election in New Hampshire, when he could dominate the headlines and the television.

But long before anybody was thinking about the Presidential election of 1972, Mr. Nixon was thinking about the possibility of a reconciliation with China. Very soon after he came into the White House, Mr. Nixon went to Paris and told President de Gaulle that one of his primary objectives was to try to reach some kind of accommodation with Peking.

De Gaulle was impressed with the sincerity of this remark by Mr. Nixon and instructed his ambassador in Peking to pass it on in confidence to the Chinese Premier, Chou En-lai. I talked to the French ambassador, Etienne Manach, last summer in the Chinese capital, long before there was any talk about President Nixon's political motives in going to Peking and he confirms the story: He had reported what President Nixon said to de Gaulle, he felt that Chou En-lai was impressed with the accuracy of the report, and he was convinced that this confidential remark by Nixon to de Gaulle, among other private diplomatic initiatives, persuaded Chou En-lai to receive Dr. Kissinger and arrange the Nixon visit to Peking.

The question now is what is going to come out of this China journey, and again, the experts are extremely skeptical. President Nixon gave a dinner this week for André Malraux, now in his 71st year, who has a long experience in China and was brought to the White House presumably to brief the President on the China visit.

If I heard Malraux accurately after the White House dinner, he has serious doubts. The leaders of China, he said, will have a critical question for Mr. Nixon: "Does the United States really have a policy for the future of the Pacific? Does Mr. Nixon have a clear intention and purpose about what is to be done in this vast area of the world between now and the end of the century?"

Malraux sounded very pessimistic—pessimistic about his own Europe, about the future of the Common Market, pessimistic about the clarity and purpose of the United States. He did not doubt the good intentions of the President, who he felt, had a "dream of historic destiny," but did he have a policy to achieve it, and what would Mr. Nixon reply when the Chinese asked him to define his policy for the future of Asia?

Malraux reminds one of Sir Ernest Satow, the expert on Asia in the British Foreign Office of the last generation. Whenever a young British diplomat was going out to the Far East, Sir Ernest used to tell him: Do not waste your time worrying about what is in the Oriental mind; for all you know, there may be nothing in it you will be able to understand. Therefore the main thing is to be clear about what is in your own mind.

What is in Mr. Nixon's mind, as he approaches Peking, may not meet the standard of precision Satow and Malraux had in mind, but his intuition and the trend of his thought is pretty good, and the leaders in Peking, who are always drawing a distinction between the "wicked" American Government, and the "good" American people, should not be deceived.

Moscow and Tokyo have been rather unfair to President Nixon about all this. He is merely trying to do in Asia what Willy Brandt did in Europe. He is reaching out for an accommodation with China, as Brandt did with the Soviet Union, and insisting on a recognition of the geographical and political facts. He may be playing politics at home with the Peking trip but mainly he is searching for a new discussion and a new order in the Pacific.

Hopefully, Chou En-lai will see this central point. There are many difficult questions to be discussed, and on Taiwan and Vietnam there will probably be no agreement. But on the wider question of a new way of getting Washington, Peking, Moscow and Tokyo together for peace in the Pacific, which is really what Mr. Nixon has in mind, he has the overwhelming support of the American people.

Mr. FULBRIGHT. Mr. President, I personally approve of the President's efforts to change our attitude toward China.

The question raised by Mr. Malraux is a valid one:

Does the United States really have a policy for the future of the Pacific?

The movement to improve relations with China does not appear to me to be consistent with the widening of the war into Cambodia and Laos and the intensification of the bombing in so much of Indochina.

The PRESIDING OFFICER (Mr. TUNNEY). The time of the Senator from Arkansas has expired.

Mr. BYRD of West Virginia. Mr. President, I yield my 3 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas may proceed.

Mr. FULBRIGHT. I thank the Senator from West Virginia very much.

Mr. President, in short, the apparent contradictions among our actions or policies, to say the least, are confusing. In much the same way, it seems to me that in going to Moscow, which I approve of, it should at least suggest that the establishment of a large home port in Greece and a new base in Bahrain could at least be postponed pending the outcome of that visit.

To appear to seek a relaxation and at the same time threaten does not appeal to me as a reasonable way to reach agreement, nor does it suggest a sound and well-thought-out policy.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Soviets Warn U.S. on Greek Port," written by Ronald Koven, and published in today's Washington Post.

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

SOVIETS WARN UNITED STATES ON GREEK PORT

(By Ronald Koven)

The Soviet Union has made public warnings to the United States that if it persists in its plan to establish naval bases in Greece this can only provide a "corresponding reaction" from the Soviet side.

This warning came in a complaint by Soviet Ambassador Anatoly F. Dobrynin to Secretary of State William P. Rogers last Thursday. State Department spokesman Charles Bray stressed that the Dobrynin complaint was part of an "oral statement" backed up by a paper he submitted to Rogers with his notes, rather than a fullfledged diplomatic protest.

The Soviet complaint comes in a period of increasing East-West competition for political advantage in the Mediterranean. In addition to the already-existing Soviet-American tensions over the Arab-Israeli conflict, there is new jockeying for position in the strategic islands of Malta and Cyprus.

Bray's comments followed a story by the Soviet news agency Tass describing what Soviet envoys in Athens and Washington had told the Greek and U.S. governments. A State Department source confirmed that the Tass account was substantially accurate.

However, Bray rejected the Soviet allegation that the United States is setting up naval bases in Greece.

He described the recently announced

Greece-American "agreement in principle" to set up home port arrangements in Piraeus as "an administrative arrangement to let dependents reside in Greece, making it possible for units of the 6th Fleet to stay on station in the Mediterranean." He said it provides for no increase in U.S. ships or fighting men there.

The State Department has acknowledged in the past, however, that the Greek agreement is related to the Soviet naval buildup in the eastern Mediterranean.

The Soviet navy has been building a major base at Mersa Matruh on the Egyptian coast in a desert region between Alexandria and the Libyan frontier. In a cable to The Washington Post from Cairo, correspondent William Dullforce said that Western diplomatic sources in the Egyptian capital believe that the expansion of facilities there could well be the "corresponding reaction" Moscow has in mind.

Dullforce said that, despite reports that the Soviet navy is already using the port, Western sources in Cairo say it is still in the development stage. The work is reportedly limited so far to dredging and deepening the harbor approach.

The Soviet navy has been using Alexandria, but Soviet activities in that major commercial port are subject to public scrutiny.

The United States has negotiated with the Greeks for the right to house 3,500 family members of sailors belonging to a carrier task force of the 6th Fleet. They have also been seeking light repair facilities at Piraeus, the port of Athens.

This announcement stirred objections among American and Greek exile opponents of the Athens military regime, but the Nixon administration has argued that any support this may lend to the junta must be balanced against the advantages in America's own interests.

No other country in the eastern Mediterranean is suitable and the arrangement permits ships to stay on station for two years without returning to the United States, instead of the present six months, U.S. officials contend.

The Tass dispatch said that Soviet ambassadors "drew attention" to the fact that "the establishment of such bases was a dangerous step, fraught with serious complications in the Balkans and the Mediterranean area, running counter to the interests of peace and relaxation of tension in Europe."

Radio Moscow, in an English-language broadcast monitored here, also related the U.S. activities concerning Piraeus to the current tensions over Cyprus. The radio said that the ruling colonels in Athens "presented Cyprus with an ultimatum that virtually wipes out its independence" just a few days after the Piraeus announcement.

Mr. FULBRIGHT. Mr. President, the article relates to the same matter of the actions I have just described, and it strikes me they could well be in the category of the U–2 incident, in that the President's actions, preoccupied as he is with his mission to Peking and Moscow, may be prejudiced by other branches of the Government on other activities. This strikes me as being inconsistent with the objectives of the President. So I hope that the Government and the proper officials in the executive branch will take these matters into consideration in order that nothing will be allowed to inhibit the prospect of the President's reaching useful agreements with both the Chinese and the Russians.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

(The remarks Mr. JORDAN of Idaho made at this point on the introduction of S. 3177 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

(The remarks Mr. PASTORE made at this point on the introduction of S. 3178 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRIBUTE TO FORMER SENATOR FRANK P. GRAHAM

Mr. ERVIN. Mr. President, on behalf of my colleague, Senator JORDAN, and myself, I announce to the Senate with great sadness the passing of a former Member of this body, Dr. Frank Porter Graham, who had a great career as the president of the University of North Carolina at Chapel Hill, as a Member of the U.S. Senate, and as a successful intermediary between the Dutch and the natives in regard to Indonesia, and as a negotiator in the India-Kashmir dispute.

Dr. Graham had the most compassionate heart of any human being it has ever been my privilege to know. He knew more North Carolinians of his generation and was more beloved by North Carolinians than any other person of his generation.

He leaves behind him a large heritage of service to the people of his native State of North Carolina and to the people of his Nation.

We shall not see his like again.

PRESIDENT NIXON'S JOURNEY TO PEKING

Mr. MANSFIELD. Mr. President, on the eve of the President's journey to Peking I think it is apropos to make a few remarks. May I say that the matter of the President's visit to the People's Republic of China has been a matter of discussion between the President and the Senator from Montana for 3 years this month.

During that time he has mentioned his desire to revive the Warsaw talks so that contacts could continue to be maintained between the Chinese and U.S. Ambassadors in the Capital of Poland, which started, incidentally, in the summer of 1954 at the conclusion of the first Geneva conference.

Second, he indicated that it was his desire at an appropriate time to remove the secondary and primary boycott against the People's Republic of China, which has been in effect since 1951 and which always was counterproductive.

Third, he indicated it was his intention to broaden the list of Americans who may visit China, subject, of course, to approval by China.

Fourth, he stated that at an appropriate time it was his intention to consider the possibility of allowing the Chinese, on the same basis as the Soviet Union, to be eligible for nonstrategic items.

Fifth, he indicated that he would do his best to increase trade possibilities between our two countries.

Sixth, he expressed the hope that he would be able to fulfill a long-held desire to visit China, which he is now about to do.

Incidentally, he will be the first American Chief of State to visit the People's Republic of China and also when he visits Moscow in May, he will be the first American Chief of State to visit the Soviet Union.

Mr. President, about 4 years ago, the University of Montana initiated a new public lecture series. The University was kind enough to invite me to deliver the first address. In contrast to today, the subject which was selected was not much in the public awareness in those days. The remarks were entitled "China Retrospect, and Prospect."

I have just reread the statement which I delivered at the University on March 29, 1968. It was, in general, a plea to the largely student-audience to cut away the shackles of thought which an older generation, of which I am a part, had self-imposed on itself in its reactions to the cataclysmic experience of the Chinese revolution. I urged the students to examine new approaches, approaches which might provide the beginnings of a beginning in restoring relations of peace with China.

For the most, the approaches which were discussed then have now been incorporated into the foreign policies of the Nation. President Nixon has played an exceptional personal role in bringing about this transition. He has ended the boycott on Chinese goods. He has not only removed the ban on travel to China but has given encouragement to visits, through his words and, of course, his personal example.

Most pertinent, the President has acted to change the language of intercourse between the two nations from that of mutual hostility and deprecation to tolerance. In so doing, the President has set the stage, in my judgment, for a peaceful evolution of United States-Chinese relations which could serve well that generation of students whom I addressed 4 years ago and their successors for many years to come.

There is no assurance, of course, that this evolution will occur but the door is opened by the President's impending visit. Clearly, it will take far more than a visit of state to undo the knots of two decades of a venomous acrimony. Nevertheless, I know the Senate joins with me in wishing President Nixon every success in the endeavor which he is about to undertake.

Mr. President, just for my own personal benefit I wish to read the concluding portion of that speech which I gave at the University of Montana 4 years ago:

> To sum up, then, it seems to me that the basic adjustment which is needed in policies respecting China is to make crystal clear that this government does not anticipate, much less does it seek, the overthrow of the government of the Chinese mainland. In addition, there is a need to end the discrimination which consigns China to an inferior status as among the Communist countries in this nation's policies respecting travel and trade. Finally, it ought to be made unequivocal that we are prepared at all times to meet with Chinese representatives—formally or informally—in order to consider differences between China and the United States over Viet Nam or any other question of common concern.
>
> Adjustments of this kind in the policies of the nation, it seems to me, require above all else a fresh perspective. We need to see the situation in Asia as it is today, not as it ap-

peared twenty years ago in the Himalayan upheaval of the Chinese revolution. We need to see the situation not through the fog of an old and stagnant hostility but in the light of the enduring intertsts of the United States in the Western Pacific.

In this context we will better be able to find appropriate responses at appropriate times to the specific problems of the Sino-U.S. relationship, whether they have to do with U.N. representation or diplomatic recognition or the offshore islands or whatever. Without prior adjustment in perspective, however, to seek to deal definitively with these questions, would be, to say the least, an exercise in futility.

I should emphasize before concluding that it is unlikely that there will be any eager Chinese responses to initiatives on our part. Nevertheless, I see nothing to be lost for this nation in trying to move along the lines which have been suggested. Chinese intransigence is no license for American intransigence. Our stake in the situation in the Western Pacific is too large for that sort of infantile indulgence.

I see great relevance in thinking deeply of the issues which divide China and the United States to see if they can be recast in new and uncluttered molds. There is every reason, especially for young people, to examine most closely the premises of policy regarding China which were enshrined almost two decades ago. The fact is that the breakdown in Chinese-U.S. relations was one of the great failures of my generation and it is highly doubtful that its full repair shall be seen in my lifetime. The problem, therefore, will fall largely to you.

This was delivered to the student body at the University of Montana at Missoula, but it applied to all young people all over the country.

It is not a particularly happy inheritance, but there is reason to hope that it may fare better in your hands.

Unlike my generation, you know more about Asia. You have a greater awareness of its importance to this nation and to the world. In 1942, four months after Pearl Harbor, for example, an opinion poll found that sixty percent of a national sample of Americans still could not locate either China or India on an outline map of the world. Certainly that would not be the case today. Furthermore, you have not had the experience of national trauma in moving abruptly from an era marked by an almost fawning benevolence toward China to one of thorough disenchantment. You were spared the fierce hostilities which rent this nation internally, as a sense of warmth, sympathy, and security regarding China gave way to feelings of revulsion, hatred, and insecurity.

Your Chinese counterparts, the young people of today's China—they are called the "Heirs of the Revolution"—have a similar gap to bridge as they look across the Pacific. Your generation in China, too, has been contained and isolated, and its view of the United States has been colored with the hates of another time. It has had no contact with you or, indeed, with much of the world outside China.

On the other hand, those young people have grown up under easier conditions than the older generation of Chinese who lived their youth in years of continuous war and revolution. It may be that they can face you and the rest of the world with greater equanamity and assurance than has been the case at any time in modern Chinese history.

I urge you to think for yourselves about China. I urge you to approach, with a new objectivity, that vast nation, with its great population of industrious and intelligent people. Bear in mind that the peace of Asia and the world will depend on China as much as it does on this nation, the Soviet Union, or any other, not because China is Communist but because China is China—among the largest countries in the world and the most populous.

Mao Tse-Tung remarked in an interview several years ago that "future events would be decided by future generations." Insofar as his words involve the relationship of this nation and China, whether they prove to be a prophecy of doom or a forecast of a happier future will depend not so much on us, the "Old China Hands" of yesterday, but on you, the "New American Hands" of tomorrow.

So, Mr. President, again I wish to extend to the President every wish for his success on this momentous journey.

I ask unanimous consent that the full text of my remarks, verbatim, as delivered at the University of Montana on March 29, 1968, be included at this point in the RECORD.

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

LECTURE BY SENATOR MIKE MANSFIELD (D., MONTANA)

(Sponsored by the Maureen and Mike Mansfield Endowment (The University of Montana Foundation) at the University of Montana, Missoula, Montana, Friday, March 29, 1968)

CHINA: RETROSPECT AND PROSPECT

Viet Nam is heavy on the heart of the nation. The Vietnamese war is a tragedy. It is a tragedy in the American lives which it claims. It is a tragedy in the death and devastation which, in the name of salvation, it has spread throughout Viet Nam.

My views on United States policy respecting Viet Nam are no secret. I have stated them, restated them, and elaborated them many times. I have cautioned against an ever-deepening military involvement in that conflict. I am opposed to any increase in it today. I believe that the way out of a barbarous situation is not to go further into it.

The first step towards peace, in my judgment, is to concentrate and consolidate the U.S. military effort and to escalate the peace-effort, looking towards the negotiation of an honorable end of the conflict.

That, in brief, is the way I feel about Viet Nam. That is the way I have felt about it for a long time. The President knows it. The Senate knows it. Montana knows it.

What I have to say to you, today, touches only indirectly on Viet Nam. My remarks are intended to go beyond Viet Nam to what may well be the roots of the war. In this first lecture of the series on international affairs, I wish to address your attention to what is the great void in the foreign relations of this nation—to the question of China.

As a nation, we have lived through a generation in only hearsay association with a third of the entire human race. At the inception of this void, we were engaged in a costly and indecisive conflict in Korea—on China's northeast frontier. Two decades later, we are engaged once again in a costly and indecisive conflict, this time on China's southeast frontier. These two great military involvements on the Chinese periphery are not unrelated to the absence of relevant contact between China and the United States.

Sooner or later a tenuous truce may be achieved in Viet Nam even as a truce was achieved in Korea. In my judgment, however, there will be no durable peace in Korea, Viet Nam, or anywhere else in Asia unless there is a candid confrontation with the problems of the Sino-U.S. relationship.

China needs peace if the potentials of its culture are to be realized. This nation needs peace for the same reason. In this day and age, the world needs peace for civilized survival. You young people have the greatest stake in peace. For that reason, I ask you to look beyond Viet Nam, behind Korea, to what may well be the core of the failure of peace in Asia—to the U.S.-Chinese estrangement of two decades.

In 1784, Robert Morris, a signer of the Declaration of Independence, sent the first American clipper ship to trade with China. The year that President George Washington took the oath of office, 1789, fourteen American ships were riding at anchor in the Pearl River off Canton in South China.

There are no American ships in Chinese ports today. There have not been for almost twenty years. In twenty years, hardly an American doctor, scientist, businessman, journalist, student, or even a tourist has set foot in China.

Across the Pacific Ocean, we and the Chinese glare at one another, uncomprehendingly, apprehensively, and suspiciously. In the United States, there is fear of the suddent march of Chinese armies into Southeast Asia. In China, there is fear of a tighter American encirclement and American nuclear attack.

We see millions of Chinese soldiers poised on China's frontiers. We see leaders who threaten in a most violent way. We see an internal Chinese turmoil to confirm our fears of irrationality and recklessness. Finally, we see a growing nuclear power, with the looming spectre of a full-fledged Chinese intercontinental ballistic missile force.

On the other hand, the Chinese see themselves surrounded by massive American military power. They see U.S. naval, ground, and air bases scattered through Japan, Korea, Taiwan, Okinawa, Guam, the Philippines, and Thailand. They see over half a million American troops in neighboring Viet Nam and hundreds of thousands more nearby. They see tremendous nuclear capability with missiles zeroed in on Chinese cities. They see the United States as "occupying" the Chinese island of Taiwan and supporting a Chinese government whose declared aim is the recapture of the mainland. And they see, too, what they describe as a growing collusion between the United States and the Soviet Union, a country which they believe infringes China's borders, threatens to corrupt the Chinese revolution and exercises an unwelcome influence throughout Asia.

We and the Chinese have not always looked at one another with such baleful mistrust. The American images of China have fluctuated and shifted in an almost cyclical way. There has been the image of the China of wisdom, intelligence, industry, piety, stoicism, and strength. This is the China of Marco Polo, Pearl Buck, Charlie Chan, and heroic resistance to the Japanese during World War II.

On the other hand, there has been the image of the China of cruelty, barbarism, violence, and faceless hordes. This is the China of drum-head trials, summary executions, Fu Manchu, and the Boxer Rebellion—the China that is summed up in the phrase "yellow peril."

Throughout our history, these two images have alternated, with first one predominant and then the other. In the eighteenth century, we looked up to China as an ancient civilization—superior in many aspects of technology, culture, and social order and surrounded by an air of splendid mystery.

Respect turned to contempt, however, with China's quick defeat by the British in the Opium War of 1840. There followed acts of humiliation of China such as participation in extra-territorial treaty rights and the Chinese Exclusion Act of 1882.

Attitudes shifted again in the early twentieth century to one of benevolence largely in consequence of the influence of missionaries. There were more missionaries in China from the United States than from any other country. More American missionaries served in China than anywhere else in the world. The Chinese became, for this nation, a guided, guarded, and adored people.

Chinese resistance to the Japanese invasion in 1937 produced another shift from

benevolence to admiration. At the end of the Second World War, admiration was displaced by disappointment and frustration, as the wartime truce between Nationalist and Communist forces collapsed in cataclysmic internal strife. This nation became profoundly disenchanted with China, a disenchantment which was replaced abruptly in 1949 by hostility.

The hostility was largely a reaction, of course, to the coming to power of a Communist regime on the Chinese mainland. We did not interpret this event as a consequence of the massive difficulties and the vast inner weaknesses of a war-torn China. Rather, we saw it almost as an affront to this nation. We saw it as a treacherous extension of the Soviet steam-roller policies which had reduced Eastern and Central Europe to subservience at the end of World War II.

Then, in 1948, came a Communist coup in Czechoslovakia and the Soviet attempt to blockade Berlin. The triumph of a Communist government in China followed immediately after these events in Europe. The nation was shaken to its fingertips.

Still, the press of events continued relentlessly. In June 1950, the North Koreans launched a sudden attack on South Korea. The Chinese forces intervened in the war in November of that year. The United States was brought into a major military confrontation in which, for the first time, the Chinese were enemies and not allies.

After these events, the assumptions of American policy towards China were revised. An effort was made to meet both the concern and outrage respecting China which existed in this nation and the revolutionary militancy of the new Chinese regime in Asia. Policy was cast anew on the premise that the government on the Chinese mainland was an aggressor which, subject to directions from Moscow, would use force to impose international Communism on Asia. Conversely, it was assumed that if the endorsement of the free nations were withheld, this regime which was said to be "alien" to the Chinese people—some sort of overgrown puppet of Moscow—would wither and eventually collapse.

On this basis, recognition was not extended to Peking. The official view was that the National Government, which had retreated to the island of Taiwan, continued to speak for all of China. We cut off all trade with the mainland and did what could be done to encourage other countries to follow suit. In a similar fashion, we led a diplomatic campaign year after year against the seating of the Chinese People's Republic in the United Nations. We drew an arc of military alliances on the seaward side of China and undergirded them with the deployment of massive American military power in bases throughout the Western Pacific.

Much has happened to call into question the assumptions in which these policies toward China have been rooted. In the first place, the People's Republic has shown itself to be neither a part of a Communist monolith nor a carbon copy of Soviet Russia. The fact is that, of the numerous divisions which have arisen within the Communist world, the differences between Moscow and Peking have been the most significant. They so remain today although the more rasping edges of the conflict appear somewhat tempered by the war in Viet Nam.

At the same time, the government on the mainland has not only survived, it has provided China with a functioning leadership. Under its direction, Chinese society has achieved a degree of economic and scientific progress, apparently sufficient for survival of an enormous and growing population and sophisticated enough to produce thermo-nuclear explosions.

In the last two years, the so-called Cultural Revolution in China has rekindled what has been a periodic expectation that the Peking government is on the verge of collapse and the way is open for a military return to the mainland of the National Government on Taiwan. There seems to be little doubt that the turmoil in China has caused serious disruptions. What appears in conflict in the cultural revolution, however, is not the Peking structure as such but the adequacy of its ideological content. That would be a far cry from the kind of popular revulsion which might be expected to open the doors to a new regime.

In any event, the worst of the upheavals within China appear to have ended months ago, without any irreparable break in the continuity of the government or the operations of the economy. It is the height of folly to envision, in the present situation, an occasion for the overthrow of the Peking government by external military pressures. Indeed, what would be better calculated to end, overnight, the remaining ferment on the mainland than a plausible threat to the security of China or an actual attack on Chinese territory?

If the People's Republic, then, is here to stay, what of the other assumption on which this nation's policy respecting China has long been based? What of the assumption that the Chinese government is an expanding and aggressive force? That it is restrained from sweeping through Asia because we have elected to meet its challenge along the 17th Parallel which divides the Northern and Southern parts of Viet Nam?

In recent years, the present Chinese government has not shown any great eagerness to use force to spread its ideology elsewhere in Asia although Chinese armies have been employed in assertion of the traditional borders of China. To be sure, China has given enthusiastic encouragement and has promised to support wars of national liberation. However, China has not participated directly in these wars and support, when it has been forthcoming, has been limited and circumspect.

In Viet Nam, for example, there is certainly Chinese encouragement and aid for the North Vietnamese and the Viet Cong. Chinese involvement, however, has been far more peripheral than our own. The enemy soldiers with whom we are compelled to grapple are all Vietnamese and, in fact, mostly South Vietnamese. At every stage of the war, the assistance we have provided to South Viet Nam has far exceeded the aid from China and from all outside sources to the Viet Cong and North Viet Nam—both in terms of men and materiel. There is Chinese equipment in South Viet Nam but there are no Chinese battalions. Even in North Viet Nam, Chinese manpower is reported to amount, at most, to one-tenth of our forces in Viet Nam, and the great bulk of these Chinese are labor troops, some involved in air-defense but most of them engaged in repairing bomb damage to roads, railroads, bridges, and the like.

Chinese actions in Tibet, and along the Himalayan frontier of India, are often cited as evidence of militant Chinese Communist aggression. The fact is, however, that Tibet has been regarded, for many decades, as falling within China's over-all boundaries. Not only the Peking government but also the Chinese National Government on Taiwan insists that Tibet belongs to China. India also acknowledges such to be the case. Indeed, American policy has never recognized Tibet as other than Chinese territory.

In the case of the border war with India in 1962, the Chinese Communists occupied territories which, again, not only they, but also the Chinese Nationalists, consider to be Chinese. It is not precisely characteristic of a militant expansionism, moreover, for a government to withdraw its military forces from a territory which they have invested. Yet, the Peking government did so from parts of India which were occupied in 1962 as well as from North Korea.

As for indirect aggression through economic means, China has been able to exert only a limited influence, either through aid or trade. In Africa and, indeed, in Southeast Asia, where attempts have been made to use trade and aid for political ends, the results have not been conspicuously successful. The fact is that most of China's trade today rests on a commercial-economic base. It is carried on largely with the non-Communist countries, including, may I add, many of our closest allies.

In short, to speak of China, today, as aggressively expansionist is to respond to Chinese words rather than Chinese actions. That is not to say that China will not pose all manner of threats tomorrow. If there are not enough nightmares already, consider the prospects when China's nuclear capabilities will have been extensively developed, along with a full-fledged intercontinental ballistic missile force.

Of course, there is an immense potential danger in China; but there is also an immense potential danger in every other powerful nation in a world which has not yet learned how to maintain civilized survival in a nuclear age except on the razor's edge. Insofar as China is concerned, the fundamental question for us is not whether it is a danger, real or potential. The fundamental question is whether our present policies act to alleviate or to exacerbate the danger. Do we forestall the danger by jousting with the shadows and suspicions of the past? Do we help by a continuance in policies which do little if anything to lift the heavy curtain of mutual ignorance and hostility?

Like it or not, the present Chinese government is here to stay. Like it or not, China is a major power in Asia and is on the way to becoming a nuclear power. Is it, therefore, in this nation's interest and in the interest of world peace to put aside, once and for all, what have been the persistent but futile attempts to isolate China? Is it, therefore, in this nation's interest and in the interest of world peace to try conscientiously and consistently to do whatever we can do—and, admittedly, it is not much—to reshape the relationship with the Chinese along more constructive and stable lines? In short, is it propitious for this nation to try to do what, in fact, the policies of most of the other Western democracies have already long since done regarding their Chinese relationships?

I must say that the deepening of the conflict in Viet Nam makes more difficult adjustments in policies respecting China. Indeed, the present course of events in Viet Nam almost insures that there shall be no changes. It is not easy to contemplate an alleviation with any nation which cheers on those who are engaged in inflicting casualties on Americans. Yet, it may well be that this alleviation is an essential aspect of ending the war and, hence, American casualties. That consideration, alone, it seems to me, makes desirable initiatives towards China at this time.

There are several obvious areas in which these initiatives would have relevance. Discriminatory restriction on travel to China, for example, is certainly one of these areas. The Chinese may or may not admit Americans to their country, as they choose. But it is difficult to understand why our own government should in any way, shape, or form seek to stand in the way of the attempts of American citizens to breech the great wall of estrangement between the two nations. It is, indeed, ironic that during the past three years there have been more visits of Americans to North Viet Nam, a nation with which we are at war, than to China in the past thirteen years.

On the question of travel, it should be recalled that the Chinese were the first to suggest in 1956 that American journalists

visit China. The suggestion was summarily rejected by the then Secretary of State. When, later, it was decided to accept the suggestion, the Chinese had changed their minds. Since that time, this nation has been more inclined to ease the travel barriers, on the basis of official agreement for exchanges of persons, but the Chinese have shown no disposition to enter into agreements or, for that matter, to admit Americans on any basis.

In any event, it seems to me that it is in the positive interest of this nation to encourage Americans, if they can gain entry, to travel to China. May I add, I refer not merely to the travel of selected journalists, doctors, and other specialists, as is now the policy, but to the travel of any responsible American. In the same fashion, it seems to me most appropriate to admit Chinese travelers to the United States under the same conditions that pertain to visitors from other Communist countries.

Trade is another area in which long-standing policies respecting China are open to serious question. Technically, this country still maintains an embargo on all trade with China. The basis for this policy is compliance with a voluntary resolution of the United Nations which was adopted at our behest at the time of the Korean conflict. It is doubtful that the resolution ever carried much weight among the trading nations of the world. In any case, it has long since been forgotten. Today, the principal nations in the China trade in rough order of importance are the United Kingdom, Japan, the Soviet Union, West Germany, Australia, Canada, Italy, and France. Of all the great maritime nations, the United States alone clings to a total trade embargo with China. Moreover, we are also the only nation in the world which makes an effort to enforce what can best be described as a kind of secondary boycott of re-exported Chinese products.

These policies have had little visible economic impact, but they have had the most serious political repercussions. It is conceivable that, to the Chinese, the policies are something of an irritant. To friendly nations, however, they have been a source of constant friction. Most serious, their continuance over the years has injected unnecessary venom into the atmosphere of U.S.-Chinese relations.

Nor can it be said that the situation in Viet Nam has compelled the pursuit of the embargo and boycott. The fact is that these restrictions were in place before most Americans ever heard of Viet Nam, and, certainly, long before Americans became involved in the war. If the Vietnamese conflict is now seen as justification for leaving these policies undisturbed, what is to be said of the existing attitude toward trade with other Communist countries?

The fact is that the European Communists are providing North Viet Nam and the Viet Cong with sophisticated military equipment which, from all reports, exceeds in value the assistance which comes from China. On what basis, then, is it meaningful to permit and even to encourage non-strategic trade with the European Communist countries while holding to a closed-door policy on trade with China? What constructive purpose is served by the distinction? Any rationalization of relations with China, it seems to me, will require an adjustment of this dual approach. We need to move in the direction of equal treatment of all Communist nations in trade matters, whatever that treatment may be.

In any event, problems of travel and trade are secondary obstacles in the development of a more stable relationship between China and the United States. There are other far more significant difficulties. I refer, principally, to the question of Taiwan and to the war in Viet Nam.

There is no doubt that the Chinese government seeks in Viet Nam a government which is friendly, if not subservient. Peking has not concealed, moreover, its desire for the withdrawal of American military power from Southeast Asia. It does not follow, however, that the price of peace in Southeast Asia is either Chinese domination or U.S. military intervention. That is a black and white oversimplification of a gray situation. The fact is that neither Burma on China's border nor Cambodia have been "enslaved" by China, despite an association of many years, despite periodic difficulties with the great state to the north and despite an absence of U.S. support, aid, or protection.

These two nations have managed to survive in a state of detachment from the power rivalries of the region. Furthermore, China is a signatory to the settlements which emerged from the Geneva Conferences of 1954 and 1962 and which contain at least a hope for a middle way to peace in Indo-China. So far as I am aware, the Chinese have not been found in direct or unilateral violation of these agreements. It is not impossible that a similar settlement, with Chinese participation, might be reached on Viet Nam.

Indeed, it is to be devoutly hoped that there can be a solution along these lines. Unless it is found, there is a very real danger—as the Korean experience shows—that the prolongation of war on China's frontiers may well bring about another U.S.-Chinese armed confrontation.

Perhaps the most important element in the rebuilding of stable relations with China is to be found in a solution of the problem of Taiwan. It may help to come to grips with this issue, if it is understood at the outset that the island of Taiwan is Chinese. That is the position of the National Government of the Republic of China. That is the position of the People's Republic of China. For a quarter of a century, this common Chinese position has been reinforced by the policies and actions of the United States government.

Since that is the case, I do not believe that a solution to the Taiwan question is facilitated by its statement in terms of a two-China policy, as has been suggested in some quarters in recent years. The fact is that there is one China which happens to have been divided into two parts by events which occurred a long time ago. Key factors in the maintenance of peace between the separate segments have been the interposition of U.S. military power in the Taiwan straits, and the strengthening of the National Government of China by massive injections of economic and military aid.

This course was followed by the United States for many reasons, not the least of which was that it made possible a refuge for dedicated allies and associates in the war against Japan. Most of all, however, it was followed because to have permitted the closing of the breech by a military clash of the two opposing Chinese forces would have meant a massive bloodbath and, in the end, the rekindling of another great war in Asia.

However, the situation has changed in the Western Pacific. Taiwan is no longer abjectly dependent for its survival on the United States. Some of the passions of the deep Chinese political division have cooled with the passing of time. Another generation has appeared and new Chinese societies, in effect, have grown up on both sides of the Taiwan Straits.

Is there not, then, some better way to confront this problem than threat-and-counter-threat between island Chinese and mainland Chinese? Is there not more better way to live with this situation than by the armed truce which depends, in the last analysis, on the continued presence of the U.S. 7th Fleet in the Taiwan Straits?

The questions cannot be answered until all involved are prepared to take a fresh look at the situation. It seems to me that it might be helpful if there could be, among the Chinese themselves, an examination of the possibilities of improving the climate. As I have already indicated, the proper framework for any such consideration would be an acceptance of the contention of both Chinese groups—that there is only one China and Taiwan is a part of it. In that context, the questions at issue have to do with the dichotomous situation as between mainland and island governments and the possibility of bringing about constructive changes therein by peaceful means.

There is no cause to be sanguine about the prospects of an approach of this kind. One can only hope that time may have helped to ripen the circumstances for settlement. It is apparent, for example, that the concept which held the Chinese government on Taiwan to be the sole hope of China's redemption has grown less relevant with the years. For Taiwan, therefore, to remain isolated from the mainland is to court the risk that the island will be left once again, as it has been on other occasions, in the backwash of Chinese history.

The removal of the wedge of separation, moreover, would also seem to accord with the interests of the mainland Chinese government. It does have a legitimate concern in the reassertion of the historic connection of Taiwan and China. It does have a concern in ending the hostile division which has been costly and disruptive both within China and in China's international relationships.

From the point of view of the United States, too, there is an interest in seeking a less tenuous situation. Progress in settling the Taiwan question could contribute to a general relaxation of tensions in the Western Pacific and, conceivably, even to resolutiin of the conflict in Viet Nam. Certainly, it would make possible a reduction in the enormous and costly overall defense burdens which were assumed in Asian waters after World War II and which, two decades later, still rest on the shoulders of this nation.

To sum up, then, it seems to me that the basic adjustment which is needed in policies respecting China is to make crystal clear that this government does not anticipate, much less does it seek, the overthrow of the government of the Chinese mainland. In addition, there is a need to end the discrimination which consigns China to an inferior status as among the Communist countries in this nation's policies respecting travel and trade. Finally, it ought to be made unequivocal that we are prepared at all times to meet with Chinese representatives—formally or informally—in order to consider differences between China and the United States over Viet Nam or any other question of common concern.

Adjustments of this kind in the policies of the nation, it seems to me, require above all else a fresh perspective. We need to see the situation in Asia as it is today, not as it appeared twenty years ago in the Himalayan upheaval of the Chinese revolution. We need to see the situation not through the fog of an old and stagnant hostility but in the light of the enduring interests of the United States in the Western Pacific.

In this context we will better be able to find appropriate responses at appropriate times to the specific problems of the Sino-U.S. relationship, whether they have to do with U.N. representation or diplomatic recognition or the offshore islands or whatever. Without prior adjustment in perspective, however, to seek to deal definitively with these questions would be, to say the least, an exercise in futility.

I should emphasize before concluding that it is unlikely that there will be any eager Chinese responses to initiatives on our part. Nevertheless, I see nothing to be lost for this nation in trying to move along the lines which have been suggested. Chinese intransigence is no license for American intransigence. Our stake in the situation in the Western Pacific is too large for that sort of infantile indulgence.

I see great relevance in thinking deeply of the issues which divide China and the United States to see if they can be recast in new and uncluttered molds. There is every reason, especially for young people, to examine most closely the premises of policy regarding China which were enshrined almost two decades ago. The fact is that the breakdown in Chinese-U.S. relations was one of the great failures of my generation and it is highly doubtful that its full repair shall be seen in my lifetime. The problem, therefore, will fall largely to you. It is not a particularly happy inheritance, but there is reason to hope that it may fare better in your hands.

Unlike my generation, you know more about Asia. You have a greater awareness of its importance to this nation and to the world. In 1942, four months *after* Pearl Harbor, for example, an opinion poll found that sixty percent of a national sample of Americans still could not locate either China or India on an outline map of the world. Certainly that would not be the case today. Furthermore, you have not had the experience of national trauma in moving abruptly from an era marked by an almost fawning benevolence toward China to one of thorough disenchantment. You were spared the fierce hostilities which rent this nation internally, as a sense of warmth, sympathy, and security regarding China gave way to feelings of revulsion, hatred, and insecurity.

Your Chinese counterparts, the young people of today's China—they are called the "Heirs of the Revolution"—have a similar gap to bridge as they look across the Pacific. Your generation in China, too, has been contained and isolated, and its view of the United States has been colored with the hates of another time. It has had no contact with you or, indeed, with much of the world outside China.

On the other hand, those young people have grown up under easier conditions than the older generation of Chinese who lived their youth in years of continuous war and revolution. It may be that they can face you and the rest of the world with greater equanimity and assurance than has been the case at any time in modern Chinese history.

I urge you to think for yourselves about China. I urge you to approach, with a new objectivity, that vast nation, with its great population of industrious and intelligent people. Bear in mind that the peace of Asia and the world will depend on China as much as it does on this nation, the Soviet Union, or any other, not because China is Communist but because China is China—among the largest coutries in the world and the most populous.

Mao Tse-Tung remarked in an interview several years ago that "future events would be decided by future generations." Insofar as his words involve the relationship of this nation and China, whether they prove to be a prophecy of doom or a forecast of a happier future will depend not so much on us, the "Old China Hands" of yesterday, but on you, the "New American Hands" of tomorrow.

Mr. SCOTT. Mr. President, the distinguished majority leader, in a speech of some years ago, spoke with great foresight and intuitive wisdom. I congratulate him for that, and I am delighted that he spoke of the President's visit in such hopeful terms.

We will all—the world will—watch this meeting, not expecting great things immediately, but recognizing that the opening of a dialog with 800 million people is itself a world-shaking event. We may achieve—and I hope we will achieve—some easing, some solution, of what the Germans call Kulturkampf der Menschheit, which means the cultural struggle of mankind.

We have had this cultural struggle. I do hope we are now taking the first step of the thousand miles of a mutual understanding of the cultures of our country and those of other nations.

I yield to the distinguished Senator from Maryland.

Mr. MATHIAS. I appreciate the Senator from Pennsylvania's yielding me just a moment to respond to his own remarks and to the remarks of the distinguished majority leader, which I think were as loyal and generous as they were thoughtful and realistic. I think they give us a valuable threshold upon which to enter the door of a new era in our international relationships with China. But, Mr. President, I also have to comment on the somewhat happy coincidence that in this body that effort is being led by the majority and minority leaders, both of whom have an unusual knowledge of the Orient and China, men who have made China a subject of personal study for many years. I think that fact can be of great importance at this moment in history. I think we are very lucky that they are learned in this area, because it is bound to lead to a greater understanding of the new era into which we are moving.

I am mindful that the President will be accompanied on this trip by his national security adviser, Dr. Henry Kissinger, and of a book Dr. Kissinger wrote about a different problem and a different time, entitled "The World Restored," a title which I hope will be applied by some future historian to the era I hope will be opened with the President's trip tomorrow.

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business be extended for an additional 12 minutes, with the usual limitation on statements therein.

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

THE PRESIDENT'S VISIT TO MAINLAND CHINA

Mr. DOLE. Mr. President, I, too, would commend the distinguished majority leader for his very complimentary remarks and also for his foresight as illustrated in the excerpt from the speech he has read, which was made in 1968, and to commend the distinguished minority leader for his comments—which only point out that, on February 4, I introduced a concurrent resolution, with Representative ARENDS of Illinois doing so in the House, designating this coming Sunday, February 20, as a National Day of Prayer for the Cause of World Peace, and designating Monday, February 21, as a Day of United Support for the President's Efforts in Pursuit of Relaxation of International Tensions and an Enduring and Just Peace.

I would say to my colleagues, with respect to the concurrent resolution, which was passed unanimously in the other body, that it is my hope the Senate will take appropriate action later in the day, because on February 21 the President will begin his historic mission in mainland China. I know some persons will disagree with the President's efforts, that they think it is beneath the dignity of the President to travel to mainland China. Whether it was the right thing to do may be determined by those who will write the history of the world later, and that history may be written by children in China, Russia, and America who may be living then because of the President's visit to mainland China this next week.

So I would hope that all Americans, regardless of political persuasion or ideology, will, on Monday, February 21, unite in support of the President—not President Nixon, but the President of our country—in his pursuit of relaxation of tensions and a just and enduring peace. Again, I state that I hope later on this afternoon the Senate will act on the House-passed concurrent resolution.

MASS BUSING FOR FORCED INTEGRATION AND RACIAL BALANCE IS WRONG

Mr. BYRD of West Virginia. Mr. President, there are those who would have us believe that the controversy over massive busing of schoolchildren to achieve an arbitrary racial balance in the classroom has polarized the black and white communities. Recent developments show that exactly the opposite is true—the overwhelming majority of Americans, black as well as white, are strongly united in their opposition to this kind of social experimentation with our children.

In fact, opposition to massive school busing may be doing more to unite Americans of all races than any other issue in recent years.

For a number of years now, proponents of busing have assumed that black parents would jump for joy at the prospects of their children being herded on buses and transported like cattle far from home for the purpose of sitting next to white children during the school day. That assumption was ill-founded at best, and it was based on two wrong principles: First, that black parents were more interested in integration than education; and, second, that predominantly black schools are inherently inferior.

I believe that most black parents are just as interested in improving schools in this country as are most white parents, and that they place the highest priority on obtaining a good education for their children. And I also believe that predominantly black, or all-black, schools are capable of reaching the same academic levels as predominantly white, or all-white, schools, To be sure, there are many black schools in this country where educational levels are low, but this results from the fact—at least for the most part, I should think—that spending for the education of black students has been less than for white students. In any event, I do not believe it is rightly attributable to the fact that there are not enough white students in the classroom. I have always advocated that the amounts spent on educating children be equal, regardless of their race; and I continue to feel that this is the sensible and positive approach

to the very serious educational problems facing our country.

That the majority of black parents favor the neighborhood school concept goes without question. Columnist Joseph Alsop points out in this morning's Washington Post that parents in New York City have the option of busing their children out of their neighborhoods, and he notes that less than 2 percent of the black parents use this option. The majority of black parents there apparently know what the people at HEW—and some Federal judges—should learn; namely, that a black child is not going to become better educated simply because he is surrounded with white faces.

Also, in the Washington Post this morning is a column by a noted Negro columnist, William Raspberry. Mr. Raspberry writes that sending "black children chasing behind white children is wrong and psychologically destructive," and he poses some very pertinent questions:

> What's so ideal about mathematically precise distributions of human beings? What's so inherently evil about a block in which all the homeowners (or a classroom in which all the pupils) happen to be black? Or white?

These columns point up the need to improve education in the United States, and they note the futility of trying to achieve that goal by massive busing. I wish that the proponents of this kind of forced integration would recognize that need and put their efforts behind measures that would result in some concrete improvements in all our schools—for all children, regardless of race.

Mr. President, I ask unanimous consent that the columns to which I referred be printed in the RECORD, together with two additional columns on the subject by Joseph Alsop.

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

[From the Washington Post, Feb. 9, 1972]

THE FACTS ON BUSING

(By Joseph Alsop)

There are two basic questions concerning forced busing to achieve integrated schooling.

First, will massive busing produce its only rationally desirable result, which is to overcome the grave educational retardation of the average black child in public school?

Second, will the educational effect of massive busing justify the social and economic costs?

You would think, by now, that American liberal intellectuals might have found time, in the intervals of slogan-chanting, to seek factual answers to these key questions. In fact, however, the present report is by way of being a first attempt.

To begin with, it must be noted that the kind of forced busing everyone is talking about nowadays is quite different from short range neighborhood busing, for school consolidation. It amounts to forcible homogenization of entire school populations, leading to approximate proportional representation of all racial groups in every school in the homogenized population.

Forcible homogenization is the real character of the busing ordered by Judge Robert R. Merhige, in his famous Richmond decision. If Judge Merhige is sustained, forcible homogenization will follow in many of the great urban-suburban school complexes in the U.S., in the North as well as the South.

There are two important models for this kind of homegenization which have been working in this country long enough to permit judgment of the effects of black educational retardation. These are also the two most striking models that have also failed, in the main, to provoke massive white flight from the reformed school system and resulting center city decay.

White Plains, N.Y., homogenized its schools in 1964–65, and Berkeley, Cal., took the same step in 1966–67. Both are rather prosperous and relatively small communities, White Plains with about 8,000 pupils in the school system, and Berkeley with about 15,000. The proportions of black children of school age are, respectively, slightly under one quarter and about 45 per cent.

In 1967, the second year of the White Plains reform, a special study was made of the performance of the black children who had been transferred from the old, all-black, local ghetto school to majority-white schools. The study, by Marian Graves, reportedly showed "modest" improvement in the black children's reading ability, which is always the key test of educational retardation.

As the study has not been published to this day, the improvement must have been extremely "modest"; otherwise the detailed results would surely have been trumpeted abroad by someone. The word "modest" is quoted from the White Plains school superintendent, Dr. Arthur P. Antin, who freely admits that his black pupils are still not reading "anywhere near national averages." Again, no figures are available.

In Berkeley, in contrast, careful statistical studies have been continuously made. Before homegenization, for example, Berkeley's black pupils finished third grade, on average, at the level of 2.8. This means they were then an entire school year behind California's statewide average for finishing third graders, which was, and is 3.8.

Immediately after homogenization, Berkeley's black average actually slipped slightly. But there has now been a gain. Finishing black third graders are now averaging 3.1 in reading ability, or a little more than 10 per cent above the pre-homogenization level, but still far below the statewide average. Meanwhile Berkeley's white schoolchildren of the same age are reading at the level of 4.4, or well above the statewide average, and 13 months ahead of the black children in the same schools.

This means that homogenization in Berkeley, as is also the case in White Plains, has done nothing to hold back the white children. It should finally be noted that these are both expensive school systems, with per pupil costs of $1,500 a year in Berkeley and a near-record $2,000 a year in White Plains.

"Modest" gains against black educational retardation—but very "modest" ones, alas—are thus perceptible in both these cases. In both communities, there was good will, and both were of easily manageable size. Hence the costs of homogenization were trifling. In these two cases, therefore, it was plainly a good thing to do.

But the question is really whether homogenization is also a good thing to do, in far less manageable situations, where there is little or no good will, and the costs will surely be very great indeed. An answer will be attempted in the next report.

[From the Washington Post, Feb. 2, 1972]

IS IT REALLY WORTH IT?

(By Joseph Alsop)

Throw entire school systems up in the air, to come down again together in a crash of parental anger, racial tension and increased school costs. With luck, you may then get a very modest reduction in the terrible education retardation that afflicts black children in our public schools.

Since the cure for black educational retardation is sure to be so strikingly incomplete, it raises a central question. This central question about massive, long range busing to achieve school integration can be put in five words:

Is it really worth it?

This, alas, is the lesson of the two best tests one can find anywhere. These have been made in White Plains, N.Y., and in Berkeley, Calif. The disappointing data concerning them were offered in the last report in this space.

In Berkeley and White Plains, moreover, the school reforms were launched with good will, and the busing is very short range and wastes little time. It is bound to be quite different when, and if, urban and suburban school systems are homogenized on a huge scale, in an atmosphere of extreme ill will, with the children also forced to waste an hour or so each day on the buses.

That is what is coming to Richmond, Va., and its adjacent suburban counties, Henrico and Chesterfield, if the famous opinion of Judge Robert R. Merhige is sustained. The background of Judge Merhige's order is strikingly interesting.

In brief, the city of Richmond itself was the target of a series of court orders, long before the suburban counties were brought into the suit that came before Judge Merhige. Full integration of the Richmond school system, based on massive busing for racial balance, was finally undertaken in the 1969–70 school year.

In that year, too, an attempt was made to better the racial balance of Richmond's school population. This was done by bringing into the city limits a slice of the then-suburbs, including about 10,000 additional white school-children.

The result of this last step was a Richmond school population 43 per cent white and 57 per cent black. White flight from the integrated Richmond system immediately began, however.

In just two years, Richmond lost 7,500 white school children. The system is now 70 per cent black. And if things go on as they now are, one can see down the road a Richmond school system comparable to the existing system in Washington, D.C., which is nearly 100 per cent black.

The extent of the white flight from Richmond should be enough, in and of itself, to indicate the extreme ill will that submission to Judge Merhige's court order will generate. No one has yet determined the actual cost of homogenizing the school populations of Richmond and most of Henrico and Chesterfield Counties.

Yet the cost is sure to be considerable. Where 19,000 children are now being bused in Richmond itself, no less than 78,000 children will have to be bused to obey Judge Merhige, according to Richmond's school superintendent, Dr. Lucian Adams. And this will usually be long range busing, for trips taking 40 minutes to an hour, in sharp contrast to the short range busing to neighborhood schools that of course takes place already in the suburban counties.

The newly homogenized school system will have a total of about 100,000 children (depending on what parts of the two counties are included), as against about 45,000 in Richmond today. Finally, and most ironically, a somewhat higher cost majority-black school system will be added to lower-cost white systems. Virginia school investments are shockingly low; but Richmond still spends from $50 to $100 more per pupil per annum than the suburban counties spend.

That is not the final irony, however. Richmond's black children are in majority-black schools costing only $800 per pupil per annum. Yet Richmond's black schoolchildren show very little more educational retardation than the black children of Berkeley, Calif., in carefully integrated schools costing 1,500 per pupil per annum.

To be specific, the black children's end-of-third-grade reading level in Richmond is 2.8, and in Berkeley it is 3.1. The Berkeley gain is equivalent to three months in school. Yet Berkeley's black third graders are still massively retarded, whether you take Cali-

fornia's statewide average, or the average reading level of 4.4 of Berkeley's white children in the same schools and the same classes.

So one asks again: Is it really worth it?

[From the Washington Post, Feb. 16, 1972]

REAL BUSING BALANCE

(By Joseph Alsop)

President Nixon to the contrary, every thinking American ought to give strong support to massive, forced busing to achieve racial balance, on a single, quite simple condition. The condition is reasonable evidence that this kind of busing really will overcome the terrible educational retardation that afflicts the average black child, whose true handicap is deep poverty.

For many years now, liberal educationists have told us that thoroughly desegregated schooling would surely overcome this retardation. Indeed they have told us that it was the (only) way to overcome this retardation. But, unhappily, they have disregarded the hard facts.

In most favorable conditions, two major efforts have been made to prove the truth of the liberal educationists' theory. In White Plains, N.Y., and in Berkeley, Calif., the school systems have long been racially homogenized in just the way demanded by Judge Robert R. Merhige in his famous Richmond, Va., decision.

In this series of reports attempting to get at the hard facts of the busing problem, the results in White Plains and Berkeley have already been set forth in some detail. It is enough, therefore, to say that the basic results have been bitterly disappointing, despite undoubted moral fringe benefits.

There have been modest educational gains; but the black retardation is still grave. Black third graders in Berkeley, for instance, though marginally better than before homogenization, are still reading at an average level 13 months behind the white children in the same classes and the same schools.

In short, the results predicted by the liberal educationists have not been attained, even in these two school populations of easily manageable size, with strong goodwill to help. The results are obviously bound to be far less good, moreover, where the attempt is made to homogenize school populations of many tens of thousands in an atmosphere of extreme ill will.

In these unfavorable conditions, there are also bound to be heavy countervailing costs to set against the gains, if any.

Quite aside from the nationwide political tumult about massive, forced busing, the widespread presence of acute ill will is proved by the fate of most American center cities of any size in the last decade and a half. In the center cities in this period, for many different reasons (including court orders in Southern cities), the old neighborhood school system has been progressively weakened.

The result has been a continuous determined and enormous flight from the center cities of white parents with children of school age. The census and school figures are there to prove it. So we are on the verge of getting segregated, ghetto solar cities which will certainly benefit no one at all.

Judge Merhige has now declared in his Richmond decision that the remedy is to merge the center city school districts with the neighboring suburban school districts, thereby leaving the whites nowhere to flee to. But in the first place this kind of large-scale homogenization is not even practical inside the larger center cities themselves. In New York City, for example, it would require busing Manhattan's black schoolchildren to outer Queens and remote Staten Island and vice versa, too.

There are also other costs and difficulties that no one seems to compute. One is the prospective cost to the children themselves of an extra half-hour a day (in Richmond) to an hour-and-a-half a day (in such a city as New York) that will be required by long-range busing. Another is the money cost. Another is the inevitable cost of increased racial tension and ill-will.

And that the majority of black parents also prefer neighborhood schools, beyond doubt. In New York, for example, they have long had the option of freely busing their children away from their neighborhoods to schools of their own choice. Yet only the tiniest minority—well under 2 per cent—are currently taking up this option.

Sen. Edmund Muskie has also revealed that his private polls say the same thing about the wishes of the black community as the data from New York City.

Radical, costly school improvement in the neighborhoods where the children are is another way to offer quality education to the children of the poor, both black and white. This way was briefly tried in New York City some years ago; and when really supported, the New York experiment achieved what has not been achieved in White Plains and Berkeley—ghetto third graders reading at a level equal to the national average. The experiment has been all but dismantled by now because of bitter hostility from some of the liberal educationists, and from total want of support from any of them. Take your own choice between the alternatives.

[From the Washington Post, Feb. 16, 1972]

MASSIVE BUSING: A WASTE

(By William Raspberry)

If this weren't an election year, it just might be possible to do something rational about school integration and busing.

But not only is it an election year; it is also a year in which all sorts of people, in all parts of the country and of all political persuasions are expressing their strong misgivings about the prospects of massive busing for the purpose of racial integration of public schools.

And with that kind of mandate, you can count on the politicians to see their duty—and overdo it. Already presidential candidate Jackson is pushing "freedom of choice." Haven't we heard that one before?

Others are talking up constitutional amendment.

It's a bit of an embarrassment, all things considered, but I happen to agree with Vice President Agnew on this one. I agree with him that massive busing solely for purposes of racial integration is a waste. And I agree with his opposition to a constitutional amendment as the way to end the waste.

The artificial separation of people, in schools or out, based on their race is wrong. It is, for one thing, psychologically destructive of the minority members who are separated out.

But to send black children chasing to hell and gone behind white children is also wrong and psychologically destructive. It reinforces in white children whatever racial superiority feelings they may harbor, and it says to black children that they are somehow improved by the presence of white schoolmates.

My favorite nightmare is of all the white people in the country moving to Alaska, and all the black children in the country following them in an endless line of buses.

Integration is a noble goal. But there comes a time when thoughtful men wonder with Joseph Alsop: "Is it really worth it?"

If white people, either because they wish to avoid contact with black people or for any other reason, choose to move far from where most black people live, how can it make sense—in terms of education or common sense—to send black kids chasing after them?

At some point, it becomes obvious that there must be a cheaper way to achieve the goal which is the education of our children.

But even the goal gets confused. Some of the advocates of massive busing, it seems to me, are being guided by the wrong ideal.

They start off with the assumption that in melting-pot America, racial integration is a good thing. But they take the melting pot metaphor altogether too literally, and it becomes their goal to make every classroom of every school (and every block of every neighborhood) an accurate cross-section of the makeup of the total population.

They would like to put us all into that metaphorical melting pot and ladle out enough portions of homogenized American to fill every schoolroom, workroom and living room in the country.

Well, what's so ideal about mathematically precise distribution of human beings? What's so inherently evil about a block in which all the homeowners (or a classroom in which all the pupils) happen to be black? Or white?

This is no brief for a return to the lie of separate but equal. It is an appeal for rational priorities, a plea that we make the test of a school whether it does what schools are supposed to do—educate our children.

It is both evil and illegal to say to a child: You cannot attend this school because it is a white school. But how much better is it to say: You must attend this school because it is integrated and we need you for racial balance?

The ideal is a situation in which race is irrelevant to assignment. Preoccupation with mathematical precision, unfortunately, is not the way to achieve that idea.

But no constitutional amendments, please. The effort that route would require would be bound to make too many of us feel that we were solving the problem of education in a pluralistic society. It would in fact solve nothing at all, except to return us to where we were the day before yesterday.

The Vice President was right again when he said:

"I think that there is almost a Pavlovian reaction. Whenever a subject becomes highly controversial, you must turn to a constitutional amendment. I think these things are capable of being handled within the normal statutory framework and constitutional framework of our existing Constitution."

But only if we deal with the situation and stop looking for new ways to run.

PARTIAL REVISION OF RADIO REGULATIONS AND FINAL PROTOCOL, GENEVA—REMOVAL OF INJUNCTION OF SECRECY

Mr. BYRD of West Virginia. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from a partial revision of the radio regulations—Geneva, 1959—and final protocol, Geneva, July 17, 1971—Executive E, 92d Congress, second session—transmitted to the Senate today by the President of the United States, and that the revision and protocol with accompanying papers be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The message from the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the text of a Partial Revision of the Radio Regulations (1959) relating to space telecommunications, with a Final Protocol, dated at Geneva July 17, 1971.

I transmit also, for the information of the Senate, the report of the Secretary of State with respect to the Partial Revision.

The English texts of the Partial Revision and Final Protocol, as certified by the Secretary-General of the International Telecommunication Union and transmitted herewith, are contained in a volume designated Final Acts. The volume also includes texts of certain documents (resolutions and recommendations) in respect of which no action with a view to ratification on the part of the United States is necessary.

The Radio Regulations (Geneva, 1959), as amended, to which the United States is a party, are further amended by the Partial Revision transmitted herewith in regard to matters relating to space telecommunications, with particular reference to the use of space radio techniques, including those for manned space vehicles and for the radio astronomy service, and to the technical criteria and procedures for frequency sharing between space and terrestrial services and between space systems.

The Final Protocol contains the texts of declarations made by certain of the governments represented at the Conference at which the Partial Revision was adopted. These declarations relate to rights to take action to protect the interests of the respective countries should any other country not comply with the provisions or should reservations made by other countries jeopardize the efficient operation of their respective telecommunication services.

Inasmuch as "the United States of America" and "Territories of the United States of America" are, under the terms of the International Telecommunication Convention, separate voting Members of the Union, the Final Acts embodying the Partial Revision were signed separately for each.

The Partial Revision will come into force on January 1, 1973, and will supersede the existing regulations adopted at a space telecommunications conference held in 1963.

I hope the Senate will give early and favorable consideration to this matter so that the United States can become a party to the Partial Revision.

RICHARD NIXON.

THE WHITE HOUSE, *February 16, 1972.*

Enclosures:

1. Report of the Secretary of State.
2. Partial Revision of the Radio Regulations (Geneva, 1959) and Final Protocol, Geneva, July 17, 1971.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 2359. A bill for the relief of Willard O. Brown (Rept. No. 92–611).

By Mr. BURDICK, from the Committee on the Judiciary, without amendment:

S. 1395. A bill to amend section 48 of the Bankruptcy Act (11 U.S.C. 76) to increase the maximum compensation allowable to receivers and trustees (Rept. No. 92–613);

S. 1396. A bill to amend section 35 of the Bankruptcy Act (11 U.S.C. 63) and sections 631 and 634 of title 28, United States Code, to permit full-time referees in bankruptcy to perform the duties of a U.S. magistrate (Rept. No. 92–614);

H.R. 8699. An act to provide an administrative assistant to the Chief Justice of the United States (Rept. No. 92–616);

H.R. 9180. An act to provide for the temporary assignment of a U.S. magistrate from one judicial district to another (Rept. No. 92–617); and

S.J. Res. 190. A joint resolution to provide for an extension of the term of the Commission on the Bankruptcy Laws of the United States, and for other purposes (Rept. No. 92–615).

By Mr. BURDICK, from the Committee on the Judiciary, with an amendment:

S. 1394. A bill to amend the Bankruptcy Act to abolish the referees' salary and expense fund, to provide that fees and charges collected by the clerk of a court of bankruptcy in bankruptcy proceedings be paid into the general fund of the Treasury of the United States, to provide salaries and expenses of referees be paid from the general fund of the Treasury, and to eliminate the statutory criteria presently required to be considered by the Judicial Conference in fixing salaries of full-time referees (Rept. No. 92–612).

By Mr. HRUSKA, from the Committee on the Judiciary, without amendment:

S.J. Res. 169. A joint resolution to pay tribute to law enforcement officers of this country on Law Day, May 1, 1972 (Rept. No. 92–618); and

S.J. Res. 189. A joint resolution to authorize the President to designate the period beginning March 26, 1972, as "National Week of Concern for Prisoners of War/Missing in Action" and to designate Sunday, March 26, 1972, as a national day of prayer for these Americans (Rept. No. 92–619).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Wilbur D. Owens, Jr., of Georgia, to be a U.S. district judge for the middle district of Georgia;

Ermen J. Pallanck, of Connecticut, to be U.S. marshal for the district of Connecticut;

William D. Keller, of California, to be U.S. attorney for the central district of California;

Harold Hill Titus, Jr., of Washington, D.C., to be U.S. attorney for the District of Columbia; and

Wilbur H. Dillahunty, of Arkansas, to be U.S. attorney for the eastern district of Arkansas.

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. JORDAN of Idaho (for himself and Mr. ALLOTT):

S. 3177. A bill to establish a land policy; to authorize the Secretary of the Interior to make grants to encourage and assist the States to prepare and implement land use programs for the protection of areas of critical environmental concern and the control and direction of growth and development of more than local significance; to establish guidelines; administer the public land policy; and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. PASTORE:

S. 3178. A bill to amend the Communications Act of 1934 to relieve broadcasters of the equal time requirement of section 315 with respect to candidates for President and Vice President. Referred to the Committee on Commerce.

By Mr. HARTKE:

S. 3179. A bill to provide opportunities for employment to unemployed and underemployed persons, to assist States and local communities in providing needed public services, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. MATHIAS:

S. 3180. A bill for the relief of Miss Belen Reyes Yabut. Referred to the Committee on the Judiciary.

By Mr. CHURCH (for himself, Mr. GURNEY, Mr. KENNEDY, Mr. WILLIAMS, Mr. MONDALE, and Mr. Moss):

S. 3181. A bill to provide for the establishment of an Office for the Aging in the Executive Office of the President, for the fulfillment of the purposes of the Older Americans Act, for enlarging the scope of that act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. SCOTT (for himself and Mr. JAVITS):

S. 3182. A bill to implement the Convention on the Prevention and Punishment of the Crime of Genocide. Referred to the Committee on the Judiciary.

By Mr. JORDAN of North Carolina:

S. 3183. A bill for the relief of Richard D. Hupman. Referred to the Committee on Rules and Administration, by unanimous consent.

By Mr. WILLIAMS:

S.J. Res. 205. A joint resolution to authorize the President to proclaim the last Friday of April, 1972, as "National Arbor Day." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JORDAN of Idaho (for himself and Mr. ALLOTT):

S. 3177. A bill to establish a land policy; to authorize the Secretary of the Interior to make grants to encourage and assist the States to prepare and implement land use programs for the protection of areas of critical environmental concern and the control and direction of growth and development of more than local significance; to establish guidelines; administer the public land policy; and for other purposes. Referred to the Committee on Interior and Insular Affairs.

LAND USE POLICY AND PLANNING ASSISTANCE ACT OF 1972

Mr. JORDAN of Idaho. Mr. President, on behalf of the distinguished Senator from Colorado (Mr. ALLOTT) and myself, I send to the desk for appropriate reference a bill to provide for a land-use policy and planning assistance. Senators will recall that during the second session of the 91st Congress, the Senate Committee on Interior and Insular Affairs reported a bill, S. 3354, to establish a national land-use policy. That bill was reported on December 14, 1970, and it was obviously too late in the session to expect any Chamber action on such an important measure.

As a part of the report on that legislation, the senior Senator from Colorado (Mr. ALLOTT) and I set forth our views concerning land-use planning in supplementary views. In those supplemental views we expressed our belief that land-use planning for both Federal and non-Federal lands should proceed together, since they are mutually interdependent,

and the results of decisions with respect to one will generally have an impact upon decisions to be made with respect to the other.

In the first session of the 92d Congress I joined with the senior Senator from Colorado in sponsoring a measure to establish a public land policy and to provide for the machinery for public participation in the decisionmaking process. That bill, S. 2450, was the subject of hearings on September 21 and 22 of 1971.

Earlier in the year, a similar, though not identical, measure was introduced in the House of Representatives by the chairman of the Committee on Interior and Insular Affairs (Mr. ASPINALL). The House measure, H.R. 7211, was the subject of committee hearings on July 26, 27, 28, 29, and 30, 1971. Consequently, title II of the bill I introduce today has been the subject of a number of hearings on both the Senate and the House side of the Capitol.

The measure I introduce today combines the essentials, with some modification, of the administration's land-use bill, S. 992, and of the public land policy bill, S. 2450. By so doing, this measure would meet the objective set forth in our supplementary views on S. 3354 by combining and insuring coordination of Federal land-use planning with non-Federal land-use planning. In many of the Western States the majority of the land area is federally owned, and in my opinion—and the senior Senator from Colorado shares this view—it makes little sense to ask for the planning and regulation of land use on non-Federal lands without requiring similar land-use management of the public lands. The measure I introduce today will meet this objection, and I believe it is the only logical way to proceed with respect to land-use planning and management.

By Mr. PASTORE:

S. 3178. A bill to amend the Communications Act of 1934 to relieve broadcasters of the equal time requirement of section 315 with respect to candidates for President and Vice President. Referred to the Committee on Commerce.

Mr. PASTORE. Mr. President, I send to the desk for appropriate reference a bill. I want to say at this juncture, Mr. President, that the bill I am introducing today would repeal the equal opportunity requirements of section 315 of the Communications Act for legally qualified candidates for the offices of President and Vice President in the general election. This measure, I believe, complements the recently enacted Federal Election Campaign Act because it will further reduce the cost of campaigning for the highest office in the land. After all, that was a major objective of the campaign legislation.

Unlike most elections for other public offices, a presidential race attracts numerous candidates. Broadcasters have told us they are, therefore, reluctant to give free time to significant candidates because of the equal time requirement, and the cost that would be involved if they had to give equal time to all of the candidates who run for the office of President.

I might say, Mr. President, with respect to the last election that with the exception of the three major candidates, all the other candidates combined received less than 5 percent of the vote.

Be that as it may, I think that under the provision in the law today, if they gave a Republican candidate any free time or a Democratic candidate any free time or the candidate who ran on the American ticket the last time—Mr. Wallace—any free time, they would have to give it to every individual candidate. The cost would be of such magnitude that, for that reason, they would give it to no one. That has been one of the problems we have encountered in seeing to it that the candidates who run for the office of the Presidency are given sufficient exposure on television so that they can bring their message to the American people.

Thus I feel that the major reason for exempting the office of the Presidency from the requirement is not present where other offices are concerned.

The reason I say that is that the position taken by Mr. Nixon was that if the law applies to the office of the Presidency, it ought to apply to every Member of the Congress. There is a difference involved. Members of Congress run either in a district or in a State, and that has nothing to do with the networks. But when a candidate for the Presidency runs, he appears on the national networks; therefore, the networks come into the picture. For that reason, I had conversations with the presidents of the three networks—ABC, NBC, and CBS—and they all agreed that were we to eliminate the office of President and Vice President from the provisions of section 315, the networks would offer free time to each of the major candidates of the major parties.

I make the general assertion, because the question arose, that this might force the President of the United States into the awkward position of being compelled to accept a challenge to debate. I tell the Senate very frankly that I do not think the President ought to be embarrassed in any way. I have said so on the floor of the Senate time and time again. I do not think that he ought to be compelled to debate. For that reason, I brought that matter up before the three presidents of the networks. They all agree that the candidate himself would have the exclusive choice of the format he would follow.

This is not a bill to embarrass anyone. It is a bill to help the networks to accommodate the major candidates for the office of President and to give them free time. For the life of me, I cannot understand how anyone would object to it. However, that is the situation.

The Senate passed the measure several times, and the House deleted it from the campaign expenditures bill. So I am introducing it today, and, as chairman of the subcommittee, I assure Senators that it will be acted upon expeditiously and reported to the Senate in due time.

I hope it will be passed by the Senate and by the House and will be sent to the President, and that once and for all the networks will be enabled to give free time to a candidate for the office of the Presidency.

I am so happy to see that the chairman of the National Republican Party is in the Chamber. I want him to understand once again that the bill is not aimed to embarrass anyone. It is designed to enable the networks to give free time to the candidates for the office of the Presidency, for, as is so well known, it costs almost $1 million for each exposure.

When the Committee on Commerce held hearings on the election campaign legislation, the heads of the three major networks testified that they were prepared to offer substantial amounts of free time to significant presidential candidates if this requirement of equal time were repealed.

At that time it was made abundantly clear that their offers were not conditioned upon a predetermined format. In other words, no candidate would be required to debate in order to receive free time. In this regard, I quote from the committee's report accompanying the campaign bill:

> Your committee also wishes to point out that in urging the adoption of this legislation to repeal Section 315 as it applies to Presidential and Vice Presidential candidates, it is not enforcing any particular format for the appearance of the candidates. Rather, complete freedom is given to the broadcaster and the candidates to develop specific program formula for the appearance of candidates. The Committee feels the flexibility being given in this legislation will permit the broadcaster and the candidate to innovate and experiment with various program formats, including joint appearances. Whatever is done should be done as a result of discussions, negotiations and cooperation between the candidates and the broadcasters.

What the committee said then is equally true with respect to the bill I am introducing today.

I urge the Senate to take this additional step so that the American voting public will have a greater opportunity to see and hear the candidates for the most important office in the land.

By Mr. HARTKE:

S. 3179. A bill to provide opportunities for employment to unemployed and underemployed persons, to assist States and local communities in providing needed public services, and for other purposes. Referred to the Committee on Labor and Public Welfare.

GUARANTEED JOBS—NOT GUARANTEED WELFARE

Mr. HARTKE. Mr. President, more than 25 years ago Congress set a national goal "to promote maximum employment, production and purchasing power." It has been more than a quarter of a century since the Employment Act of 1946 became law, yet we have yet to achieve that all-important objective of full employment.

There can be no effective welfare reform until we solve the unemployment problem; nor can we stabilize our economy until we succeed in achieving full employment. For too long, this problem has been the subject of rhetoric and empty promises. With an unemployment rate hovering around the 6-percent level, now is the time to act to meet the commitment made in 1946.

I am today introducing legislation to

provide a job for every able-bodied American. In essence, my "Full Employment Act" assures that anyone who cannot find a job in the private sector will have access to a public sector job. These will not be transitional jobs, nor will they be made work jobs. Instead they will be jobs which will help translate the social concerns of Government into concrete action. They will be jobs in which workers can take pride in their accomplishments.

Mr. President, for the past 3 years, the employment picture has been colored with gloom. Last month we had further proof that the President's program of economic regeneration has been a failure. Despite policies which are supposedly new and escalating rhetoric from the White House, 5,477,000 Americans were unemployed last month. As startling as this figure is, it fails to reflect the millions who are underemployed—those working a short week and living on a shrunken paycheck. Nor does this figure include those who have been unable to find work and have simply stopped looking.

As chairman of the Senate Committee on Veterans' Affairs, I am well aware of a most shameful aspect of the unemployment picture. Some 400,000 of the unemployed are Vietnam veterans. Men torn from careers in formation, pulled away from jobs and normal lives, sent to the purposeless quagmire of our Indochina involvement, and then returned to a society that offers them no place. This is nothing short of a national disgrace.

For the past 35 years, we have assumed that the answer to a high rate of unemployment was either tax reductions or additional Government spending. Inevitably, either of these approaches has failed. Even at times when the national unemployment rate was relatively low, we have fallen far short of real full employment. In the last quarter of 1968, for example, the overall unemployment rate fell to 3.4 percent—the lowest rate recorded throughout the 1960's. The rate for white adult males was actually even lower—1.8 percent. At the same time, however, the rate for women was 4.5 percent; for blacks, 6.6 percent; for white youths, 10.8 percent; and for black youths, 25.3 percent. The full employment I propose today would provide for a complete end to actual unemployment for all groups of Americans, rather than a continuation of the superficial and misleading numbers game with which we have been satisfied.

The perennial reliance upon traditional fiscal and monetary policy has led us to alternate between periods of unacceptably high unemployment and times of rising prices. The result of 25 years of a stop and go policy is a price level roughly twice what it was in 1945 and relatively little progress in attacking the structural problems that are responsible for so much unemployment. Nor has this process of generally fixing prices been a costless proposition. Older Americans on fixed incomes have found their savings from years of toil seriously eroded.

Higher domestic prices coupled with a generally disastrous trade and investment policy have frequently priced American goods out of the international market. And despite all these costs in terms of human impoverishment and national strength, we find ourselves with an unemployment rate hovering around 6 percent.

Although there has been increasing recognition of structural unemployment and the marked skill imbalances in the economy, most economists have supported monetary and fiscal policy as the main tools to assure full employment and price stability. More recently, there has been a growing body of work focusing on structural improvements that will reduce unemployment without forcing us back into a ruinous price spiral. A leader of this new breed of labor economist, Dr. Melville J. Ulmer of the University of Maryland, has directed his studies toward the goal of alleviating the level of unemployment in the hard-to-place unskilled without demanding national economic action that would be bound to lead us to further inflation. Essentially, Professor Ulmer advocates a matching of public service jobs to the skills and aptitudes of the existing supply of labor.

The current policies of the Nixon administration are but an extension of the high unemployment policies of the past. These policies will not succeed in lowering prices or holding back inflation, nor will they succeed in lowering unemployment below the 5-percent level.

It is time that we broke with the misguided policies of the past and adopted a new economic game plan which will give us full employment without substantial inflation. By full employment I do not mean a 5-percent rate of unemployment or even a 4-percent range, but zero long-term unemployment.

If we are to meet this goal, we will have to provide more than millions of new jobs. Of the 5 million people currently unemployed, most are unskilled and therefore unable to get a job in our increasingly skilled job market.

Another smaller but equally significant group of unemployed are highly skilled but because of changes in national priorities or unfair competition from abroad have lost their jobs and are unable to find new ones.

Experience has made it clear that the private sector cannot expand to provide jobs for these millions of able-bodied unemployed without at the same time causing inflation. The answer lies in creating new public sector jobs—jobs financed by the Federal Government and provided at the Federal, State, and local levels.

Some may say that the cost for these new jobs will be excessive, but such critics forget that we are already paying the unemployed through unemployment insurance and welfare programs. By paying the able-bodied unemployed for socially useful work, we can enhance the moral fiber of the Nation, stabilize and invigorate the economy.

Others may oppose any legislation which turns over to the public sector a larger portion of the Nation's economic activity than is customary during peacetime. To these people, I say that Government is in a unique position to calculate both the social costs and the social benefits of its activities. Government need not be solely concerned with maximizing profits and replacing manpower with technology. Instead, Government can weigh the availability of unused manpower against the values of purer air and water, better schools and medical care, more livable cities, safer streets, better care of the aged, better mass transit, more day care centers and other services which can best be offered by Government. In short, Government can match the concerns of society to the resources at hand.

The continued growth of a technology intensive society promises to leave millions of Americans with obsolete skills and no prospects of meaningful employment. This situation seems so needless and wasteful when there are so many unmet public needs crying for manpower. My bill will provide many middle-aged Americans with new hope, start millions of young people on the road to productive lives, and assure our returning veterans of full membership in the society that sent them off to war.

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

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

S. 3179

A bill to provide opportunities for employment to unemployed and underemployed persons, to assist States and local communities in providing needed public services, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Full Employment Act of 1972".

STATEMENT OF PURPOSES

SEC. 2. The Congress finds and declares that—

(1) to attain the objective of the Employment Act of 1946 "to promote maximum employment, production, and purchasing power" it is necessary to assure an opportunity for a gainful, productive job to every American who seeks work and furnish the education, training, and job placement assistance needed by any person to qualify for employment consistent with his highest potential and capability;

(2) the United States has the capacity to provide every American who is able and willing to work, full opportunity, within the framework of a free society, to prepare himself for and to obtain employment at the highest level of productivity, responsibility, and remuneration within the limits of his abilities;

(3) the growth of the Nation's economic prosperity and productive capacity is limited by the lack of sufficient skilled workers to perform the demanding production, service, and supervisory tasks necessary to the full realization of economic abundance for all in an increasingly technical society, while, at the same time, there are many workers who are working below their capacity and who, with appropriate education and training could capably perform jobs requiring a higher degree of skill, judgment and attention;

(4) the placement of unemployed or underemployed workers in private employment is hampered by the absence of a suffi-

cient number of appropriate employment opportunities;

(5) there are great unfilled public needs in such fields as health, community improvement, education, transportation, public safety, recreation, environmental quality, conservation, and other fields of human betterment and public improvement, which can be met by expansion of public sector employment opportunities providing meaningful jobs for unemployed and underemployed persons, including those who have become unemployed as a result of shifts in the pattern of Federal expenditures; and

(6) economic prosperity and stability in the United States and the well-being and happiness of its citizens will be enhanced by the establishment of a comprehensive full employment program designed to assure every American an opportunity for gainful employment.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Secretary" means the Secretary of Labor;

(2) "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and

(3) "city" means an incorporated municipality, or other political subdivision of a State, having general governmental powers.

AUTHORIZED APPROPRIATIONS

SEC. 4. (a) For the purposes of carrying out this Act, there are authorized to be appropriated such funds as may be necessary.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation of this subsection, any funds appropriated to carry out this Act which are not obligated prior to the end of the fiscal year for which such funds were appropriated, shall remain available for obligation during the succeeding fiscal year, and any funds obligated in any fiscal year may be expended during a period of two years from the date of obligation.

ALLOCATION OF FUNDS

SEC. 5. (a) Sums appropriated pursuant to this Act for any fiscal year shall be allocated in the following manner:

(1) Not less than 80 per centum shall be apportioned by the Secretary among the States in an equitable manner, taking into consideration the proportion which the total number of unemployed persons, and of persons heading low-income families and unrelated low-income persons, in each such State bears to such total numbers, respectively, in the United States.

(2) The remainder shall be available as the Secretary deems appropriate to carry out the purposes of this Act.

(b) The amount apportioned to each State under clause (1) of subsection (a) shall be apportioned among areas within each such State in an equitable manner taking into consideration the proportion which the total number of unemployed persons in each such area bears to such total numbers, respectively, in the State. To the maximum extent appropriate, apportioned funds for each such area shall be expended through approved applications submitted by prime sponsors.

(c) The Secretary is authorized to make reallocations for such purposes under this Act as he deems appropriate of the unobligated amount of any apportionment under subsections (a)(1) and (b) to the extent that the Secretary determines that it will not be required for the period for which such apportionment is available. Any funds reallocated under this subsection are not required to be apportioned in accordance with subsection (a)(1) or (b), and no revision in the apportionments of the funds not so reallocated shall be made because of such reallocations.

(d) As soon as practicable after funds are appropriated to carry out this Act for any fiscal year, the Secretary shall publish in the Federal Register the apportionments required by subsections (a)(1) and (b) of this section.

FINANCIAL ASSISTANCE

SEC. 6. The Secretary shall enter into arrangements with eligible applicants in accordance with the provisions of this Act in order to make financial assistance available for the purpose of providing employment for unemployed and underemployed persons in jobs providing needed public services.

ELIGIBLE APPLICANTS

SEC. 7. Financial assistance under this Act may be provided by the Secretary only pursuant to applications submitted by eligible applicants who shall be—

(1) public agencies and institutions of the Federal Government;

(2) public agencies and institutions of States and cities; and

(3) Indian tribes and any private nonprofit agencies and institutions approved by the Secretary for the purpose of this Act.

ELIGIBLE PARTICIPANTS

SEC. 8. Eligibility for participation in any program under this Act shall be determined in accordance with the provisions of this Act authorizing such program; and persons who or persons heading families who receive benefits under title IV of the Social Security Act, or food stamps or surplus commodities under the Agricultural Act of 1949 and the Food Stamp Act of 1964, shall be included among individual eligible to participate in programs assisted under the provisions of this Act.

APPLICATION

SEC. 9. (a) Financial assistance under this Act may be provided by the Secretary for any fiscal year only pursuant to an application which is submitted by an eligible applicant and which is approved by the Secretary in accordance with the provisions of this Act. Any such application shall set forth a public service employment program designed to provide employment and, where appropriate, training and manpower services related to such employment which are otherwise unavailable, for unemployed and underemployed persons in such fields as health care, public safety, education, transportation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvement, rural development, conservation, beautification, and other fields of human betterment and community improvement.

(b) An application for financial assistance for a public service employment program under this Act shall include provisions setting forth—

(1) assurances that the activities and services for which assistance is sought under this Act will be administered by or under the supervision of the applicant, identifying any agency or agencies designated to carry out such activities or services under such supervision;

(2) a description of the area to be served by such programs, and a plan for effectively serving on an equitable basis the significant segments of the population to be served, including data indicating the number of potential eligible participants and their income and employment status;

(3) a description of the methods to be used to recruit, select, and orient eligible participants, including specific eligibility criteria, and programs to prepare the participants for their job responsibilities;

(4) a description of unmet public service needs and a statement of priorities among such needs;

(5) description of jobs to be filled, a listing of the major kinds of work to be performed and skills to be required, and the approximate duration for which participants would be assigned to such jobs;

(6) the wages or salaries to be paid participants and a comparison with the prevailing wages in the area for similar works;

(7) the education, training, and supportive services (including counseling, medical care, and family planning) which complement the work performed;

(8) the planning for and training of supervisory personnel in working with the participants;

(9) a description of career opportunities and job advancement potentialities for participants;

(10) appropriate arrangements with community action agencies, and, to the extent appropriate, with other community-based organizations serving the poverty community, for their participation in the conduct of programs for which financial existence is provided under this title;

(11) an indication of the full participation and maximum cooperation among local public officials, area residents, and representatives of private organizations in the development of the program and a description of their respective roles in the conduct and administration of the program; and

(12) such other assurances, arrangements, and conditions, consistent with the provisions of this Act, as the Secretary deems necessary, in accordance with such regulations as he shall prescribe.

APPROVAL OF APPLICATIONS

SEC. 10. An application, or modification or amendment thereof, for financial assistance under this Act may be approved only if the Secretary determines that—

(1) the application meets the requirements set forth in this Act;

(2) an opportunity has been provided to the Governor of the State to submit comments with respect to the application to the Secretary; and

(3) an opportunity has been provided to officials of appropriate cities to submit comments with respect to the application to the Secretary.

SPECIAL CONDITIONS

SEC. 11. (a) The Secretary shall not provide financial assistance for any program under this Act unless he determines, in accordance with such regulations as he shall prescribe, that—

(1) the program will result in an increase in employment opportunities over those which would otherwise be available and will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of non-overtime work or wages or employment benefits), and will not impair existing contracts for services of result in the substitution of Federal for other funds in connection with work that would otherwise be performed;

(2) persons employed in a public service job under this Act shall be paid wages which shall not be lower than whichever is the highest of (A) the minimum wage which would be applicable to the employment under the Fair Labor Standards Act of 1938, as amended, if section 6(a)(1) of such Act applied to the participant and if he were not exempt under section 13 thereof, (B) the State or local minimum wage for the most nearly comparable covered employment, or (C) the prevailing rates of pay in the same labor market area for persons employed in similar public occupations;

(3) all persons employed in a public service job under this Act will be assured of workman's compensation, retirement, health insurance, unemployment insurance, and other benefits at the same levels and to the same extent as other employees of the employer and to working conditions and promotional

opportunities neither more nor less favorable than such other employees enjoy;

(4) the provisions of section 2(a)(3) of Public Law 89–286 shall apply to such agreements;

(5) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants; and

(6) every participant shall be advised, prior to entering upon employment, of his rights and benefits in connection with such employment.

(b) Where a labor organization represents employees who are engaged in similar work in the same labor market area to that proposed to be performed under any program for which an application is being developed for submission under this Act, such organization shall be notified and afforded a reasonable period of time in which to make comments to the applicant and to the Secretary.

(c) The Secretary shall prescribe regulations to assure that programs under this Act have adequate internal administrative controls, accounting requirements, personnel standards, evaluation procedures, and other policies as may be necessary to promote the effective use of funds.

ADDITIONAL LIMITATIONS AND CONDITIONS

SEC. 12. (a) Any amounts received under chapters 11, 13, 31, 34, and 35 of title 38, United States Code, by any veteran of any war, as defined by section 101 of title 38, United States Code, who served on active duty for a period of more than one hundred and eighty days or was discharged or released from active duty for a service-connected disability or any eligibile person as defined in section 1701 of such title, if otherwise eligible to participate in programs under this Act, shall not be considered for purposes of determining the needs or qualifications of participants in programs under this Act.

(b) The Secretary shall not provide financial assistance for any program under this Act unless he determines, in accordance with regulations which he shall prescribe, that periodic reports will be submitted to him containing data designed to enable the Secretary and the Congress to measure the effectiveness of all programs. Such data shall include, but be not necessarily limited to, information on—

(1) enrollee characteristics, including age, sex, race, health, education level, and previous wage and employment experience;

(2) duration in previous training and employment situations, if any;

(3) total dollar cost per person, including breakdown between salary or stipend, supportive services, and administrative costs. The Secretary shall compile such information on a State, regional, and national basis.

(c) The Secretary shall not provide financial assistance for any program under this Act unless the grant, contract, or agreement with respect thereto specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of race, creed, color, national origin, political affiliation, physical disability, or beliefs.

(d) The Secretary shall not provide financial assistance for any program under this Act which involves partisan political activities; and neither the program, the funds provided therefor, or personnel employed therein, shall be, in any way or to any extent, engaged in the conduct of partisan political activities in contravention of chapter 15 of title 5, United States Code.

(e) The Secretary shall not provide financial assistance for any program under this Act unless he determines that participants in the program will not be employed on the construction, operation or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

ADMINISTRATIVE PROVISIONS

SEC. 13. (a) The Secretary may prescribe such rules, regulations, guidelines and other published interpretations or orders under this Act as he deems necessary. Such rules, guidelines, regulations, and other published interpretations or orders may include adjustments authorized by section 204 of the Inter-governmental Cooperation Act of 1968.

(b) The Secretary may make such grants, contracts, or agreements, establish such procedures, and make such payments, in installments and in advance, or by way of reimbursement, or otherwise allocate and expend funds made available under this Act, as he may deem necessary to carry out the provisions of this Act, including (without regard to the provisions of section 4774(d) of title 10, United States Code) expenditures for construction, repairs and capital improvements, and including necessary adjustments in payments on account of overpayments or underpayments. The Secretary may also withhold funds otherwise payable under this Act in order to recover any amounts expended in the current or immediately prior fiscal year in violation of any provision of this Act or any term or condition of assistance under this Act.

(c) The Secretary is authorized, in carrying out his functions and responsibilities under this Act, to accept in the name of the Department, and employ and dispose of in furtherance of the purposes of this Act, or any title thereof, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise.

(d) The Secretary is authorized, in carrying out his functions and responsibilities under this Act, to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(e) The Secretary is authorized to accept and utilize in carrying out the provisions of this Act funds appropriated to carry out other provisions of Federal law if such funds are utilized for the purposes for which they are specifically authorized and appropriated.

(f) In addition to such other authority as he may have, the Secretary is authorized, in carrying out his functions under this Act, to utilize, with their assent, the services and facilities of Federal agencies without reimbursement, and with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivision with reimbursement.

(g) The Secretary is authorized, in carrying out his functions under this Act, to expend funds without regard to any other law or regulations for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by him only when necessary to fulfill the purposes of this Act and subject to prior written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of his intention to exercise such authority and the reasons and justification for the exercise of such authority.

ADVANCE FUNDING

SEC. 14. (a) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in the appropriations Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(b) In order to effect a transition to the advance funding method of timing appropriation action, the amendment made by subsection (a) shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act of otherwise) of two separate appropriations, one for the current fiscal year and one for the succeeding fiscal year.

TRANSFER OF FUNDS

SEC. 15. Funds appropriated under the authority of this Act may be transferred, with the approval of the Director of the Office of Management and Budget, between departments and agencies of the Federal Government, if such funds are used for the purposes for which they are specifically authorized and appropriated.

LABOR STANDARDS

SEC. 16. All laborers and mechanics employed in any construction, alteration, or repair, including painting or decorating of projects, buildings, and works which are Federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). All others shall be paid at a rate not less than the ten-prevailing Federal minimum wage. The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

COOPERATION OF OTHER AGENCIES

SEC. 17. Each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such services and facilities as he may request for his assistance in the performance of his functions under this Act.

(a) The Secretary shall carry out his responsibilities under this Act through the utilization, to the extent appropriate, of all possible resources for skill development available in industry, labor, public and private educational and training institutions, State, Federal, and local agencies and other appropriate public and private organizations and facilities, with their consent.

ADVISORY COMMITTEE

SEC. 18. (a) The Secretary shall appoint an Advisory Committee on Public Service Employment which shall consist of at least 13 but not more than seventeen members and shall be composed of persons representative of labor, management, agriculture, education, economic opportunity programs, as well as representatives of the unemployed. From the members appointed to such Committee, the Secretary shall appoint a Chairman. Members shall be appointed for terms of three years except that (1) in the case of initial members, one-third of the members shall be appointed for terms of one year each and one-third of the members shall be appointed for terms of two years each, and (2) appointments to fill the unexpired portion of any term shall be for such portion only. Such committee shall hold not less than two meetings during each calendar year.

(b) The Advisory Committee shall—

(1) review the administration and operation of all programs under this Act and advise the Secretary of Labor and other appropriate officials as to carrying out their duties under this Act;

(2) conduct independent evaluations of programs carried out under this Act and publish and distribute the results thereof; and

(3) make recommendations (including recommendations for changes in legislation) for the improvement of the administration and operation of such programs as are authorized under this Act.

(c) The Advisory Committee shall make an annual report, and such other reports as it deems necessary and appropriate, on its findings, recommendations, and activities to the Secretary and to the Congress.

(d) The Advisory Committee may accept and employ or dispose of gifts or bequests, either for carrying out specific programs or for its general activities or for such responsibilities as it may be assigned in furtherance of subsection (b) of this section.

(e) Appointed members of the Advisory Committee shall be paid compensation at a rate not to exceed the per diem equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, when engaged in the work of the Advisory Committee, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

(f) The Advisory Committee is authorized, without regard to the civil service laws, to engage such technical assistance as may be required to carry out its functions; to obtain the services of such full-time professional, technical, and clerical personnel as may be required in the performance of its duties, and to contract for such assistance as may be necessary.

(g) For the purposes of this section, funds may be reserved from the sums appropriated to carry out this Act, as directed by the Director of the Office of Management and Budget.

STATE AND LOCAL ADVISORY COMMITTEES

SEC. 19. For the purpose of formulating and implementing programs under this Act, the Secretary may, where appropriate, assist in the establishment of representative advisory committees on a community, State, and regional basis.

REPORTS

SEC. 20. (a) The Secretary of Labor shall make such reports and recommendations to the President as he deems appropriate pertaining to manpower requirements, resources and use, and his recommendations for the forthcoming fiscal year, and the President shall transmit to the Congress within sixty days after the beginning of each regular session a report pertaining to manpower requirements, resources and use.

(b) The Secretary shall transmit at least annually as part of the report required under this section a detailed report setting forth the activities conducted under this Act.

INTERSTATE AGREEMENTS

SEC. 21. In the event that compliance with provisions of this Act requires cooperation or agreements between States, the consent of Congress is hereby given to such States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

EFFECTIVE DATE

SEC. 22. The effective date of this Act shall be July 1, 1972. Rules, regulations, guidelines and other published interpretations or orders may be issued by the Secretary at any time after the date of enactment of this Act.

By Mr. CHURCH (for himself, Mr. KENNEDY, Mr. WILLIAMS, Mr. MONDALE, Mr. GURNEY, and Mr. MOSS):

S. 3181. A bill to provide for the establishment of an Office for the Aging in the Executive Office of the President, for the fulfillment of the purposes of the Older Americans Act, for enlarging the scope of that act, and for other purposes. Referred to the Committee on Labor and Public Welfare.

ACTION ON AGING ACT OF 1972

Mr. CHURCH. Mr. President, I introduce for appropriate reference the Action on Aging Act of 1972. The Senator from Florida (Mr. GURNEY), and the Senator from Utah (Mr. Moss), the Senator from Minnesota (Mr. MONDALE), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Massachusetts (Mr. KENNEDY) have joined me as cosponsors of this proposed legislation.

Recent reorganization moves have raised very basic and serious questions about the capability of the Administration on Aging to function as the Federal focal point for the elderly. Despite strong expression of congressional intent on several occasions, AOA's role has deteriorated markedly in recent years. As a consequence, it is now a weak agency with little clout and visibility. And it can no longer serve as a forceful advocate for improving and enriching the lives of aged and aging Americans.

Approximately 5 years ago, AOA lost its direct line of communication to the Secretary of Health, Education, and Welfare when it was made a component unit in the newly created Social and Rehabilitation Service. Further downgrading occurred in 1970 when action was initiated to transfer the research and training programs to the SRS regional offices. And AOA was all but dismantled when the foster grandparent and the retired senior volunteer programs were spun off a few months ago to the newly created volunteer agency, Action.

With its programs being systematically stripped away, AOA is now left with only the administration of the title III community programs on aging and the areawide model projects. Moreover, during the past 2 years, its program responsibility has been reduced by two-thirds.

Additionally, AOA lacks the capability of performing essential interdepartmental coordinating functions because of its low status in the Federal hierarchy. This point was made very forcefully by the President's Task Force on Aging in 1970 when it said:

> The experience of the Administration on Aging . . . makes it abundantly clear that interdepartmental coordination cannot be carried out by a unit of government which is subordinate to the units it is attempting to coordinate.

Equally important, this task force stressed that no agency now has authority to determine priorities, settle conflicts, eliminate duplication, and make other key decisions for a comprehensive and coordinated policy for aged and aging Americans.

Last March, as chairman of the Senate Committee on Aging, I joined the chairman of the Subcommittee on Aging of the Labor and Public Welfare Committee (Mr. EAGLETON) in conducting joint legislative review hearings on the Evaluation of the Administration on Aging and the Conduct of the White House Conference on Aging. This inquiry has already had a dramatic impact on many key fronts for older Americans. These hearings, for instance, have helped to produce a $71.5 million funding increase for the programs under the Older Americans Act, from $29.5 million to $100 million. This represents the highest appropriation, by far, in the history of the act.

Equally significant, this study led to the appointment by the Senate Committee on Aging of a 20-member advisory council on the Administration on Aging—or a successor. In October, this advisory council issued a far-reaching report, calling for major organizational changes to establish a clearcut, coherent, and coordinated policy to serve the aged of today and tomorrow.

The bill that I introduce today is designed to carry out these recommendations. Briefly, this measure would establish an independent Office on Aging at the White House level to be directed by an Assistant on Aging to the President. This new Agency would have broad responsibilities, including:

Formulating and administering policy;

Coordinating and monitoring programs among departments and agencies with a direct concern in matters related to aging;

Initiating and administering programs, until the value of these projects is demonstrated sufficiently to delegate to existing agencies; and

Providing funds for innovative programs to appropriate departments or agencies.

Second, my proposal calls for the establishment of an advisory council—composed of distinguished individuals in the field of aging—to serve the independent Agency on Aging in a wide range of capacities. One of its key duties would be to prepare a comprehensive report each year, identifying major issues affecting older Americans and the progress made during the year in resolving their problems.

Third, my bill retains the Administration on Aging. But, it would be headed by an Assistant Secretary on Aging in HEW, instead of only a commissioner as is the case now. This is significant, I believe, because it would establish a high level spokesman for the elderly with a direct line of authority to the Secretary. Moreover, an Assistant Secretary could provide the visibility and leadership which is so urgently needed to carry out the programs under the Older Americans Act in an effective and forceful fashion.

This legislation now takes on added meaning because in just a few months—on June 30—the Older Americans Act will expire. During this time the Congress must determine whether the Administration on Aging should be continued as is presently constituted, strengthened, or replaced with something entirely new.

The reasons for early and favorable action on this legislation, I believe, are compelling. Today the existing governmental framework for coping with the problems and challenges of the elderly is, to a very large degree, fragmented and haphazard. And this diffusion of responsibility has resulted in duplication of ef-

forts, lack of coordination, and gaps in our Nation's overall approach for the 20 million Americans now past 65, as well as the millions more nearing that age.

However, the establishment of an independent Agency on Aging at the White House level would provide the high-level spokesman for policy development in the field of aging. It would also produce greater coordination of Federal programs to serve the elderly. Additionally, the Presidential Assistant on Aging would be ideally situated for establishing priorities for a national policy on aging. And above all, the Assistant on Aging could help assure that our national programs for the aged are built upon sound and intelligently conceived plans.

Moreover, streamlined and effective Government organization is essential if the recommendations emerging from the White House Conference on Aging are to be effectively implemented this year and in the years ahead.

Our Nation can ill-afford a half-hearted commitment to come to grips with the problems besetting the aged. What is needed now is a high-level advocate with the power and prestige to represent the elderly effectively in the highest councils of government.

All Americans—whether they be young, middle-aged, or older—have an important stake in this decision because our haphazard efforts in the field of aging have resulted in high costs for our Nation, the elderly, and their families. These economic, social, psychological, and other costs are likely to climb unless major policy and organizational changes are instituted.

Persons now old have a direct interest because a strong Federal spokesman is a cornerstone in any national policy to make the later years a time of fulfillment, instead of despair and neglect. Middle-aged individuals also have a direct concern because they may be ill-equipped to cope with the problems associated with advancing age, such as the lack of coordinated social services, isolation, loneliness, and many others. And the young also have a stake because they can expect to spend more years in retirement than any other generation in the history of mankind.

This proposal, I am pleased to note, has been enthusiastically endorsed by the delegates at the White House Conference on Aging.

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

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

S. 3181

A bill to provide for the establishment of an Office for the Aging in the Executive Office of the President, for the fulfillment of the purposes of the Older Americans Act, for enlarging the scope of that Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Action on Aging Act of 1972".

DECLARATION OF PURPOSE

SEC. 2. It is the purpose of this Act to—

(1) provide increased coordination, improved planning, more innovative services, and other activities on behalf of Older Americans through the establishment of an Office for the Aging in the Executive Office of the President; and

(2) broaden and strengthen the mission and administrative role of the Administration on Aging.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Office" means the Office for the Aging;

(2) "Director" means the Director of the Office for the Aging;

(3) "Council" means the National Advisory Council for the Aging;

(4) "department and agency of the Federal Government" means any department, agency, or independent establishment of the Executive Branch of the Government including any wholly owned government corporation.

TITLE I—OFFICE FOR THE AGING

ESTABLISHMENT

SEC. 101. (a) There is established in the Executive Office of the President the Office for the Aging.

(b) The Office shall be headed by a Director who shall be appointed by the President by and with the advice and consent of the Senate. There shall be in the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may prescribe and shall be acting Director in the absence or disability of the Director or in the event of a vacancy in the position of Director.

FUNCTIONS OF THE OFFICE

SEC. 102. It shall be the function of the Office to—

(1) advise and assist the President as he may request on programs and activities for older Americans conducted or assisted by any department or agency of the Federal Government;

(2) provide effective procedures for the coordination of programs and activities for older Americans conducted or assisted by and department or agency of the Federal Government with particular emphasis upon practical coordination of the availability of such programs and activites at the local level;

(3) encourage the development of State and local governmental agences and private agencies and organizations which will carry out programs and activities designed to meet the special needs of older Americans;

(4) develop and establish demonstration programs of an innovative character, when deemed necessary by the Director, designed to meet the special needs of older Americans and to carry out such programs until such time as their worth is demonstrated;

(5) establish effective procedures—including regular meetings with appropriate officers of the Departments of Health, Education, and Welfare, Commerce, Agriculture, Labor, Transportation, and Housing and Urban Development, the Civil Service Commission, the Veterans' Administration, the Office of Management and Budget, and the Office of Economic Opportunity—designed to assure a more effective consideration of the interests of older Americans in the operation of programs and activities conducted or assisted by those departments and agencies;

(6) advise and make recommendations to all departments and agencies of the Federal Government with respect to general policy matters concerning programs and activities related to the interests of older Americans; and

(7) report to the Congress at least once in each fiscal year on the activities of the Office during the preceding fiscal year.

ADMINISTRATIVE PROVISIONS

SEC. 103. (a) The Director, subject to the direction of the President is authorized to—

(1) appoint and fix the compensation of such staff personnel as he deems necessary;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $125 a day for individuals;

(3) promulgate such rules and regulations as may be required to carry out the provisions of this title;

(4) designate representatives to serve or assist on such committees as the Director may determine to be necessary to maintain effective liaison with departments and agencies of the Federal Government and with State and local agencies carrying out programs and activities related to the special interests of older Americans; and

(5) use the services, personnel, facilities, and information of departments and agencies of the Federal Government and those of State and local public agencies and private research agencies, with the consent of such agencies, with or without reimbursement therefor.

(b) Upon request made by the Director each such department and agency is authorized and directed to make its services, personnel, facilities, and information (including suggestions, estimates, and statistics) available to the greatest practicable extent to the Office in the performance of its functions.

ADVISORY COUNCIL ON THE AGING

SEC. 104. (a) There is established a national advisory council on the aging to be composed of 15 members appointed by the President for terms of 3 years without regard to the provisions of title 5, United States Code. Members shall be appointed so as to be representative of older Americans, national organizations with an interest in aging, business, labor, and the general public.

(b)(1) Of the members first appointed, five shall be appointed for a term of one year, five shall be appointed for a term of two years, and five shall be appointed for a term of three years, as designated by the President at the time of appointment.

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

(3) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner by which the original appointment was made.

(4) Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates not to exceed $135 per diem, including travel time and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(c) The President shall designate the chairman from among the members appointed to the Council. The Council shall meet at the call of the chairman but not less often than four times a year. The Director shall be an ex officio member of the Council.

(d) The Council shall—

(1) advise the Director on matters relating to the special needs of older Americans;

(2) review and evaluate programs and activities conducted or assisted by departments and agencies of the Federal Government with particular emphasis upon identifying unsolved special problems of older Americans; and

(3) make recommendations to the President and to the Congress for the establishment of new programs and activities for

older Americans in view of the evaluation conducted by the Council.

(e) The Director shall make available to the Council such staff, information, and other assistance as it may require to carry out its activities.

(f) The Council shall make such interim reports as it deems advisable and an annual report of its findings and recommendations (including recommendations for changes in the provisions of this Act) to the President not later than March 31 of each year. The President shall transmit each such report to the Congress together with his comments and recommendations.

COMPENSATION OF OFFICERS

SEC. 105. (a) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(21) Director, Office for the Aging.".

(b) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(56) Deputy Director, Office for the Aging.".

(c) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(95) Assistant Directors, Office of the Aging.".

TITLE II—AMENDMENTS TO THE OLDER AMERICANS ACT OF 1965

ASSISTANT SECRETARY FOR THE AGING

SEC. 201. (a) Section 201(b) of the Older Americans Act of 1965 is amended by inserting at the end thereof the following new sentence: "The Commissioner on Aging shall be an Assistant Secretary of Health, Education, and Welfare.".

(b) Paragraph (17) of section 5315 of title 5, United States Code, is amended by striking "(5)" and inserting in lieu thereof the following: "(6), one of whom shall be an Assistant Secretary of Health, Education and Welfare for Aging.".

EXTENSION OF OLDER AMERICANS ACT OF 1965

SEC. 202. (a) Section 301 of the Older Americans Act of 1965 is amended by striking out the word "and" immediately before "$30,000,000" and inserting immediately after "June 30, 1972" a comma and the following "$——— for the fiscal year ending June 30, 1973, and $——— for the fiscal year ending June 30, 1974,".

(b) Section 305 (b) of such Act is amended by striking out the word "and" the first time it appears and inserting in lieu thereof after "June 30, 1972" a comma and the following: "and $——— for the fiscal year ending June 30, 1973, and $——— for the fiscal year ending June 30, 1974".

(c) Section 603 of such Act is amended by striking out the word "and" and by inserting after "June 30, 1972" a comma and the following: "$——— for the fiscal year ending June 30, 1973, and $——— for the fiscal year ending June 30, 1974".

(d) Section 614 of such Act is amended by striking out the word "and" and by inserting after "June 30, 1972" a comma and the following: "——— for the fiscal year ending June 30, 1973, and $——— for the fiscal year ending June 30, 1974".

(e)(1) The first sentence of section 703 of such Act is amended by striking out the word "six" and inserting in lieu thereof the word "eight".

(2) The second sentence of such section is amended by striking out the word "and" and inserting after "June 30, 1972" a comma and the following: "$——— for the fiscal year ending June 30, 1973, and $——— for the fiscal year ending June 30, 1974".

By Mr. SCOTT (for himself and Mr. JAVITS):

S. 3182. A bill to implement the Convention on the Prevention and Punishment of the Crime of Genocide. Referred to the Committee on the Judiciary.

Mr. SCOTT. Mr. President, I am today submitting on behalf of myself and Senator JAVITS, legislation originally requested by our Foreign Relations Committee, implementing the proposed Genocide Convention.

I ask unanimous consent to have printed in the RECORD, at this point, the letter of transmittal, a sectional analysis, and the bill itself.

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

S. 3182

A bill to implement the Convention on the Prevention and Punishment of the Crime of Genocide

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) title 18, United States Code, is amended by adding after chapter 50 the following new chapter:

Chapter 50A—GENOCIDE

"Sec.
"1091. Definitions.
"1092. Genocide.

"SEC. 1091. Definitions.

"As used in this chapter—

"(1) 'National group' means a set of persons whose identity as such is distinctive in terms of nationality or national origins from the other groups or sets of persons forming the population of the nation of which it is a part or from the groups or sets of persons forming the international community of nations.

"(2) 'Ethnic group' means a set of persons whose identity as such is distinctive in terms of its common cultural traditions or heritage from the other groups or sets of persons forming the population of the nation of which it is a part or from the groups or sets of persons forming the international community of nations.

"(3) 'Racial group' means a set of persons whose identity as such is distinctive in terms of race, color of skin, or other physical characteristics from the other groups or sets of persons forming the population of the nation of which it is a part or from the groups or sets of persons forming the international community of nations.

"(4) 'Religious group' means a set of persons whose identity as such is distinctive in terms of its common religious creed, beliefs, doctrines, or rituals from the other groups or sets of persons forming the population of the nation of which it is a part or from the groups or sets of persons forming the international community of nations.

"(5) 'Substantial part' means a part of the group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity.

"(6) 'Children' means persons who have not attained the age of eighteen and who are legally subject to the care, custody, and control of their parents or of an adult of the group standing *in loco parentis.*

"SEC. 1092. Genocide.

"(a) Whoever, being a national of the United States or otherwise under or within the jurisdiction of the United States, willfully without justifiable cause, commits, within or without the territory of the United States in time of peace or in time of war, any of the following acts with the intent to destroy by means of the commission of that act, or with the intent to carry out a plan to destroy, the whole or a substantial part of a national, ethnic, racial or religious group shall be guilty of genocide:

"(1) kills members of the group;

"(2) causes serious bodily injury to members of the group;

"(3) causes the permanent impairment of the mental faculties of members of the group by means of torture, deprivation of physical or physiological needs, surgical operation, introduction of drugs ir other foreign substances into the bodies of such members, or subjection to psychological or psychiatric treatment calclated to permanently impair the mental processes, or nervous system, or motor functions of such members;

"(4) subjects the group to cruel, unusual, or inhumane conditions of life calculated to bring about the physical destruction of the group or a substantial part thereof;

"(5) imposes measures calculated to prevent birth within the group as a means of effecting the destruction of the group as such; or

"(6) transfers by force the children of the group to another group, as a means of effecting the destruction of the group as such.

"(b) Whoever is guilty of genocide or of an attempt to commit genocide shall be fined not more than $20,000, or imprisoned for not more than twenty years, or both; and if death results shall be subject to imprisonment for any term of years or life imprisonment. Whoever directly and publicly incites another to commit genocide shall be fined not more than $10,000 or imprisoned not more than five years, or both."

"(c) The intent described in subsection (a) of this section is a separate element of the offense of genocide. It shall not be presumed solely from the commission of the act charged.

"(d) If two or more persons conspire to violate this section, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000 or imprisoned not more than five years or both.

"(e) The offenses defined in this section, wherever committed, shall be deemed to be offenses against the United States."

(b) The analysis of title 18, United States Code, is amended by adding after the item for chapter 50 the following new item:

"50A. Genocide ——— 1091."

SEC. 2. The remedies provided in this Act shall be the exclusive means of enforcing the rights based on it, but nothing in the Act shall be construed as indicating an intent on the part of the Congress to occupy, to the exclusion of State or local laws on the same subject matter, the field in which the provisions of the Act operate nor shall those provisions be construed to invalidate a provision of State law unless it is inconsistent with the purposes of the Act or the provisions of it.

SEC. 3. It is the sense of the Congress that the Secretary of State in negotiating extradition treaties or conventions shall reserve for the United States the right to refuse extradition of a United States national to a foreign country for an offense defined in chapter 50A of title 18, United States Code, when the offense has been committed outside the United States, and

(a) where the United States is competent to prosecute the person whose surrender is sought, and intends to exercise jurisdiction, or

(b) where the person whose surrender is sought has already been or is at the time of the request being prosecuted for such offense.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., February 16, 1972.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal to implement the

Convention on the Prevention and Punishment of the Crime of Genocide.

The Genocide Convention, which is now pending before the Senate for advice and consent to ratification, is intended to make genocide—the commission of certain atrocities with the intent to destroy a national, ethnic, racial or religious group—an international crime. It was drafted under United Nations auspices, adopted by the General Assembly in 1948, and entered into force in 1951. It was sent to the Senate by President Truman in 1949, but was not acted upon by the Senate. On February 19, 1970, President Nixon sent a message to the Senate, urging it "to consider anew this important Convention and to grant its advice and consent to ratification." The Convention was approved by the Senate Committee on Foreign Relations on December 8, 1970, but it was not brought to a vote by the Senate before the adjournment of the 91st Congress.

On May 4, 1971, following additional hearings, the Committee on Foreign Relations favorably reported the Convention to the Senate. (Senate Ex. Rept. 92–6): On page 9 of its report, the Committee states that it has asked the executive branch to submit implementing legislation to the Congress so that the Senate may have a draft at the time that the Convention is being debated. Accordingly, a draft bill to implement the Convention is hereby submitted.

The draft bill contains three sections which are explained in detail in the accompanying sectional analysis. Section 1 of the bill would add a new chapter on Genocide to title 18 of the United States Code. While generally following the language of the Convention, the provisions contain definitions designed to make it clear, without awaiting judicial interpretation, precisely what acts are punishable, thus clarifying some of the vague terms of the Convention. The provisions also give effect to certain understandings set forth in Senate Ex. Rept. 92–6, pp. 1–2.

Section 2 of the bill would exclude civil remedies for violations of the Convention, and would express the Congressional intention not to preempt State law in the field.

The third section expresses the sense of the Congress that extradition treaties negotiated under the Convention shall provide protection for Americans against double jeopardy for genocidal acts committed abroad if they have been proceeded against in the United States.

We hope that this draft will assist the Senate in its deliberations concerning advice and consent to ratification of the Convention, and that, following Senate approval of the Convention, the bill will be promptly enacted.

The Office of Management and Budget advises that enactment of the proposed legislation would be consistent with the objectives of the Administration.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

SECTIONAL ANALYSIS

SEC. 1 of the bill would add to title 18, United States Code, a new chapter 50A, Genocide, consisting of new sections 1091 and 1092:

Proposed section 1091 of title 18 contains definitions of some of the terms used in the Convention, in order to comply with the principle that criminal statutes should have a sufficient degree of certainty to make it clear without judicial interpretation just what acts are punishable.

Clauses (1)–(4) define the groups which the statute is intended to protect in terms of the characteristics which distinguish them from the rest of the population of the larger society of which they are a part. The larger society can be either a nation or the international community of nations.

Clause (5) defines "substantial part" in terms of its numerical significance to the group as a viable force. The term is used in proposed section 1092 defining the offense of genocide in order to comply with the understanding of the Senate Committee on Foreign Relations concerning the intent provision of Article II of the Convention. Senate Ex. Rep. 92–6, pp. 6–7.

Clause (6) defines children as dependent persons under 18 years of age.

Proposed section 1092 of title 18 creates the crime of genocide, tracking substantially the language of the Convention, except for the use of the term "substantial part" (see explanation of clause (5) above), and except for subsection (a)(3), which defines genocide by "mental harm" as the willful causing of permanent impairment of the mental facilities, thus complying with the second understanding of Senate Ex. Rep. 92–6. The definition also details precisely the means used to cause the impairment, in order to avoid a claim of impairment based on incidental or hypothetical mental harm. Not only must the act be willful, but it must be calculated to cause dysfunction. "Mental faculties" is amplified and focused in terms of mental processes, nervous system, and motor functions.

Genocide by killing and bodily harm use the Convention terminology entirely, since killing and assault are recognized crimes.

Subsection (a)(4) defines genocide by "inhumane treatment" and clarifies the ambiguity of the Convention's phrase "conditions of life."

Subsection (a)(5) defines genocide by imposed birth control as the willful imposition of measures intended to prevent the natural group increase "as a means of effecting the destruction of the group as such."

Subsection (a)(6) defines genocide by repatriation as the willful and forcible transfer of the children of the group as a means of effecting the destruction of the group.

Subsection (b) proscribes attempted genocide and public incitement to genocide, in order to comply with Article III of the Convention. In this regard, it is unnecessary to proscribe complicity in genocide, as required by Article III, since this inchoate offense would be covered 18 U.S.C. 2 (principals), and 18 U.S.C. 3 (accessory after the fact).

Subsection (b) also sets forth the penalties for genocide and related offenses. Like the penalties for violations of other criminal statutes, increased penalties are provided if death results.

Section 2 of the bill would provide that the remedies in it are the exclusive means of enforcing the rights based on it, thus excluding civil remedies, but would also express the Congressional intent not to preempt State law in the field.

Section 3 of the bill would express the sense of the Congress that extradition treaties negotiated (pursuant to Article VII of the Convention) shall provide protection for Americans against double jeopardy for genocidal acts committed abroad if they have been proceeded against in the United States or if the United States intends to exercise its jurisdiction. See Senate Ex. Rep. 92–6, p. 11–12. This section is included because the draft statute would make it possible for the United States to assert jurisdiction over citizens of this country in cases of alleged genocide where the facts giving rise to the case took place outside United States territory. As a result it is possible that there may be situations where both the United States and another country will have jurisdiction to try someone for the same alleged offense. The statutes of the United States are not directed to the issue of who exercises jurisdiction, but leave the answer to the text of the extradition treaty involved. 18 U.S.C. 3184. See, for example, Treaty of Extradition with Brazil, 15 U.S.T. 2094, Art. V., which is the source of the language for this section. The Secretary of State is directed to ensure that future extradition treaties which treat genocide as an offense for which extradition may be granted shall reserve to the United States in cases where double jurisdiction exists the right to try its own citizens rather than grant extradition. Clause (b) of the section is, as a matter of policy, presently included in all extradition treaties.

By Mr. WILLIAMS:

S.J. Res. 205. A joint resolution to authorize the President to proclaim the last Friday of April 1972, as "National Arbor Day." Referred to the Committee on the Judiciary.

NATIONAL ARBOR DAY

Mr. WILLIAMS. Mr. President, today I am introducing for appropriate reference a resolution that would authorize the President to proclaim the last Friday in April, 1972, as "National Arbor Day."

It is of special interest that this worthy observance be authorized this year, for this April marks the 100th anniversary of the first Arbor Day ceremony.

Last session, I introduced a resolution calling for the annual observance of "National Arbor Day." I am not abandoning my original intent, as I still believe that the annual celebration of this occasion is a fitting tribute to the efforts that have been made in preserving one of our most prized possessions.

I am hopeful, however, that this resolution I am submitting today will enable prompt and favorable action by the appropriate committees and by Congress in order that all Americans may join in officially recognizing the centennial observance of Arbor Day in April 1972.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 2592

At the request of Mr. HARTKE, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 2592, a bill to amend the tariff and trade laws of the United States to promote full employment and restore a diversified production base; to amend the Internal Revenue Code of 1954 to stem the outflow of U.S. capital, jobs, technology, and production, and for other purposes.

S. 2767

At the request of Mr. THURMOND, the Senator from New Jersey (Mr. CASE) was added as a cosponsor of S. 2767, a bill to authorize nonregular military service personnel to elect retirement as early as age 50.

S. 2994

At the request of Mr. MCCLELLAN, the Senator from California (Mr. CRANSTON) and the Senator from Iowa (Mr. MILLER) were added as cosponsors of S. 2994, a bill to provide for the compensation of innocent victims of violent crime in need; to make grants to States for the payment of such compensation; to authorize an insurance program and death and disability benefits for public safety officers; to provide civil remedies for vic-

tims of racketeering activity; and for other purposes.

S. 3078

At the request of Mr. HARTKE, the Senator from New Jersey (Mr. CASE) and the Senator from Delaware (Mr. BOGGS) were added as cosponsors of S. 3078, a bill to amend title 5, United States Code, to require the heads of the respective executive agencies to provide the Congress with advance notice of certain planned organizational and other changes or actions which would affect Federal civilian employment, and for other purposes.

S. 3152

At the request of Mr. CHILES, the Senator from Utah (Mr. MOSS), the Senator from Arizona (Mr. GOLDWATER), and the Senator from North Dakota (Mr. BURDICK) were added as cosponsors of S. 3152, a bill to amend the Internal Revenue Code of 1954 to provide that no interest shall be payable by a person to whom an erroneous refund is made if the erroneous refund is made due to error by an officer or employee of the United States.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 232

At the request of Mr. CHILES, the Senator from Hawaii (Mr. INOUYE) and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of Senate Resolution 232, expressing the sense of the Senate that the remainder of the amount appropriated for the rural electrification program for fiscal 1972 be released immediately by the Office of Management and Budget.

ADDITIONAL COSPONSORS OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. DOLE, the Senator from Maryland (Mr. MATHIAS), the Senator from California (Mr. CRANSTON), the Senator from Illinois (Mr. PERCY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New York (Mr. JAVITS), the Senator from Texas (Mr. TOWER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Connecticut (Mr. WEICKER), the Senator from New York (Mr. BUCKLEY), the Senator from Maryland (Mr. BEALL), the Senator from Nebraska (Mr. HRUSKA), the Senator from Kansas (Mr. PEARSON), the Senator from Alabama (Mr. SPARKMAN), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Tennessee (Mr. BAKER), the Senator from Tennessee (Mr. BROCK), the Senator from Idaho (Mr. JORDAN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Pennsylvania (Mr. SCOTT), and the Senator from Michigan (Mr. GRIFFIN) were added as cosponsors of Senate Concurrent Resolution 57, calling for a national day of prayer for the cause of world peace.

SOCIAL SECURITY AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 891

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

WELFARE REFORM AND AMERICAN INDIANS

Mr. RIBICOFF. Mr. President, today I am introducing a series of amendments to H.R. 1 to assure that Indians receive equitable treatment under the proposals before the Congress for welfare reform. Because of the special status, rights, and disabilities of reservation Indians under Federal law, H.R. 1 as drafted, will have completely unintended and unfair consequences for those Indians presently entitled to assistance under the Social Security Act.

H.R. 1 provides that no person with resources exceeding $1,500 shall be eligible for benefits. Many Indians who need assistance are ineligible under that formula since they are beneficial owners of Indian trust land—land which is technically worth more than $1,500 but which cannot be alienated by the beneficial owner since legal title rests with the Federal Government.

The impact of the $1,500 cutoff on a particular reservation community can be seen from statistics developed in a 1970 study conducted on the Pine Ridge Reservation in South Dakota by the U.S. Department of Health, Education, and Welfare. The study shows that social security benefits constitute a major source of reservation income. Twenty-two percent of the Indian population are welfare recipients, and 36 percent of the full-blood Indian women receive welfare payments. Approximately half of the Indian population receives lease income from 1,089,076 acres of allotted trust land on the reservation. The December 1968 semiannual distribution of lease income ranged from $1 to $3,300, with only three or four payments exceeding $1,000.

Many aged, blind or disabled Oglala Sioux and many families who would otherwise be entitled to benefits under H.R. 1 will be denied benefits because of their ownership of an interest in trust land, which, while it may be worth more than $1,500, is not freely alienable, is managed by the Federal Government, and brings an annual return to the Indian owner which is insufficient to lift him above the poverty line.

My proposal would remedy this inequity by requiring the Secretary of Health, Education, and Welfare to exclude property held in trust by the Federal Government for Indians in determining eligibility. If income actually received by an Indian from trust land exceeds the maximum provided in the bill, he will be rendered ineligible for benefits. My proposal would only insure that large numbers of Indians will not be automatically barred from benefits by the $1,500 resources cutoff even though they would be eligible on the basis of income actually received.

My amendments will also assure that Indian tribes can provide supplemental benefits to needy recipients, just as States are allowed to provide supplements under H.R. 1. This would assure that, on the 96,000 square miles of Indian reservation lands where State laws have not been applicable, the local tribal governments could continue to provide public assistance benefits.

Unemployment is also a major problem for the American Indian, because few private employment opportunities are available on reservations. On the Pine Ridge Reservation in South Dakota the 1970 HEW study indicated that 36.6 percent of the Indian work force was unemployed and that 54 percent of the employed Indians worked for Federal or other government agencies. More than one-quarter of the Indian work force population on the Pine Ridge Reservation is engaged in seasonal and temporary employment such as firefighting or harvesting.

These conditions are typical of Indian reservations throughout the United States, the development of the private sector on most reservations is impeded by their remote locations, transportation problems, and the shortage of capital in reservation communities.

My proposal would assure that public service employment programs could be continued with Federal funding past the 3-year limit applicable to the public service programs for regular State and local government. In view of the relatively small size of the reservation Indian population, currently estimated at 488,000, a public service employment program can have a significant impact on reservation poverty for a relatively small cost.

Since most tribes lack financial resources, this proposal provides 100 percent Federal funding for these jobs. Such a funding formula is consistent with similar financing provisions for Indian tribal projects in recent laws, including the Omnibus Crime Control and Safe Streets Act, the Juvenile Delinquency Prevention and Control Act, and the Emergency Employment Act of 1970.

Another part of my proposal would assure that Indian tribes are eligible for H.R. 1 funding for projects and services now available only to "public or nonprofit private agencies." It would further assure that funds for child care services within each State containing Indian reservations would be apportioned among such reservations and nonreservation communities on the same basis as such funds are apportioned among the States. Often in the past, Indian tribes have been discriminated against in the distribution of public funds.

Finally, judgment funds awarded to Indian tribes which are distributed on a per capita basis among members of the tribe by the United States under the Indian Claims Commission Act would not be counted as income in determining eligibility for social security benefits. Such an income exclusion follows congressional intent to rectify past injustices perpetrated against the American Indian.

AMENDMENTS NOS. 892 AND 893

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

Mr. HARTKE submitted two amend-

ments intended to be proposed by him to the bill (H.R. 1) to amend the Social Security Act to increase benefits and improve eligibility and computation methods under the OASDI program, to make improvements in the medicare, medicaid, and maternal and child health programs with emphasis on improvements in their operating effectiveness, to replace the existing Federal-State public assistance programs with a Federal program of adult assistance and a Federal program of benefits to low-income families with children with incentives of requirements for employment and training to improve the capacity for employment of members of such families, and for other purposes.

AMENDMENT NO. 894

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

Mr. CHILES. Mr. President, I wish to call the attention of this body to the plight of the handicapped American, the disabled who are receiving compensation under our social security system, and who have been singled out for a rather unusual and discriminatory application of our social security regulations. I am referring to the way the law is administered so that an individual's disability status is jeopardized if he earns between $90 and $140 per month and is removed if his earnings exceed the latter figure. The basis of this regulation is the way the Secretary of Health, Education, and Welfare has interpreted and applied the law which says that the disabled by definition are unable to perform "substantial gainful work."

The purpose of the amendment to H.R. 1 which I wish to introduce today is first to remove the amount between $90 and $140 from consideration as far as interpreting the word "substantial" is concerned and to allow the disabled the possibility of up to $140 per month in earnings so long as the nature of the work performed is not inconsistent with his disability. Second, to provide flexibility in defining what we mean by "substantial" work. Certainly, what was substantial back in 1932 is hardly that today, and what was in 1969 may not be in 1972 or 1975. Therefore, I would propose to tie the maximum earnings allowable to the same exemption we allow retired persons under the social security law. Today it would be $1,680 per year, but it would be more, depending upon what happens in the Congress this year to pending welfare reform legislation.

Aside from the foregoing, this provision would remove an aspect of the law which discriminates between the retired and disabled person. For example, if a 61-year-old disabled person earns more than $90 per month, his earnings prompt a reconsideration of his status and might well under the circumstances be considered "substantial." One year later he may "retire" under reduced pension and earn up to $140 per month with no questions asked, or possibly more if the exemption is raised this year.

In other words, we have established a more flexible monetary standard for determining full retirement than we have for determining full disability. We are encouraging retired persons to supplement their social security incomes without jeopardizing their retired status while we penalize the disabled who are by definition younger and, therefore, more encumbered with financial responsibilities and obligations and thus in greater need. Of course, the disabled veteran has no such restrictions of any kind.

I think it is fundamental to the human spirit to make use of oneself, to find useful, remunerative things to do, no matter what the handicap, no matter what the limitation. Was Helen Keller disabled? Did she in her lifetime rise above her disability to find "substantial gainful work?" Do not some of the 1 million 6 hundred thousand disabled persons receiving an average monthly income of $145 today aspire to some useful activity, if we did not interpret the law in such a narrow sense that they are effectively denied the chance? I am not insisting that the disabled beneficiaries be allowed to earn exhorbitant extra incomes which would render the concept of disability compensation meaningless. What I propose is a system that permits some meaningful, useful, remunerative activity if the spirit and flesh are somehow willing, even if medical determinations have indicated that they should not be.

I am simply proposing that we allow the handicapped the same exemption we allow our retired citizens insofar as extra earnings are concerned. This would not swell the disability rolls; it would not entail any substantial, if any, increase in allocations. It would provide balance and equity in the treatment we provide our disabled citizens on the one hand and our older citizens on the other; it would lend a quality of dignity to our concept of the disabled person; and it would for those who can muster the effort, provide a means to supplement to a very modest degree the meager income that is already well below the minimum standard for poverty in this country. An average of $1,752 per annum which the disabled receive is hardly exhorbitant; add to this now the exemption we provide them automatically when they "retire" and we come up with the outrageous sum of $3,432 per annum at the maximum, assuming, of course, they have the steady physical capacity to earn the extra $1,680.

Allow me to end my remarks by reading to you from a letter sent to me by the handicapped adults of Tampa, Florida's third largest city:

> There are many young adults and middle aged people physically handicapped from birth, childhood, or later in life who receive welfare or social security. Many of these people are capable of a certain amount of work. However, our earning capacity is limited because of our handicaps, thus preventing us from making enough money to live on. We feel that we should be allowed to work and continue to draw social security. This would be in line with a privilege accorded the elderly, who are allowed to earn up to $1,600 a year. We feel that handicapped young people, who desire a more active life and can make a contribution to our society are entitled to the same privilege.

Mr. President, this is all my proposal is designed to accomplish, to accord them that same privilege.

ADDITIONAL STATEMENTS

THE FIRE OF FREEDOM STILL BURNS

Mr. CURTIS. Mr. President, in all the world there are so few, so very few, who live in freedom and can turn their faces to the light. So few, Mr. President, so few.

Count them.

The few in Europe's western borders.

A few scattered through Africa.

That tiny band perched so precariously on the eastern shores of the Mediterranean.

A dusting of free men through the South Pacific, and on the islands off Asia's mighty mainland.

And we fortunate ones in the northern half of the Western Hemisphere.

And there, sir, the count must end. For the rest of the world is trapped in darkness.

We are so very, very few. And it must give us pause to wonder. Why is freedom—why is the flame of liberty—confined to such small numbers of human beings?

Have we done something that has caused the Creator to smile upon us this blessing of freedom?

What have others done that it should be denied to them and that they must live through their lives in the deep shadow of night?

Beyond question, Mr. President, some men have cravenly thrown away their chance to live free and have accepted the foot of the tyrant in shamed silence. Some, wrapped in folly, have themselves chosen the dark rather than the light.

But from most this precious gift was stolen by cunning men or taken by the force of arms. And freedom for them is gone, not so much lost as taken away.

This is what happened to the tiny fragment of humanity known as Lithuania. Nestled as they have been on the shoulder of the Baltic on the direct road of commerce and conquest running from east to west, the Lithuanians have for their entire history been the prey of conquering tyrants. Their land has been ravaged time and again by the marauding forces of the great powers of Eastern Europe.

Down through the centuries they have fought valiantly to protect themselves and their land. But they were such a tiny people and the armies that moved back and forth across their land in the ebb and flow of history were so massive.

It was impossible for a handful to stem the tide.

It is a wonder, then, that even a flickering glow of freedom was able to withstand the overwhelming onslaught of tyranny that has swept over them.

But, Mr. President, although liberty itself is denied most men, the hope for freedom can be denied to none.

Of such is freedom. Though chained, a man's heart yet may be free. Though imprisoned, the spirit cannot be confined. Only when a man or a nation accepts slavery do they indeed become forever slaves.

Throughout its long and proud history the people of Lithuania have never ac-

cepted slavery. They have never been willing to grovel. They have never been willing to accept the heel upon their necks.

And so it is, Mr. President, that today, after over 30 years of occupation, by the Russians, the Nazis, and then the Russians again, the fire of freedom still burns brightly in their hearts. The desire to be once again walking tall among the tall of the earth wells up within them.

And I say to you, so long as this fervent, flaming soul lives, Lithuania's people shall once again be free.

They shall once again, Mr. President, join those few of us who can and do walk in freedom.

They have fought so long for this great blessing, this great privilege, that they shall prevail.

RULES OF THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. JORDAN of North Carolina. Mr. President, in accordance with the provisions of the Legislative Reorganization Act, I ask unanimous consent to have published in the CONGRESSIONAL RECORD the Rules of Procedure of the Committee on Rules and Administration.

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

RULES OF PROCEDURE OF THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

(Adopted February 4, 1971, Pursuant to Section 133B of the Legislative Reorganization Act of 1946, as Amended.)

TITLE I—MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the committee shall be the second and fourth Wednesdays of each month, at 10 a.m., in room 301, Senate Office Building. Additional meetings may be called by the chairman as he may deem necessary or pursuant to the provisions of sec. 133(a) of the Legislative Reorganization Act of 1946, as amended.

2. Meetings of the committee shall be open to the public except during executive sessions for marking up bills or for voting or when the committee by majority vote orders an executive session. (Sec. 133(b) of the Legislative Reorganization Act of 1946, as amended.)

3. Written notices of committee meetings will normally be sent by the committee's staff director to all members of the committee at least 3 days in advance. In addition, the committee staff will telephone reminders of committee meetings to all members of the committee or to the appropriate staff assistants in their offices.

4. A copy of the committee's intended agenda enumerating separate items of legislative business, committee business, and referrals will normally be sent to all members of the committee by the staff director at least 1 day in advance of all meetings. This does not preclude any member of the committee from raising appropriate nonagenda topics.

TITLE II—QUORUMS

1. Pursuant to sec. 133(d) 5 members of the committee shall constitute a quorum for the reporting of legislative measures.

2. Pursuant to rule XXV, sec. 5(a) of the Standing Rules of the Senate 3 members shall constitute a quorum for the transaction of routine business.

3. Pursuant to rule XXV, sec. 5(b) 3 members of the committee shall constitute a quorum for the purpose of taking testimony under oath; provided, however, that once a quorum is established, any one member can continue to take such testimony.

4. Subject to the provisions of rule XXV, sec. 5(a) and sec. 5(b), the subcommittees of this committee are authorized to fix their own quorums for the transaction of business and the taking of sworn testimony.

5. Under no circumstances, may proxies be considered for the establishment of quorum.

TITLE III—VOTING

1. Voting in the committee on any issue will normally be by voice vote.

2. If a third of the members present so demand, a record vote will be taken on any question by rollcall.

3. The results of rollcall votes taken in any meeting upon any measure, or any amendment thereto, shall be stated in the committee report on that measure unless previously announced by the committee, and such report or announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment by each member of the committee. (Secs. 133 (b) and (d) of the Legislature Reorganization Act of 1946, as amended.)

4. Proxy voting shall be allowed on all measures and matters before the committee. However, the vote of the committee to report a measure or matter shall require the concurrence of a majority of the members of the committee who are physically present at the time of the vote. Proxies will be allowed in such cases solely for the purpose of recording a member's position on the question and then only in those instances when the absentee committee members has been informed of the question and has affirmatively requested that he be recorded. (Sec. 133(d) of the Legislative Reorganization Act of 1946, as amended.)

TITLE IV—DELEGATION OF AUTHORITY TO COMMITTEE CHAIRMAN

1. The chairman is authorized to sign himself or by delegation all necessary vouchers and routine papers for which the committee's approval is required and to decide in the committee's behalf all routine business.

2. The chairman is authorized to engage commercial reporters for the preparation of transcripts of committee meetings and hearings.

3. The chairman is authorized to issue, in behalf of the committee, regulations normally promulgated by the committee at the beginning of each session, including the senatorial long-distance telephone regulations and the senatorial telegram regulations.

TITLE V—HEARINGS

All hearings of the committee shall be conducted in conformity with the provisions of sec. 133A of the Legislative Reorganization Act of 1946, as amended. Since the committee is normally not engaged in typical investigatory proceedings involving significant factual controversies, additional implementary rules for hearing procedures are not presently promulgated.

TITLE VI—SUBCOMMITTEES

1. There shall be seven, three-member subcommittees of the committee as follows:
   Standing Rules of the Senate.
   Privileges and Elections.
   Printing.
   Library.
   Smithsonian Institution.
   Restaurant.
   Computer Services.

2. After consultation with the ranking minority member of the committee, the chairman will announce selections among the members of the committee to the various subcommittees (and to the Joint Committee on Printing and the Joint Committee on the Library) subject to committee confirmation.

3. Each subcommittee of the committee is authorized to establish meeting dates, fix quorums, and adopt rules not inconsistent with these rules.

4. Referrals of legislative measures and other items to subcommittees will be made by the chairman subject to approval by the committee members.

HEROIN AND GOLD

Mr. ALLOTT. Mr. President, what do heroin and gold have in common? Obviously very little—except that the U.S. Government forbids Americans to hold either in this country.

And what distinguishes heroin and gold? Obviously many things do—including the fact that the Government forbids Americans to own gold at home or abroad, whereas the Government does not forbid Americans to own heroin abroad.

Obviously this is an absurd situation. The bill I introduced yesterday (S. 3162) is designed to restore reason to the law by restoring to American citizens the right enjoyed by most people in the world, and the right enjoyed by Americans until 1934—the right to hold gold, at home or abroad.

Today, Mr. President, I received a lucid and persuasive statement in favor of S. 3162. It comes from Prof. Donald L. Kemmerer of the Department of Economics at the University of Illinois, Urbana, Ill. So that all Senators can consider Professor Kemmerer's sensible remarks, I ask unanimous consent that they be printed in the RECORD.

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

STATEMENT BY PROF. DONALD L. KEMMERER

Why are the restrictions against an American citizen owning gold bullion more complete than those against his owning heroin, opium, bird of paradise feathers, aigrettes, and burglar's tools. At least so far as the American government cares, an American citizen may own any of these abroad but may not import them. Yet he may not own gold bullion *even* abroad. One immediately senses the good reason why a citizen may not import or possess the above mentioned commodities with the exception of gold. The restrictions on it are the most severe of all and yet gold seems the most harmless. Why? Only a few countries in the world forbid their citizens to own gold bullion and most of those nations are dictatorships.

The prohibition to own gold bullion in the United States, or to import it into this country, dates back to 1933–34, and the prohibition to own it overseas went into effect early in 1961. (The United States did not extend the prohibition to demand gold for paper dollars to foreign central banks or treasuries, only to its own citizens.) The underlying reason is that the federal government did not want American citizens to compete with it in the ownership of gold although the immediate causes of the 1933–34 and 1961 edicts differed somewhat.

This leads us to ask why, basically, the government wished to monopolize the American gold supply. A nation disposing of a large gold reserve is in a strong foreign trade and international finance bargaining position, just as a nation with a stockpile of atomic weapons is in a strong military and diplo-

matic bargaining position. Citizens are not in a position to reduce their government's atomic stockpile but any American, in a minuscule way, until mid-August, 1971 might take steps to reduce the government's gold stockpile. Every time he sipped a cup of coffee (it all comes from overseas), or drank some imported beer, wine or Scotch (whether he did so here or abroad), every time he visited a foreign country, every time he bought foreign securities (and oddly that might include shares in a South African gold mining company), every time his Congress voted foreign aid or monies to support troops in Europe or Asia, he drew down on the government's gold stockpile to the extent that foreign individuals and governments were not offsetting our expenditures with them by their purchases from us or loans to us. But somehow to Treasury officials the most harmful and inexcusable of all expenditures by American citizens was for gold bullion because what he got, his government obviously did not get and it might indirectly be losing the equivalent. Hence their severity on gold bullion buyers.

During the past 20 years, and especially from 1958 on, Americans spent considerably more abroad (including foreign aid and wars) than foreigners bought from us, and our gold reserves fell from a high of $24.8 billion in September, 1949 to about $10 billion (if indeed that much) a year or so ago. The growth of our debts (short term liabilities reached over $45 billions) and the decline of our gold reserves worried the foreign nations who were our creditors and last year a growing number began asking for gold. On August 15, 1971 President Nixon announced that we would no longer settle balances against us by paying from our stockpile of gold. We had cut our last tie with the gold standard.

At this point the American citizen's right to accumulate his own personal stockpile of gold, either here or abroad, no longer, in any way, menaced his government's gold reserves. True, the citizen's buying gold might have a slight adverse effect on the value of the dollar in the foreign exchange market, just as it always had, but not one whit more than his buying Brazilian coffee, French wines, Chilean copper, Russian or Rhodesian chrome, German toys or Japanese cars would. If one is to forbid a citizen from buying gold because it will hurt the dollar on the foreign exchange market, he should also forbid citizens buying any foreign product or service whatsoever. To do that completely would cut off all foreign trade and is absurd even to contemplate. Since the United States is no longer on any form of the gold standard, however loosely one might define it, there remains not the slightest provocation for forbidding American citizens to own gold at home or abroad. I strongly urge to Congress both to remove all such prohibitions from the statute books and affirmatively to grant citizens the right once again to own gold anywhere in any form.

DONALD L. KEMMERER,
Professor of Economics.

THE LOVE OF POWER

Mr. ERVIN. Mr. President, as chairman of the Judiciary Subcommittee on Separation of Powers, I have had an opportunity over the past 4 years to deal directly with several areas in which the system of checks and balances built into our Federal Government has gone awry.

These have included the use of executive orders by the President to usurp the legislative functions of the Congress, such as were issued to create the Philadelphia plan and to grant unwarranted powers to the Subversive Activities Control Board; the practice of executive impoundment of appropriated funds by which the President circumvents the intent of the Congress as expressed in the appropriations acts passed by it; the so-called doctrine of executive privilege, which is the much abused theory by which the President withholds information from Congress, even when requested to provide it.

In each of these examples, the power of the executive branch has been increased at the expense of the constitutional authority and prerogatives of Congress. There have been many bills introduced, but Congress has been unable or unwilling to stop this aggrandizement by the executive of its own powers and functions.

Mr. President, we have seen in this great Nation over the past 40 years the growth of an almost unrestrained Federal bureaucracy, and the power and influence of the Federal Government is now felt in almost every nook and cranny of American life. Examples range from the abolition of county and district lines and the long distance busing of our schoolchildren in the name of equal educational opportunity to the spying on private citizens by the U.S. Army.

The encroachment of Federal power into the lives of every American citizen should be the concern of us all, for the protection of such liberties as the right to privacy is the business of everyone regardless of political affiliation or label.

Mr. President, I recently read an article entitled "The American Presidency: On Power As a Disease," written by Tristram Coffin, and published in the Nation magazine of December 20, 1971. While I do not agree with all of the points made by Mr. Coffin, this article demonstrates very well what George Washington meant, in his Farewell Address, as "the love of power and the proneness to abuse it."

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

THE AMERICAN PRESIDENCY—ON POWER AS A DISEASE

(By Tristram Coffin)

Mr. Coffin, editor of the newsletter Washington Watch, *is currently at work on a study of the Presidency.*

WASHINGTON.—The American President, no matter how fine a fellow he may be personally, is a hydra-headed monster. The job is too big, too complex, too spiked with responsibility for any one human being. It is small wonder that Presidents hide out in pomp, fantasy, the Burning Tree golf course, or Key Biscayne. That may be the only way to endure the job.

The President must be:

Commander in Chief of the "Free World." Amaury de Riencourt writes in *The Coming Caesars:*

"Today, one man is directly in command, either as peacetime President or wartime Commander in Chief, of more than half the world's economic and technical power. Along the militarized borders of the Western world, he is in full control as Augustus and the Roman emperors after him were in full control of the limes. . . . He is the only statesman of the Western world who can make decisions alone in an emergency. He is in control of a de facto empire into which the scattered fragments of the dissolving British Commonwealth are gradually being merged. Everywhere, on the European continent, in the Western hemisphere, and in the Far East, he can make the weight of his incalculable power felt with immediate and crushing speed."

It might be pointed out, no one elected the American Chief Executive to this job. When the President made a recent grand pronouncement, the French journal, *Combat,* demanded: "Who authorized Mr. Nixon to speak in behalf of our planet?"

The United States bought and paid for the job. No other country was willing to spend so much money, energy and lives to save the world from the heathens. America was taking up, a little less mystically, where Nazi Germany had left off—saving the world for the superrace. The same superman, racial nonsense runs through the Manifest Destiny and Hitler's ravings. The economic cost is fairly steep—$15 billion annually in economic and military aid, $14 billion to maintain forces in NATO, $21 billion to $25 billion for the nuclear umbrella for NATO, and up to $20 billion for the war in Indochina.

It hardly seems a desirable role, yet every President in the cold-war era, except General Eisenhower, took to it enthusiastically. They spent most of their time with generals, poring over maps and strategies; and they tended to lose sight of such mundane matters as schools, housing and the environment. There must be a sense of exhilaration in this exercise, for when the American President retires and goes home, the photographs he hangs in his study are of himself surrounded by beribboned officers.

General Manager of the Federal Government. This most titanic operation ever envisioned involves itself in every activity known to man. It is even the landlord of bawdy houses in Nevada. No one any longer pretends that the megastate can be run efficiently or humanely, that the mail will arrive on time or the lowly citizen's voice be heard. The megastate is a wasteland of bureaucratic rulers, forms and petty despots.

The departments are huge, unmanageable empires, often at odds with one another. The Department of Agriculture pays $2 billion a year to farmers not to produce more crops. The Department of the Interior spends billions to irrigate new farmlands to grow more food and fiber.

Presidents do not enjoy the housekeeping chore. They turn it over to cronies, political allies, ex-Congressmen, professional bureaucratic managers and big-business governors. When the populace cries out, the President names a commission whose solemn duty it is to file a report.

Manipulator of the Legislative Process. The major spectator sport in Washington is the tug of war between the White House and the Capitol. It is no longer a fair game, for the President has too much weight on his side—the unestimated boodle of federal contracts that he passes out like an ancient Oriental pasha, the party political machinery, the control over a series of agencies which in turn oversee radio-TV, transportation, food and drugs, taxes and export licenses. The Congress, in a supplicating role, can hardly rise from its bended knee to fight off Presidential fiat.

Economic Czar. We no longer indulge in the fancy that ours is a free economy; it is politically called a "managed economy," with the government at the controls. Taxes, government spending, controls, priorities are jiggled about, and the effect of this jiggling reaches far beyond America. When we spent, largely for military operations, more overseas than we took in, the world's monetary system was inflated with cheap dollars it could not digest, and a global recession seemed inevitable.

Since few Presidents know anything about economics, they turn its intricacies over to a succession of advisers, whom they switch about when the going gets rough. The only part of this job the President really handles

is the exuding of confidence, the belief being that if the Chief Executive says business is good, people will raid their piggy banks.

Master Politician. Every President wants to be reelected. He watches the voters out of the corner of his eye, and hustles his aides to produce tricks to entertain and win the favor of the electorate. Nixon, a master of the staged act, thought the Cuban missile crisis was a superjob. It had everything—the good guys versus the band, danger, suspense and a happy ending.

Great Oracle of the Temple of Washington. The American people, with their religious fundamentalist background, are believed to yearn for an authoritarian, Jehovah-like figure, and the more so since religion has lost its hell-fire punch. The President is peculiarly well situated to play this part. He has power to reward or destroy. He is the leader of a chosen people, the children of Manifest Destiny. He appears in the newspapers and on TV, exhorting, condemning, praising, reassuring, and waving the flag. He is Moses in a gray flannel suit and striped tie.

This is a role to tempt any mortal, but Presidents forget that the worshippers want something more than words. If deeds are not forthcoming, their adoration curdles.

Ceremonial Head of State. It lacks a crowned head, but the most powerful nation in history does not forgo pageantry—twenty-one-gun salutes. Hail to the Chief, formal White House dinners that rival such splendid hosts as the former Kings of Egypt and Saudi Arabia, rose garden receptions for Miss America, and levees for visiting monarchs.

Presidents when rebuffed seem to retreat into this sanctuary, far from the shrieks and groans of the people. When union labor chiefs laughed at President Nixon, he rushed back from Florida to Washington, without advance notice, and appeared at a ballet performance at Kennedy Center, to receive the adoration of the court and to shake hands with everyone he could touch.

The office is now so powerful that the President can have his own wars, without even consulting Congress; tell that body he will "ignore" its policy guidelines, refuse to abide by its appropriations, and give orders for the arrest of thousands of unarmed demonstrators.

That certainly was not the idea of the men who wrote the Constitution. They thought they had established a general manager, who could get his policy from the Senate (a board of directors) and the House (the stockholders). Alexander Hamilton warned of "avarice" and "ambition" in a President and commented: "The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States." And Hamilton in his day was the warmest advocate of a strong Presidency.

The Constitution gave Congress specific powers—over foreign policy, the military, appropriations, taxes, even appointments. Hamilton wrote: "The ordinary power of appointments is confined to the President and the Senate jointly." The President was supposed to come before the Senate and secure its "advice and consent" before undertaking any major acts or policy changes or appointments. Apparently, the authors of the Constitution saw the Chief Executive actually appearing in person before the Senate. George Washington did so once, but was so miffed by the questions and lack of respect for his position that he never returned.

Over the years, and particularly during and since World War II, Congress has turned over to the President almost all the authority granted it by the Constitution. The unique quality of American democracy—independent parliament—has all but been destroyed. The adversary relationship designed in the Constitution has been abandoned under the guise of "bipartisan foreign policy" and the "consensus." In this withering-away process, political opposition has also died, so that there is little difference between Democrats and Republicans on Capitol Hill. Lyndon Johnson was President Eisenhower's chief Congressional bullwhip artist, and Majority Leader Mike Mansfield and Speaker Carl Albert have become Nixon proconsuls.

The fears of the authors of the Constitution have been justified. Hamilton commented on the "temptations" of power "which it would require superlative virtue to withstand." John Jay wrote: "Absolute monarchs will often make war when their nations are to get nothing by it, but for purposes and objects purely personal, such as a thirst for military glory, revenue for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. There are a variety of other motives which affect only the mind of the sovereign; often lead him to engage in wars not justified by justice or the voice and interests of his people. . . ."

The problem, as Hamilton so well understood, is that the President is a mere human being, for whom power can become as crippling a disease as schizophrenia. The insanity of Presidents is not often mentioned publicly, although it is a subject of pressroom and cocktail gossip. But George E. Reedy, the former LBJ aide, said in *The Twilight of the Presidency;* "The problem of the unbalanced President is on the mind of every close observer of the political process. . . . It is certain that whatever neurotic drive a President takes with him into the White House will be fostered and enhanced during his occupancy."

Not only does the President have unparalleled power; he operates in an isolation that is almost bound to create fantasy. He is surrounded by regal pomp not seen since the Middle Ages. His assistants vie with one another to make "the old man" feel happy and thus grateful to them, for in this way they can steal a little of his power.

His aides screen out soreheads and dissenters. President Kennedy's conferences on the Bay of Pigs were stacked with yes men, perhaps, without his being really aware of the imbalance. When Senator Fulbright, an old friend of Johnson, criticized his policies in Latin America and Asia, he was no longer invited to the White House for chummy talks. Nixon threw out his Secretary of the Interior when he begged the Chief to listen to the young people. Neither Johnson nor Nixon made any effort to understand the revolt of youth. Indeed, Nixon called them "bums" and contented himself with the fiction that "Middle America," a term made up by his speech writers, was the vast majority of people and that they loved him.

The President operates behind a cloud of secrecy which neither the press nor Congress penetrates. Sen. Sam J. Ervin, Jr. chairman of the subcommittee on Separation of Powers, says: "The affairs of the executive branch are hidden from the scrutiny of Congress and the American people." Henry Steele Commager writes of "a concerted campaign to deny the American people the knowledge about the operation of their Government so essential to the sound functioning of a democracy."

The President exercises "executive privilege" and refuses to send his assistants to Congress to be questioned on high policy. Ervin comments: "They will not produce Army generals to testify about Army surveillance. . . . They will not produce Dr. Kissinger to talk about foreign policy. . . . They will not produce State Department plans which explain our foreign policy."

The White House keeps the press at a distance. Gone are the large televised press conferences, where any question could be asked. This was dumped by President Johnson and an even more stultifying process has been introduced by Nixon. Instead of the regular weekly press conference, the President appears without advance warning to make announcements before the captive White House press corps. White House reporters are like poor relatives dependent on the largesse of the rich uncle. If they are alertly critical, their sources dry up, the White House complains to editors, and FBI investigations are ordered.

When Washington is too much for him, the President boards his jet and flies to a secluded resort where, with old cronies, he plays golf, bridge or poker, and hears no harsh voices. As Reedy warned, "The most important and least examined problem of the Presidency is that of maintaining contact with reality."

It is very difficult, under these circumstances, for a President not to conclude that he is indeed a rare bird with special gifts. Even so chastened a man as Harry Truman soon became as cocky as a spring robin. In the early days, Truman confessed to James Farley, "I didn't want to be President. I wouldn't have accepted the nomination if I had thought Mr. Roosevelt was going to die. I don't want the nomination in 1948. I want to go back to the Senate. That's where I belong."

Within a few months, Truman had completely reversed the Roosevelt foreign policy, dropped the atom bomb, fired an FDR favorite from the Cabinet, and in 1948 ran for re-election like a fire engine responding to a four-alarm.

One leavening factor should be the voters. But how does that incoherent voice reach the White House? Actually, the President develops a curious concept of the public, thanks largely to the electronic media. It is a dumb animal which can be conditioned to react like Pavlov's dogs. The "motivation" experts assure the President that, treated to a little makeup, a "sincere" look, low voice, familiar clichés, the public will buy him lock, stock and barrel. Humbug is the regular currency of the White House in modern times. Johnson discovered at the last moment, after the New Hampshire primary, that it did not work. Nixon obviously was startled by public reaction to the Cambodian invasion.

The probability that a President will make mistakes, even hideous ones, is high. No one is checking on him. Congressional investigagations come after the deed. Unlike the parliamentary system, the President need not answer for his errors in a public forum. The information and intelligence given him are often false. The CIA assured Kennedy that the Cubans would rise up and overthrow Castro when the *émigré* army hit the beaches, and the Joint Chiefs of Staff told him that the invasion was entirely "feasible" as a military operation. One sane voice from the outside, that of Senator Fulbright, told Kennedy his advice was idiotic, but by then the plan was too far advanced to be canceled. Johnson was told by the military just before the Tet offensive that "captured enemy documents" showed that Hanoi and the NLF were at the point of collapse. Nixon was informed of a huge and vital enemy headquarters in Cambodia that could be seized for the asking. All of this was nonsense.

The problem of getting information to the President is that it is screened so many times before it reaches him, and is prepared to suit his fancy. Intelligence people on the ground floor are often astonished to read or hear how their reports have been distorted at the high levels. Living in a closed court, the President finds it hard to distinguish between national welfare and his own vanity and ambition. The lines blur. Lyndon Johnson, supposedly one of the shrewdest politicians ever to come down Pennsylvania Avenue, turned Vietnam into a major war, against the advice of CIA reports and a part of the Pentagon. He was

obsessed by the thought that *he* was not going to be driven out of Vietnam with "my tail between my legs." Gloria Steinem refers to "the system of value and behavior known as the Masculine Mystique. . . . Peace at any price is humiliation, but victory at any price—even genocide in Indochina and chaos at home—is quite all right."

Congress has only two instruments, both difficult to wield and time-consuming, by which to restrain a President. The first is the power of appropriation—it can refuse to spend money for a war. But that is a two-edged sword. The President can refuse to allocate funds for their pet projects and private boodle. Beyond closing the purse, Congress can have the President impeached, but the process is so complex, so lengthy, that it is almost impossible to carry out.

There must be a remedy, and indeed it can be found in the deliberations of the Constitutional Convention. Madison wrote, "Ambition must be made to counteract ambition. . . . It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary."

The President must be confronted regularly with doubt and suspicion and required to seek the advice and consent of the legislative body. There is at present no device to enforce this discipline. Congress is obviously too large for the job. A new agency to span the gulf between Capitol Hill and the White House must be created.

It might be a legislative council of six members, drawn equally from the two houses and favoring the majority party in Congress. It would be chosen by secret ballot, with the stipulation that at least one member from each body should be a freshman, to encourage fresh viewpoints.

The President would be required to meet with the council every week, unless he were ill or out of the country. As a symbolic act, the meetings would take place in the Capitol. The President would be required to ask the advice of the council on all major acts and policies, and to answer its questions truthfully. The council would report to Congress and discuss issues raised at its meetings in open debate. The council, or any member, would have access to the media to publicize matters of public concern or to criticize Presidential actions.

The President would be required to send officials of his administration, including members of his personal staff, to testify before appropriate committees of Congress. The custom of "executive privilege" would be dropped. Obviously, a system is crazy which sends a nun to jail for refusing to testify before a grand jury on relatively minor matters, and allows a President to defy Congressional demands for information on major policy. Any official who refused to appear could be held in contempt of Congress.

All executive agreements with any foreign governments would be submitted to the Senate for confirmation by a two-thirds majority. As it is, Secretaries of State and even Vice Presidents make commitments, without the knowledge or consent of Congress. Agnew assured the Greek dictatorship that the United States would arm and support it.

Either house of Congress could vote a motion of "no confidence" in the President on any specific act or policy. After Nixon's invasion of Cambodia, for example, Congress might have passed such a motion. This would serve to deter Presidents, for they would not want to face voters with a "no confidence" motion hanging over them.

These reforms would not bring the millennium, but they would let some air and light into the closed cell of the Presidency and rescue the Chief Executive from his own isolation and vanity.

BEEF IMPORTS

Mr. PEARSON. Mr. President, I am very much concerned about reports that certain administration officials are urging the President to authorize substantial increases in meat imports.

I am opposed to such an action. I believe it would be a mistake.

In 1964, Congress, after long and careful consideration, adopted the meat import law. The intent of this law was to stabilize, not to stop the flow of beef imports to this country. Indeed, the law provided for regular annual increases of imports commensurate with the growth in the demand for beef in this country. In other words, the law was aimed at preventing a flood of foreign beef imports over the level that would break domestic livestock prices.

That law has worked well. As the American market has grown other countries have been able to sell more meat to the United States, within an orderly fashion and without disrupting domestic prices.

We should not try to overturn this program in 1972.

The American cattle producer has finally reached the point where he has a chance to make a reasonable profit. Prices in 1972 are now back at the level they were in 1951. Even so, beef cattle prices are still only at 88 percent of parity. In other words, production costs have increased at a greater rate than prices, and, therefore, the cattleman still does not receive full parity.

Substantially increasing beef imports at this time is not going to result in any adjustment at the retail level. But almost certainly the cattleman would be hit with lower prices because of the psychological impact that such an action would have on the market.

It is most unfortunate that every time the American farmer starts getting a half way reasonable break on prices, there are those who come in and say we have got to knock them down. The fact is, Mr. President, that if farm prices would have increased at anything like the rate of other prices in this economy, the American consumer would have experienced a runaway inflation over the past 20 years. The American farmer has never contributed to the inflationary spiral in this country. Quite the contrary. That inflation would have been sharply greater if it had not been for the enormous efficiency of our farmers and ranchers.

Therefore, again let me say that I think a substantial increase in meat imports at this time is wholly unwarranted and would set in motion a chain of events which would be very harmful to the American agricultural economy.

SENATOR CARL HAYDEN

Mr. SPARKMAN. Mr. President, we were all saddened by the recent death of Carl Hayden. This distinguished man represented his State of Arizona in the Congress of the United States from the time it entered the Union until he voluntarily retired at the end of his term in January 1969. His first service was in the House of Representatives from 1912 until 1927, when he moved over to the Senate where he served until 1969. This long congressional service was a tremendous record and his representation of his State and the Nation as a whole has never been exceeded by any person.

I had the privilege of knowing Senator Hayden from the time that I entered Congress in January 1937 throughout his long career here. As chairman for many years of the Appropriations Committee and as President pro tempore of the Senate for his last 12 years, he rendered great service to the entire Nation. He was a man to whom his colleagues were glad to turn for advice and assistance. He was gentle; he was dedicated. We missed him greatly when he left the Senate, and we shall long miss him now that he has passed on from this earth. I mourn with all his death.

COMMITTEE ON ARMED SERVICES RULES OF PROCEDURE

Mr. BYRD of Virginia. Mr. President, the chairman of the Committee on Armed Services (Mr. STENNIS) has asked me to submit for publication in the CONGRESSIONAL RECORD the rules governing the procedure of the committee. These rules of procedure have been unanimously adopted by the Committee on Armed Services.

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

SENATE COMMITTEE ON ARMED SERVICES RULES OF PROCEDURE

1. *Regular Meeting Day and Time.* The regular meeting day of the committee shall be each Thursday at 10:00 a.m., unless the Committee or the Chairman directs otherwise.

2. *Additional Meetings.* The Chairman may call such additional meetings as he deems necessary.

3. *Special Meetings.* Special meetings of the Committee may be called by a majority of the members of the Committee in accordance with section 133(a) of the Legislative Reorganization Act of 1946, as amended by section 102(a) of the Legislative Reorganization Act of 1970.

4. *Open Meeting.* All meetings of the Committee shall be open to the public except executive sessions for marking up bills or for voting or unless the Committee by majority vote provides otherwise.

5. *Presiding Officer.* The Chairman shall preside at all meetings and hearings of the Committee except that in his absence the ranking majority member present at the meeting or hearing shall preside unless by majority vote the Committee provides otherwise.

6. *Quorum.* (a) A majority of the members of the Committee are required to be actually present to report a matter or measure from the Committee.

(b) Except as provided in subsections (a) and (c), and other than for the conduct of hearings, six members of the Committee shall constitute a quorum for the transaction of such business as may be considered by the Committee.

(c) Three members of the Committee, one of whom shall be a member of the minority

party, shall constitute a quorum for the purpose of taking sworn testimony, unless otherwise ordered by a majority of the full Committee.

(d) Proxy votes may not be considered for the purpose of establishing a quorum.

7. *Proxy Voting.* Proxy voting shall be allowed on all measures and matters before the Committee. The vote by proxy of any member of the Committee may be counted for the purpose of reporting any measure or matter to the Senate if the absent member casting such vote has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded.

8. *Announcement of Votes.* The results of all roll call votes taken in any meeting of the Committee on any measure, or amendment thereto, shall be announced in the Committee Report, unless previously announced by the Committee. The announcement shall include a tabulation of the votes cast in favor and votes cast in opposition to each such measure and amendment by each member of the Committee who was present at such meeting.

9. *Hearings.* (a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the Committee or any Subcommittee thereof, at least one week in advance of such hearing, unless the Committee or Subcommittee determines that good cause exists for beginning such hearing at an earlier time.

(b) Hearings may be initiated only by the specific authorization of the Committee or Subcommittee.

(c) Hearings shall be held only in the District of Columbia unless specifically authorized to be held elsewhere by a majority vote of the Committee or Subcommittee conducting such hearings.

(d) Each hearing held by the Committee shall be open to the public except when the Committee determines that the testimony to be taken at such hearing may relate to a matter of national security, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters deemed confidential under other provisions of law or regulations.

(e) Witnesses appearing before the Committee shall file with the Clerk of the Committee a written statement of his proposed testimony at least one day prior to a hearing at which he is to appear unless the Chairman and the ranking minority member determines that there is good cause for the failure of the witness to file such a statement.

(f) Confidential testimony taken or confidential material presented in a closed hearing of the Committee or Subcommittee or any report of the proceedings of such hearing shall not be made public in whole or in part or by way of summary unless authorized by a majority vote of the Committee or Subcommittee.

(g) Any witness summoned to give testimony or evidence at a public or closed hearing of the Committee or Subcommittee may be accompanied by counsel of his own choosing who shall be permitted at all times during such heaing to advise such witness of his legal rights.

(h) Each Subcommittee of the Committee shall (1) fix the number of members that shall constitute a quorum of such Subcommittee for the purpose of taking sworn testimony, (2) determine the circumstances under which subpoenas may be issued, and (3) the member or members over whose signature subpoenas may be issued.

10. *Nominations.* Unless otherwise ordered by the Committee, nominations referred to the Committee shall be held for at least seven days before being voted on by the Committee. Each member of the Committee shall be furnished a copy of all nominations referred to the Committee.

11. *Real Property Transactions.* Each member of the Committee shall be furnished with a copy of the proposals of the Secretaries of the Army, Navy, and Air Force, submitted pursuant to section 2662 of title 10, United States Code, and with a copy of the proposals of the Director of the Office of Emergency Preparedness, submitted pursuant to section 43 of the Act of August 10, 1956 (50 U.S.C. app. 2285), regarding the proposed acquisition or disposition of property of an estimated price or rental of more than $50,000. Any member of the Committee objecting to or requesting information on a proposed acquisition or disposal shall communicate his objection or request to the Chairman of the Committee within twenty days from the date of submission.

12. *Legislative Calendar.* (a) The Clerk of the Committee shall keep a printed calendar for the information of each Committee member showing the bills introduced and referred to the Committee and the status of such bills. Such calendar shall be revised from time to time to show pertinent changes in such bills, the current status thereof, and new bills introduced and referred to the Committee. A copy of each such revision shall be furnished to each member of the Committee.

(b) Unless otherwise ordered, measures referred to the Committee shall be referred by the Clerk of the Committee to the appropriate department or agency of the government for reports thereon.

TWO LITHUANIAN ANNIVERSARIES

Mr. CASE. Mr. President, the month of February marks two important dates for the Lithuanian people.

February 12 is the 721st anniversary of the formation of the Lithuanian state. On that day in 1251, Mindaugas the Great unified all the Lithuanian principalities into one kingdom.

And today, February 16, is the 54th anniversary of the establishment of the Republic of Lithuania.

As I have done many times during past Februaries, I would like to take the occasion of these important anniversaries to salute the Lithuanian people. Those Lithuanians who have come to the United States have made an outstanding contribution to our country. Unfortunately, Lithuanians who remain in their homeland are unable to exercise the basic human rights of self-determination. I can only hope that not too many Februaries in the future, Lithuanians everywhere in the world will be able to live in freedom.

AFL–CIO OPPOSES EQUAL RIGHTS FOR WOMEN AMENDMENT

Mr. ERVIN. Mr. President, the largest labor organization in the country, the AFL–CIO, has recommended that Congress not pass the equal rights amendment. In its resolution No. 122, the organization stated:

We continue opposition to the so-called equal rights amendment as an unnecessary addition to the Constitution, ultimately more harmful than helpful to the legal rights of women.

Prior to the adoption of the resolution, the executive council of the AFL–CIO, in a report to its convention, said:

We have opposed the equal rights amendment to the Constitution because of its potentially destructive impact on State labor legislation for women workers.

Before the Senate votes on this important measure, I hope each Senator will ponder these words of the AFL–CIO's report. It says:

The proposed equal rights amendment would render all protective labor laws for women workers unconstitutional, as well as any other laws treating the sexes differently. Such laws, for example, include marriage laws which place primary responsibility for family support on husbands and fathers.

So, Mr. President, all laws which treat men and women differently, no matter how reasonable, will be unconstitutional. I hope this is understood, because it is the essence of my opposition to the amendment.

The AFL–CIO realized the significant impact the passage of the amendment could have when it mentioned that "laws which place primary responsibility for family support on husbands and fathers" will be held unconstitutional. Prof. Jonathan H. Pincus of the Yale University School of Medicine has called this aspect of the equal rights amendment the "Tonkin Gulf resolution of the American social structure."

Mr. President, I ask unanimous consent that the portion on the equal rights amendment of the AFL–CIO's executive council report to the ninth convention and resolution No. 122 be printed in the RECORD.

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

WOMEN WORKERS

Over the past two years the issue of discrimination on the basis of sex has come to the fore. Numerous women's groups have been formed to monitor and influence the enforcement of such anti-discrimination legislation as the Equal Pay Act and the sex discrimination provisions of the Equal Employment Opportunity section of the 1964 Civil Rights Act (Title VII), to seek elimination of sex discrimination by government contractors, to obtain the same coverage for women under general civil rights statutes as for racial, national and religious minorities, and to promote the so-called equal rights amendment to the Constitution.

The labor movement has traditionally supported measures to eliminate discrimination against women. But it has often disagreed with particular recommendations promoted by some non-labor groups. Especially, we have opposed the equal rights amendments to the Constitution because of its potentially destructive impact on state labor legislation for women workers.

Much of such state protective labor legislation has been eliminated or weakened by the federal courts and state legislatures on the ground that it interferes with equal opportunity for women to work. Experience, to date, shows that "equality" has been used to remove labor law protections for women, rather than to extend them or adapt them to men. The proposed equal rights amendment would render all protective labor laws for women workers unconstitutional, as well as any other laws treating the sexes differently. Such laws, for example, include marriage laws which place primary responsibility for family support on husbands and fathers.

Labor continues to voice its opposition to the proposed equal rights amendment. The 14th Amendment to the Constitution guarantees "equal protection" to citizens. There are federal statutes against discriminatory practices. The legal remedy against discriminatory practices lies in enforcement of

existing statutes and in new legislation rather than by constitutional amendment.

COUNCIL RECOMMENDATION

The labor movement seeks to be increasingly responsive to the needs and wishes of its women members, within the context of overall trade union objectives. These include economic security for all workers, the extension of minimum wage and other labor standards legislation, provision of day care centers, maternity leave and benefits, access to education and training, equal pay for equal work, and elimination of discriminatory employment practices based on sex.

The AFL–CIO affirms its commitment to non-discrimination on the basis of sex. We seek to honor this commitment in collective bargaining agreements, in the conduct of union affairs, and in legislative enactments.

We continue opposition to the so-called equal rights amendment as an unnecessary addition to the Constitution, ultimately more harmful than helpful to the legal rights of women.

RESOLUTION NO. 122—WOMEN WORKERS (E. C. REPORT, PAGE 100)

The labor movement seeks to be increasingly responsive to the needs and wishes of its women members, within the context of overall trade union objectives. These include economic security for all workers, the extension of minimum wage and other labor standards legislation, provision of day care centers, maternity leave and benefits, access to education and training, equal pay for equal work, and elimination of discriminatory employment practices based on sex.

The AFL–CIO affirms its commitment to non-discrimination on the basis of sex. We seek to honor this commitment in collective bargaining agreements, in the conduct of union affairs, and in legislative enactments.

We continue opposition to the so-called equal rights amendment as an unnecessary addition to the Constitution, ultimately more harmful than helpful to the legal rights of women.

ZPG

Mr. PACKWOOD. Mr. President, it always does my heart good to see credit given where credit is due. I was, therefore, pleased and gratified to read an interesting column which appeared recently in the Los Angeles Times. Written by Ernest B. Furguson and entitled "Zero Population Growth Group Is Not Zero," the article commends the ZPG membership for their hard work, endurance in the face of enormous obstacles, and eventual success, slow but sure.

ZPG has stuck steadfastly to its stated mission, and has not strayed into unrelated fields or issues, a temptation to which many other interest groups frequently succumb. Their efforts are divided into public information and political activism and I for one have been grateful for the excellent assistance of their Washington staff, particularly Carl Pope and Lee Lane.

Let me take this opportunity to congratulate ZPG for its energy, creativity, and persistence and for its fine nationwide support in moving this Nation toward the urgent goal of population stability.

I ask unanimous consent that the column be printed in the RECORD.

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

ZERO POPULATION GROWTH GROUP IS NOT ZERO

(By Ernest B. Furgurson)

WASHINGTON.—It is blissful to be able to confirm that the public, followed at a distance by the politicians, is at least catching up with ideas you have preached for years. Columnists particularly enjoy this form of ego massage, often accompanying it with phrases like, "As we wrote in this space 11 months ago . . ." Organizations which at their foundings were brushed off as a bunch of kooks prattling on about weird schemes are especially susceptible, too, and liable to have hallucinations of grandeur when the rest of the world begins to discern dimly the truths they patented long ago.

For example, the outfit calling itself Zero Population Growth is in position now to begin a great campaign of we-told-you-so if it so desires, and from there, if it followed others' form, to demand that it be allowed to dictate the platforms and name the candidates of the major political parties. But ZPG is showing restraint uncharacteristic of an organization that has made it from the far fringes of idealism to the center of public concern.

By now, few reading Americans can be unaware that a cold computer study financed by major European industries and produced by MIT scientists finds that current population and industrial trends will bring the human race into fatal confrontation with itself before the coming century is over. And in London, 33 prominent scientists back up a study that says population there must be leveled off, then gradually halved in order for the nation to survive.

That, of course, is the kind of warning ZPG has been putting out since its founding. But now the warnings have the cachet of big-business sponsorship and the seal of the scientific establishment, so sober, nonalarmist publications are paying attention. In this country there has been no single study with the wallop of those cited above. It has been more of a drip-drip process. But an Opinion Research Corp. poll among the general American public, commissioned by the Population Commission, says it is taking effect.

By those figures, 65% of Americans now think population growth is a serious problem; 57% think U.S. population is "about right" now; most prefer to live in more thinly settled areas; more than half think population growth is causing the country to use up its natural resources too fast, producing social unrest and dissatisfaction; and that people should limit the size of their families even when they can afford a large number of children (57% agreed, 32% disagreed on that last point). Forty-three per cent thought two children constituted an average family size—more than picked any other figure.

Interestingly, when population growth was matched against other national problems to be faced over the next 30 years, 31% ranked it ahead of pollution, 39% ahead of racial discrimination, 31% ahead of poverty, 29% ahead of crime and 39% ahead of population distribution.

A breakdown of the polling sample showed it to be slightly older and less educated than the whole population, which means its opinions were probably even less pro-population control than the whole.

As noted, the politicians are trailing the public at a fairly remote range. Despite general awareness of the growing urgency of population control and a widespread liberalization of abortion laws at the state level, not one of the recent congressional proposals applying directly or tangentially to the problem has passed into law.

For instance, a heavy last-minute telegram and letter campaign pushed by the U.S. Catholic Conference blocked Senate Labor Committee approval of a population stabilization resolution although a majority of committee members were already on record in favor—and although the measure was merely a policy statement in favor of voluntary population control, with no teeth in it. It was postponed and probably buried by a superior lobbying effort.

That lesson was not lost on ZPG. As this congressional session and election year began, the organization claimed 35,000 members in 380 chapters, and they were increasing their dues and otherwise muscling up to translate aroused public opinion into political action. They were trying to get presidential candidates to stand still for questioning about population policy. But they were not hallucinating any takeover of the democratic convention or otherwise dreaming beyond their means.

Instead, they were swapping data on the status of legislation, which congressmen to pressure about what, state initiative procedures and publicity techniques. As the group's paper put it, "ZPG, with all its allies, is still a very small fish in the presidential pond . . . We need to make a lot of splashes, in every political pond we can find," which means at the local and state level.

Such becoming realism, so untypical of a group that began on those idealistic fringes, may explain why ZPG has moved so close to where the action is. Or vice versa.

ALLIED HEALTH PROFESSIONS IN CONNECTICUT

Mr. RIBICOFF. Mr. President, in 1968, when I conducted hearings into the problems of health care in America, it became apparent to me that medical treatment could be improved significantly and made more widely available if we began to employ a new kind of medical agent, a "paramedic" who could treat minor ailments, spot potential health hazards, and save the physicians' valuable time for sicknesses and injuries which only a doctor can treat.

Allied health personnel could be especially useful for setting up mobile clinics in inner cities—and in declining rural areas as well—where poor people could receive the routine health care the rest of us take for granted.

Two sources of allied health personnel are available. The most readily available talent pool can be found in the Army—where medical corpsmen are being highly trained and can treat about 95 percent of the routine injuries and ailments.

The second source of paramedical talent—and the one which provides the best long-term solution to the problem of building up the allied health profession—is the allied health profession school.

The University of Connecticut, which recently entered the medical education field with its new medical school, has developed an innovative and worthwhile allied health education program, TACT—toward an allied health career today.

Operation TACT has as its main objective the preparation of students at the high school level for job entry into the health occupations field or for admission to community colleges which have allied health programs.

The need for allied health manpower in Connecticut and the exclusion of minority and disadvantaged persons from relevant, academic, and institutionalized programs is well documented.

The TACT project can potentially open up new careers for these persons as well as provide crucially needed medical manpower. The city of Hartford, with its wealth of health and educational resources and its problems of unemployment and underemployment, will provide a challenging setting for this project.

I ask unanimous consent that documents describing TACT be printed in the RECORD.

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

HIGHLIGHTS

(a) Operation—Towards an Allied Health Career Today.

On October 14, 1971 and October 29, 1971, a planning group representing: (a) Hartford School System; (b) Greater Hartford Community College; (c) Manchester Community College; (d) University of Connecticut Allied Health Planning Team; and (e) Urban League of Greater Hartford met to develop and finalize a proposal to develop an Allied Health Educational Continuum from the senior high school through the University. A contract proposal was sent to the Division of Allied Health, Bureau of Health Manpower, National Institute of Health, for funding. Louis Bourgeois, Ph.D., Program Consultant, has been assigned as Project Officer and is in the process of developing the Work Scope Proposal. If you are interested in additional details on the status of the Contract, I am sure Dr. Bourgeois would be delighted to answer your questions. His telephone number is 202–496–6751.

Operation TACT has as its main objective, the preparation of students at the high school level for job entry into the health occupations field or for admission to the community college; graduates of community colleges will be awarded the Associate degree and will be prepared for employment or admission to the University.

The participating agencies have identified personnel and equipment on an "In-Kind" basis in the first phase to develop the curricula and clinical affiliation aspects and have committed their institutions to the implementation of the program. Details of the program are attached as Appendix I.

Equal Representation in Allied Health (ERAH): The Association of Schools of Allied Health Professions has been awarded a contract from the Bureau of Health Manpower to develop three regional programs to increase the enrollment in the allied health professions of minority students, Black, Spanish-Surnamed, and Indian. Dr. Bourgeois is the Contract Officer for this project also.

The ERAH Advisory Committee has designated Hartford, Connecticut as the Eastern Office to cover the New England States and New York. The University of Connecticut has been asked to submit an outline of a program to the Association as the subcontractor for this regional aspect of the project.

(c) Special Improvement Grant: As you are aware, the Bureau of Health Manpower, Division of Allied Health, administers the Allied Health Special Improvement Grant monies.

The University of Connecticut has submitted the attached grant (Appendix II) for a five year period. (To be forwarded later).

The first year requests one hundred and fifty thousand ($150,000) dollars to permit the University to name the Dean of the School of Allied Health Professions and to assign the three existing programs, Dietetics, Medical Technology, and Physical Therapy, to the Dean to develop coordinated interrelated curricula in the three areas.

POINT OF INTEREST

It is presently proposed to submit a bill to the General Assembly via the Legislative Education Committee to designate the School and an appropriation at the next session.

ALLIED HEALTH EDUCATION CONTINUUM, GREATER HARTFORD AREA

OBJECTIVE

To actualize an allied health education continuum in the Greater Hartford area which:

(1) Recruits minority and disadvantaged persons for allied health professions

(2) Gives incentive and support to training, development and mobility

(3) Engages the learner in developmental work experiences, and

(4) Sensitizes facilities and institutions to respond to the need for a "new kind of health manpower to emerge".[1]

It is proposed that the initial education continuum incorporate a selected secondary school, the vocational technical school, an identified community college and The University of Connecticut. It is also proposed that options for study, work-study employment and work developmental experiences be based on a variety of financial assistanceships. The latter is necessary as incentive and support for the economically disadvantaged. This proposal has major intention to:

(1) Blend the stages of planning and implementation;

(2) Establish the framework for enlarging this educative plan within the Greater Hartford area.

NARRATIVE

The need for allied health manpower in Connecticut and the exclusion of minority and disadvantaged persons from relevant, academic and institutionalized programs is well-documented.[2] Special training projects which exist for adults are not freely credited at academic institutions and often dead-end the participants to employment in specific institutions. The lack of allied health education in the curricula of inner-city schools causes many students to be ignorant of the various opportunities in allied health and the requirements for allied health professions. Moreover, the gap of allied health in secondary curriculum coupled with the training program syndrome and a lack of mobility from such programs fosters a disrespect for certain types of health occupations and the nonexistent rungs of the allied health ladders.

The retention of suitable candidates in the areas of allied health must be based on:

1. Viewing recruitment as an on-going, interest-expanding process

2. Assuring that planned educational experiences are intellectually stimulating and immediately useful

3. Offering services supportive to individual needs and personal short and long-range career plans.

Continuum can result from task oriented planning. This means that those agencies with responsibility to and for the education, work-study and employment of participants have real input into (a) program design, (b) role definition, (c) implementation of programs, (d) admission, matriculation and developmental work experiences.

There is little need for further verbiage on mobility, transferability, career ladders, etc. Problems to be incurred in implementation cannot be resolved here by furthering the philosophical discussion. Therefore the suggestion for this proposal is for rather straightway initiation of:

1. A basic allied health course at the secondary level for secondary school juniors, seniors and adults.

2. Projects for summer employment and/or summer work-study will be developed and interrelated with the basic allied health course and admission requirements for the vocational-technical schools and community colleges.

3. Relating the basic coursework of item one to the options in item two, and

4. Designing and implementing programs for freshmen-sophomores, junior high school students, teachers and counselors to stimulate interest in allied health careers.

STAGE I

(a) Organize a task oriented advisory committee for the project including significant representation of:

(a) Hartford Public School (administration, instruction and counseling).

(b) The vocational-technical school.

(c) The community colleges.

(d) University of Connecticut Allied Health Professions.

(e) Clinical supervisors.

(f) Employers.

(g) Prospective students and

(h) Community-based agencies and programs.

(b) Charge to Committee:

1. Development of the curriculum for preparing students for employment upon graduation from high school or for admission to the community college.

2. Concurrent development of the allied health curriculum for the community college level programs. Programs for the part-time and adult students will be investigated.

3. Identification of health personnel needs in the Greater Hartford area will be made; and projected personnel needs for proposed clinics, HMO and group practices will be made.

4. During this period, prospective employers for the work-study program at all levels will be identified and the job description and administrative protocols will be developed for the formal contracts.

5. Clinical affiliations will be surveyed and a schedule will be developed to assure total utilization of the resource and the protocols for the formal contracts designed.

6. Evaluation protocols will be defined.

STAGE II

1. Teachers for these courses need to be hired by the schools by July 1972 and will be required to attend a two or three week orientation program that month. It is predicted that the faculties will spend the next months developing the specifics of the curriculum, including the work study program, arranging clinical affiliation, developing formal contracts for the affiliation and establishing the roles and responsibilities of each institution, the faculty and clinical supervisors.

2. An adult education program directed to individuals in the community who are not in school or who are employed in the health area but wish to improve their skills and enhance their promotion potential.

3. A recruitment program directed to the community will be devised.

4. Protocols for evaluation of the program will be pre-tested.

WORKSHOPS

(a) A one-day conference of the entire committee plus potential employers, administrators of health care institutions and those related official state agencies to discuss the project's goals and objectives and alert them to their potential involvement on sub-committees.

(b) A three-week workshop for teachers and counselors relating to the new program.

(c) A one-day conference for teachers and counselors in the school system to orient them to the new program.

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[1] Alfred Fisher, *The Minority Tapes*, Report on Selected Minority Motivation Programs for Health Careers, National Health Council, New York, New York, 3/23/71.

[2] Frederick G. Adams, The Need for Allied Health Professional Personnel Training in the State Of Connecticut, 1970.

LONG RANGE PLANS

1. Funds must be identified which will provide staff for three to five years to carry on evaluation of the program in concert with the original committee and the administrators and faculties conducting the programs. On-going evaluation of the students who have graduated and are employed and/or are continuing their education. Evaluation must be made on a longitudinal basis of the work-study programs.

2. Funds must be identified for teacher supplements and student stipends for at least two years when the program will be incorporated in the educational institutions.

ADDENDUM

The City of Hartford with its wealth of health and educational resources and its problems of unemployment and underemployment provides a challenging milieu for this project.

U.N. DEVELOPMENT PROGRAM

Mr. JAVITS. Mr. President, during the congressional recess a great and very wise American retired after many years of distinguished service to his country and to the world. I refer to Paul Hoffman who, following a distinguished career in the U.S. Government, became the Administrator of the United Nations Development Program—UNDP.

In a recent publication of the United Nations entitled "Years of Challenge and Response," Paul Hoffman concisely sets forward the role the UNDP has, and is playing in furthering economic development in the developing third world. I commend Paul Hoffman's remarks to the Senate. I ask unanimous consent that the article be printed at this point in the RECORD.

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

ONE MAN, MANY MILLIONS—AND A PROGRAMME

Franklin D. Roosevelt: "We are all of us children of earth—grant us that simple knowledge. If our brothers are oppressed, then we are oppressed. If they hunger, we hunger. Yet we can make, if we choose, a planet unvexed by war, untroubled by hunger or fear."

Some observations by the Administrator of the UNDP . . .

The man in this picture is a threat to world peace—and also one of the best hopes for building a more peaceful world.

He is a threat to world prosperity—and also one of the best hopes for increasing the world's wealth.

Above all, he is a human being who has been largely and needlessly deprived of basic human necessities and opportunities. This is the single most important fact to keep in mind when we talk about global poverty.

For the term "global poverty" is, after all, nothing more than a convenient abstraction. Like a shadow, it is merely the projection of reality and not reality itself. Yet only by coming to grips with the *several* realities of world poverty can we solve the problems which that poverty presents, not just to those who suffer its immediate consequences but to all mankind.

WHAT ARE THE REALITIES OF GLOBAL POVERTY?

Reality number one is the existence throughout Asia, Africa, Latin America and the Middle East of hundreds of millions of *poor people*—people who live with hunger and often die of it, people who are pinned down by ignorance and cannot escape from it, people who are open to attack by every form of killing and crippling disease, people whose homes are rural shacks or urban slums, people whose children move in appalling numbers directly from the cradle to the grave.

Reality number two is the growing frustration of the poor in the low-income lands over the lack of opportunity to substantially better their lives. There is no more explosive force on the world scene than the resentment this lack of opportunity creates, particularly among the angry young men—and women—who make up over sixty percent of the population in the developing countries. Conversely, there is no force potentially more constructive than their determination to improve matters. The prospects for world peace depend in no small measure on whether they will be given the chance to work for change, or see themselves compelled to fight for it.

Reality number three concerns the cause and eventual cure of poverty in the low-income nations. One of the most important findings of the UN's first Development Decade is that most "poor" countries have a great deal of potential wealth—but that, on the average, they are able to use productively only 20% of their natural resources and 10% of their man, woman and youth power. What remains untapped is enormous. It is clearly sufficient to permit the building of economies with all the strength and dynamism necessary for meeting human needs—provided that adequate growth possibilities are opened up in certain key economic sectors, and that adequate numbers of people are equipped to take full advantage of those possibilities.

Reality number four is that during the past decade, with all its disappointments, a significant number of low-income countries have succeeded in laying the foundation for meeting both these prerequisites. And in every case where this vital though sometimes "hidden" progress was made, there was a maximum national effort supplemented by the right kinds and sufficient amounts of external development aid.

THE CONTRIBUTION OF PREINVESTMENT ASSISTANCE

One of the most important forms of external development aid has been—and continues to be—a type known as "pre-investment and technical assistance."

Preinvestment and technical assistance contributes to the development process in two related ways. It helps low-income countries open up sound investment opportunities—so that they can mobilize from domestic savings and attract from external sources the sizable amounts of capital without which rapid economic progress simply cannot take place. But it also does something more. It helps these countries acquire the knowledge, working skills and technological capabilities that will allow them to make fully effective use of capital and of all other available growth resources. Both these contributions of pre-investment and technical assistance are essential to progress on virtually every front of the development drive.

Consider, for example, the vital agricultural sector from which two-thirds of the people of the developing countries derive their livelihoods. Money alone will never grow more crops, raise more timber, catch more fish or fatten more cattle. What is needed, in addition to money, is accurate information. Is potentially productive acreage now lying fallow? Could substantially more be grown on presently cultivated land? What kind of fertilizers, how much irrigation, which new agricultural techniques must be used to realize these possibilities? Where are the marketing opportunities that will provide incentives for raising farm output above the subsistence level, and how can farm credit facilities be improved? Today's dramatic advances in technology also have a decisive role to play in raising both agricultural production and rural incomes. Particularly significant have been the development of higher-yielding, faster growing and more disease-resistant crop strains; the discovery of new methods for locating underground water resources and for tracking the migrations of food-fish; the successes registered by experiments aimed at converting inedible organic substances into protein-rich nutrients. Finally, there is the growing need for practical education. Farmers who never went to school must be taught to read simple agricultural manuals; extension workers must be trained, as must veterinarians, forestry officers, and specialists in rural development, land resettlement and dozens of other complex skills. All this work and more lies in the province of preinvestment and technical assistance.

So, too, do many of the vital problems of industrialization in the low-income countries. Capital, and a good deal of it, is necessary to build modern industrial facilities. But factories need more than financing. They need locally available raw materials cheap enough to be processed at a profit. They need entrepreneurs to plan them, managers and supervisors to run them, electric grids to power them, export markets to absorb at least part of their output and to bring in foreign exchange. They need decent housing and adequate medical care for their labour forces. All this is a taken-for-granted part of the economic landscape in the already advanced countries. In nations whose economies may be just emerging from the 17th or 18th century, all are likely to be in very inadequate supply.

A PARTNERSHIP OF THE MILLIONS

Over the past ten years—in these sectors and across the whole broad spectrum of other development needs—the UNDP, its predecessors and the international Agencies affiliated with the United Nations system have rendered an increasing volume and variety of services. They have helped governments representing more than 1,500 million people to survey, assess and exploit their latent natural resources. They have worked with these governments to strengthen educational and training institutions at every level of learning. They have supported the establishment of facilities for disseminating and applying technology in the specialized and often quite new forms required by low-income countries. They have furnished advisors, consultants and, in some cases, operational personnel for essential tasks of planning and administration. They have provided fellowships for advanced training abroad to thousands of men and women whose development responsibilities call for skills they could not acquire at home.

These pre-investment and technical assistance activities have been financed by the voluntary contributions of almost every member of the United Nations and its related Agencies—contributions totalling over $1,433 million since 1959 and growing from some $55 million for that year to nearly $200 million for 1969. But because the governments of the low-income countries themselves assume responsibility for more than half the costs involved in implementing projects supported by the Programme, the value of work carried out in the field over the last decade has been some two-and-one-third times greater than the amount of voluntary contributions to the Programme's central resources.

Yet, here again, money is far from everything.

The basic contribution, the basic commitment has been human—a commitment of will, of purpose, of hope and hard work, of faith that the future will redress and redeem the past.

"Action Times Ten" presents a very limited sampling of what has been and is being accomplished by a unique partnership—a partnership not simply among national governments and international Agencies, but among hundreds of millions of men and

women who are striving to help themselves and one another.

Mr. JAVITS. Mr. President, a further tribute to Paul Hoffman's work in strengthening the U.N. development program over the past 10 years appeared in the report of President Richard Nixon on the "United States Foreign Policy for the 1970's, The Emerging Strategy for Peace." I ask unanimous consent that the paragraphs dealing with the UNDP and the work of Paul Hoffman be printed at this point in the RECORD.

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

A UNITED STATES FOREIGN POLICY FOR THE 1970'S, THE EMERGING STRUCTURE OF PEACE

(A report by President Richard Nixon to the Congress, February 1972)

A reduction of U.S. support for the UNDP would be particularly unfortunate. The UN system has gradually become a major instrument for encouraging economic and social progress in the developing countries, and the UNDP is the primary instrument by which the UN fills this role. The United States has been the major contributor of funds to the UNDP, and since its inception the UNDP has been headed by a distinguished American, Paul Hoffman.

Last year there were several developments which should reconfirm the American attachment to this program. Progress continued in making the UNDP's machinery more efficient. The contributions to the UNDP from other countries were significantly increased. And when Paul Hoffman retired at the end of the year, the UN chose another outstanding American, Rudolph Peterson, as his successor. The UNDP deserves our continuing support.

Mr. JAVITS. Mr. President, in placing this material in the RECORD I invite the attention of Senators to the fact that the funding level for the UNDP in fiscal year 1971 is very much in dispute since the House of Representatives did not provide any funds for this most worthwhile organization in the fiscal year 1972 appropriation bill. It is my hope that the Senate-House conferees will rectify this matter, since the Senate provided almost full funding.

Finally, I would like to wish Paul Hoffman boundless good health and fruitful new labors as he enters his 80th year.

ADDRESS BY SENATOR BUCKLEY BEFORE NATIONAL PRESS CLUB

Mr. BYRD of Virginia. Mr. President, on February 11 the able junior Senator from New York (Mr. BUCKLEY) delivered a thoughtful speech on the international posture of the United States at a luncheon meeting of the National Press Club in Washington.

Senator BUCKLEY had just returned from a visit to eight nations in Southeast Asia and East Asia, and while he made no claim of having become an "instant expert" on these areas, his speech shows a deep familiarity with the many complex problems involved in the relationship between the United States and Asia.

Senator BUCKLEY pointed out the implications of the Nixon doctrine, citing both the responsibilites involved in this doctrine and the fundamental purpose of lessening the likelihood of U.S. involvement in ground wars in Asia.

Because Senator BUCKLEY's speech is of great interest and significance, I ask unanimous consent that it be printed in the RECORD.

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

EROSION OF CONFIDENCE IN AMERICA: CAN THE FREE WORLD REALLY DEPEND ON THE UNITED STATES?

(A speech by Senator JAMES L. BUCKLEY)

I have just returned from a visit to eight nations in Southeast and East Asia; nations which have achieved a significance in recent American affairs which in most cases is far out of proportion to their size and resources, but which has been dictated by their geography.

Now, I am well aware of the justified skepticism of the "instant expert" syndrome which afflicts so many American travelers, members of the Congress not excepted. I like to think, however, that I have managed to escape its more virulent manifestations. In the first place, I am not exactly a stranger to the region. My interest in the Orient dates back to 1945 and 1946 when, as a member of the United States Navy, I found myself visiting such exotica as Manila, Haiphong, Shanghai, Peking and Seoul, and other ports and points in between. And subsequently, during the fifteen years preceding my election, I spent a month or more a year—most often more—engaging in business in the Far East.

The purpose of my recent visit was to try to assess how these nations view the problems of their own security, and to determine how they have been affected, if at all, by recent significant shifts in our external policies and in the tone of our internal debates. To this end, I met with senior political and military leaders, as well as with private citizens, in each of the nations which I visited; namely, the Philippines, South Viet Nam, Cambodia, Laos, Thailand, the Republic of China, Japan and Korea.

I sought to learn how our allies view the rapidly changing events which affect their security, because only with this perspective can we make the most effective use of our power and influence in the cause of peace. We in this country have too great a tendency to operate in a vacuum. Because we have for so long borne so huge a share of the security burdens of the free world. we tend to forget that others are involved in our decisions, and that the network of worldwide alliances which we have constructed for our own ultimate protection cannot thrive without mutual understanding, a mutual effort, and a mutual trust.

Perhaps it is because we have never sought world responsibilities, but rather have had them thrust upon us, that we can at times become dangerously provincial in our outlook. We become absorbed in our internal debates as if the world outside were unable to listen in. It is easy for us to insist that what we do and say at home, what we choose to undertake abroad, is no one else's business but our own. But if we have asked other nations to join us, to choose sides in arrangements for our mutual security, and if at this moment ours is the only power which stands between certain of these nations and the extinction of their independence, then I hope I will be pardoned for suggesting that we *ought* to be concerned about the concerns of these other nations, even though they inhabit such remote corners of the globe as southeast Asia. Southeast Asia, of course, has dominated our news and our thoughts in recent years. Yet we continue to think of it in terms of Laos and Cambodia and North and South Viet Nam; in terms of a cluster of sleepy little countries of little consequence to the outside world. Yet in reality, Southeast Asia consists of far, far more; and it is because of this reality that we became involved in Viet Nam in the first instance.

We tend to forget that Southeast Asia extends from Burma and Thailand on the west down through Malaysia and Singapore, across the Indonesian Archipelago and then northward to include the Philippines. This is an area of more than 1,500,000 square miles. It contains one of the strategic waterways of the world, the Malacca Straits, and it is inhabited by close to 300 million persons. Furthermore, it contains immensely rich mineral resources which are critical to the booming free economies of Asia and which will be increasingly important to ours. While events in Laos and Cambodia may seem very remote to us and therefore unimportant, they are of a rather urgent interest to Thailand, a country which we like to regard as a reliable buffer between Communist China to the North and Malaysia to the south; and Malaysia, of course, shares in Borneo a common border with Indonesia, whose flirtation with Communism under Sukarno caused Australians such grave concern.

I hasten to say that I am not suggesting that we dispatch airborne divisions to Laos and Cambodia. Rather, I merely wish to call attention to some of the geographic facts so that we might have a proper understanding of some of the implications of what is happening in Asia today; so that we may determine what price, if any, we should be willing to pay in order to be able to exercise some measure of influence over the course of events.

We on the east coast tend to be preoccupied with Europe. We can understand the inter-relationships which exist around the North Atlantic, but we find it much more difficult to see the parallels which exist to our west even though for the past three decades, Asia has been at the vortex of U.S. involvement in world affairs—first in the Pacific theatre of operations in World War II, then in Korea, and most recently in Viet Nam. Eighteen of the last thirty years have seen the United States involved in military conflict in Asia. For better or for worse, since the early 1950's, the United States has been the principal proponent and architect of a series of alliances on which a dozen nations along the periphery of Asia have had to depend for their security.

While there may be arguments as to the extent and details of our involvement in the problems of Asia, no one in a position of responsibility suggests that we can turn our backs on them. We are a Pacific power just as we are an Atlantic power. The control of Asia and its vast manpower and mineral resources by a power hostile to the United States would be as intolerable a threat to our security as would be the control by a hostile power of the human and industrial resources of western Europe. If the rimland of eastern Asia were to fall in hostile hands, the threat against the island republics extending from Indonesia around through Japan would be palpable, and our own continued access to vital waterways and resources would be placed in jeopardy. Moreover, the geographic and political isolation which would follow would dangerously reduce the alternatives which would be available to us in planning for our own defense. This is why every American President for over one hundred years has understood the need to maintain an American military presence in the western Pacific.

But the need to maintain such a presence does not dictate a particular form. The form of our involvement can and should change as conditions and power relationships change, and as we gain in experience. In the twenty years which have elapsed since our Pacific security arrangements first took

shape, profound changes have taken place in the non-communist countries of Eastern Asia. By and large, these nations have succeeded to a remarkable degree in shaking off the yoke of primitive economies and feudal institutions. Their leap from the eighteenth to the twentieth century has been all the more impressive because it has taken place in the midst of one of the most profound ideological confrontations of our times, and it has taken place under the umbrella of American military protection.

At one time or another since V–J Day, each of the peoples of Eastern Asia, with the exception of Japan, has felt the impact of that driving, disciplined, fanatic force which is communism. It is a force which now controls the Chinese mainland and the northern halves of Korea and Viet Nam. It is a force which has launched direct attacks on South Korea and South Viet Nam, and on Laos and Cambodia; a force which has organized and sustained guerrilla operations in Thailand, Burma, Malaysia, Indonesia and the Philippines. It is a force, I might add, which as yet has shown no signs of exhausting its incredible energy and determination.

Yet despite the continuing threats and pressures to which they have been subjected, most of these nations are well advanced towards political and economic stability. Anyone who has travelled through the region over the past twenty-five years has witnessed, as I have, the dramatic changes which have taken place. They have seen the transition from rickshaw to pedicab to taxicab. They have seen colonial towns transformed into bustling modern cities with all their attendant problems of pollution and traffic congestion; and they have noted a growing self-confidence among their peoples as they have successfully demonstrated their capacity to manage their own affairs.

These developments in Eastern Asia do not in any way lessen our interest in the stability and security of the region, but they do make possible that fundamental change in the character of our support which is embodied in the Nixon Doctrine. Whereas we at one time had to shoulder virtually the entire burden for regional security, the indigenous nations now have the political and economic capacity to mobilize and maintain the forces required for their own security, provided we make available the necessary military hardware. Thus the role of the United States can be reduced to that of training and supply, and to the maintenance of the regional naval and air power required to enable us to meet our commitments and to deter major aggression.

When the Nixon Doctrine was first announced in July of 1969, it was met with a great degree of anxiety by a number of our friends in Asia who feared that it might prove to be merely a rhetorical smokescreen designed to hide the fact of an American withdrawal from its alliances. On my recent trip, however, I found that any doubts about the President's motives in advancing the doctrine were fully dispelled, and the doctrine itself welcomed as the most viable framework for a long-term approach to regional security. But while I found an enthusiasm for the principles involved in the Nixon Doctrine, and a determination on the part of our allies to make it work, I also encountered an increasing concern over our failure in so many ways to carry through with its implicit undertakings implicit in it.

Almost without exception, our friends in Asia are faced with clear and present threats to their security. The Thais must cope with increasingly active bands of Communist-trained insurgents; large areas of Laos, Cambodia, and South Vietnam are presently occupied by Communist invaders; and South Korea and Nationalist China must continue to live in the shadows of well-armed, hostile neighbors who have vowed to overwhelm them. Our friends are prepared to do what they can to defend themselves, but they require the military hardware with which to match the increasingly sophisticated weapons with which their enemies are being so freely supplied. In too many cases, however, we are failing to deliver the arms and the support implicit in the Nixon Doctrine.

This failure on our part to follow through is giving rise to agonizing doubts as to the ability or willingness of the United States to sustain its role of leadership in the western Pacific. Except in the case of South Vietnam, we simply are not coming forward with the kind of support which is required to sustain the kind of confidence in our tenacity which will be needed if we are to make the Nixon Doctrine work. The administration has requested the necessary funds, but the Congress has cut them back—and our friends are left to speculate whether they can safely stake their own survival on America's staying power in the long-term struggle to safeguard the security of the western Pacific.

While we engage in endless debate, and as we impose arbitrary restrictions on the manner and extent of our aid, others across the Pacific must face the realities of the threats to their survival.

The South Koreans, for example, must face the reality of a belligerent neighbor to the north which is in flagrant violation of the armistice terms in constructing new airbases and fortifications near the DMZ; a neighbor which has now developed an air force several times larger than her own; a neighbor which periodically declares its intention to reunite Korea by force of arms. Under the circumstances, it is hardly surprising that the South Koreans take seriously the threats from the north. It is for this reason that two years ago they expressed such great concern when we first proposed to withdraw one of the two American divisions stationed in their country. We were able to satisfy them, however, that the removal of this division would not jeopardize their ability to defend themselves against the growing military strength of North Korea. We were able to do so because, and only because, we promised to implement a five-year program for the modernization of their own forces, a program which both sides agreed to be essential to their future security. Two years have now elapsed since the program was agreed upon; but already, because of cuts imposed by the Congress, we are over a year behind in our deliveries; and this despite the fact that the savings which we have been realizing by the withdrawal of that one division are more than enough to pay for the promised equipment.

Let us move on to Cambodia, where I had the opportunity to visit a town known as Kampong Chan in the eastern part of the country. This town lies less than two miles across the Mekong River from the Chupp rubber plantation which now harbors two North Vietnamese divisions. We had to reach the town by helicopter because Communist units operating in the area had cut it off from the capitol Kampong Chan is protected by a rag-tag army of local volunteers. I inspected one platoon comprised largely of sixteen-year-old boys, and I saw that they were equipped with six different types of rifles of European, American and Chinese manufacture, some of them dating back to the Second World War. They had only a few hours of training.

The Cambodians, you will recall, were supposed to have collapsed within days of the time when American forces were withdrawn to South Viet Nam. Yet despite their lack of training, despite their primitive equipment, tens of thousands of simple villagers rose to the defense of their land and have somehow kept themselves from being inundated by the North Vietnamese regulars. The Cambodians have demonstrated the will to fight for their own survival, and they have absorbed losses which have been needlessly high because of their inadequate equipment and training. With our material help, they have the capacity to survive. Yet we have imposed an iron limitation on the amount of aid which we can extend to them, and arbitrary constraints on our ability to train them on their own soil in the rudimentary arts of war. Thus thousands of Cambodians will meet a needless death at the hands of well-trained invaders equipped with some of the most modern weapons which the Soviet and Chinese arsenals can provide. This is the nation which has been described in the Senate as "hapless, helpless, and hopeless."

Let us look, now, at Thailand—a country which for centuries has managed to maintain its independence and to live at peace with its neighbors. The Thais are faced with an increasingly serious problem of insurgency along their northern, northeastern and southern borders. In two separate incidents during my visit to Bangkok, a total of forty policemen were killed in ambushes in areas where the insurgents have been tightening their control. The Thais can scarcely be blamed for being worried about events in the neighboring countries of Laos and Cambodia with which they share borders extending over 1500 miles, or about an all-weather highway which the Chinese Communists have now extended across northern Laos to within thirty miles of their border. It is self-evident, therefore, that Thailand will need to develop effective counterinsurgency forces on a major scale.

In Laos we have a nation of less than three million persons which is on the verge of having its national identity destroyed by North Viet Nam. Three-fifths of its territory is already occupied by North Vietnamese troops, and its leaders watch in anguish as the arbitrary congressional ceiling on aid expenditures makes it necessary for the United States to cut back air support for the beleaguered and outnumbered Laotian army.

And so it is throughout the region. While the Communists continue to exhibit an unrelenting drive to achieve their ends, we appear to have become increasingly uncertain of our own objectives, increasingly unwilling to supply our friends with what they need in order to be able to defend themselves. Small wonder that we see in Asia today a sapping of confidence in the dependability of the United States.

This confidence was further shaken by the dramatic and unexpected nature of the President's announcement of his plan to visit Peking. This sudden reversal of a twenty-year policy in which we had enlisted the support of our allies sent shockwaves throughout Eastern Asia. I am satisfied that President Nixon has since been able to reassure the leaders of these countries that the United States will make no agreements which will undercut their security, and that we will not back away from our existing commitments. But the seeds of doubt have been planted, and it will take far more than rhetoric to root them out. Except in the case of Nationalist China, I found little or no objection to the opening of channels of direct communication between the United States and Peking, but I met everywhere a deep concern over the fact that the United States could unilaterally and without advance warning undertake so radical a change in policy. There are pervasive fears that, impelled by a new mood of isolationism at home, we will in the end agree to secret accommodations with Peking which will compromise the security of our allies; and everywhere there are those who will be looking for any sign which suggests that America is prepared to withdraw from an involvement in the affairs of Asia.

In this context, the continued existence of our mutual defense agreement with Tai-

wan takes on a particular significance, because for many of leaders in Asia it has become a litmus test of our intentions. Whatever the other arguments for the necessity to maintain this agreement, and I find them very powerful, an abrogation of our undertaking to defend the Republic of China against attack would have the most profound and adverse impact on our position in the Far East.

We can and must, in our own self-interest, restore the badly shaken morale of our friends in Asia; and we can do this most effectively, in my judgment, by implementing the Nixon doctrine, and by making it clear in our actions abroad, and in our debates at home, that America will continue to give effective support to its Pacific alliances for as long as may be required to safeguard our mutual interests.

This is an undertaking which is well within our means. The interests of the United States in Asia today can now be supported wtih a minimum effort because of the great strides which have been made by our allies in achieving a capacity for their own defense. We must understand, however, that the U.S. role is in many ways that of a catalyst. If we fail to make self-help possible through the support implicit in the Nixon doctrine, we will develop pockets of weakness which will invite attack, and we may once again find ourselves faced with a major military confrontation. An investment in the security of Asia at this time is the most inexpensive insurance which I can imagine.

But we must remember that if we are to maintain effective alliances, we must decide as a people that ours is a long-term commitment, and we must restore confidence in our capacity as a nation to sustain our role of leadership. If we should appear to falter, to grow weary of that role; if we appear unable to match the tenacity of the Communists, then the framework for regional security which we have constructed at so great a cost will surely fall apart.

And we must also be able to demonstrate that we will not fall victim to our own good nature. Because we have no aggressive designs on others, we find it hard to understand that others have a driving compulsion to dominate. Because we seek peace, we assume that others seek it with an equal intensity. Because we negotiate in good faith, we are too often tempted to place a dangerous reliance on the good faith of others. It is this beguiling streak of innocence embedded in our nature which may raise the greatest question as to our ultimate capacity to meet the responsibilities which have been thrust upon us. I believe, in fact, that we may now be entering a point in history, both in Asia and elsewhere, which will test whether or not Leo Durocher stated a rule of universal application when he said, "Nice guys finish last."

THE SUPREME COURT AND THE FEDERAL SYSTEM

Mr. THURMOND. Mr. President, on January 27, 1972, the State newspaper in Columbia, S.C., published an editorial, entitled "Supreme Court Once More Erodes the Federal System."

The article points out the fact that the Supreme Court is continuing its recent trend of downgrading the role of the States in the American system, despite the fact that there are four "conservatives" on the Court. The Court's most recent step in this direction was one of omission rather than commission. The Supreme Court accomplished this by letting stand two lower court decisions which held that a State could not require a 1-year residency before a welfare applicant becomes eligible for benefits.

Mr. President, the editorial criticizes this decision because it is one more move toward a complete takeover of the welfare program by the Federal Government, and a giant step toward centralizing governmental functions which properly should be discharged by the States. Decisions such as this certainly bear out the accuracy of Thomas Jefferson's warning:

> The Judiciary is the instrument which is to press us at last into one consolidated mass.

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

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

SUPREME COURT ONCE MORE ERODES THE FEDERAL SYSTEM

Despite the presence of four Nixon-appointed "conservatives" on the bench, the United States Supreme Court once more has downgraded the role of the states in the American system.

This time, the sin was one of omission rather than of commission, since the high court let stand two lower court decisions which impaired the rights of states. The issue was the same in both cases: an effort by two states (New York and Connecticut) to require one year's residency in the respective states before a welfare applicant became eligible for benefits.

There was nothing surprising in the ruling (or lack of ruling). The federal courts two years ago determined that newcomers to a state were entitled to welfare on the same basis as established residents.

Still, it was disappointing that the Burger court did not take the opportunity to revitalize the weather-beaten concept that the states and the central government exercise sovereignty within their respective realms. One would think that a state would retain the right to decide how its own funds would be spent. But perhaps that right has become eroded because of the infusion of federal funds into the welfare picture.

Be that as it may, the inevitable consequence of the Supreme Court's attitude is to increase the pressure for a complete takeover of the welfare program by the federal government. States which find themselves strapped for funds (a common characteristic these days) will try to shift as much of the relief burden to Uncle Sam as is possible.

New York's Gov. Nelson A. Rockefeller put the case in these words:

"Allocation of welfare to the federal level is essential to avoid fiscal bankruptcy of state and local governments and to end the social and moral bankruptcy of the present welfare system."

It should be noted in passing that states such as New York and Connecticut invited their present headaches by dispensing welfare benefits more liberally than did other states. The natural result was that welfare-seekers were attracted to the more bountiful states. That trend may be expected to accelerate in light of the Supreme Court's most recent action.

Hence, the predictable effort to get Uncle Sam to pick up the check for a governmental function which properly should be discharged by the states. And when that succeeds, as seems likely, the United States will have taken one more giant step toward centralization.

It all bears out the accuracy of Thomas Jefferson's warning of 1821:

"The Judiciary is the instrument which is to press us at last into one consolidated mass."

THE GENOCIDE CONVENTION AND FREE SPEECH

Mr. PROXMIRE. Mr. President, article III of the International Genocide Treaty has become a point of controversy in the move toward ratification. Included in that article is mandatory punishment for acts of "direct and public incitement to commit genocide."

Critics of the convention argue that such an agreement by the United States would result is an abridgement of the right to free speech, the cornerstone of the Bill of Rights. Since the days of Oliver Wendell Holmes and the "clear and present danger" doctrine, the question of incitement and unlawful expression has been heatedly debated by constitutional experts. As a result, a detailed code of legal interpretations has developed to protect both the individual and society.

The question now is whether or not American ratification of the Genocide Convention would violate that code and thus be unconstitutional. If so, then ratification would be impossible for no treaty in conflict with the highest law in the land is permissible. But as I have mentioned on an earlier occasion, no conflict exists. For if we exchange the word "genocide" with murder, or any other crime, it becomes apparent that incitement toward criminal action is already illegal and not protected by the first amendment.

The Bill of Rights was designed to protect the individual from the whims of a changing society, but it was also constructed to protect society from the malice of individuals. The Genocide Convention's ban against incitement to commit genocide represents a necessary safeguard for society without violating the right to lawful free speech.

With this certainly and in the hope of a less violent world community, I ask the Senate to take up immediately the question of the Genocide Convention and ratify the treaty.

RECIDIVISM

Mr. BROCK. Mr. President, recidivism is one of our most critical problems in America's current correctional system. The percentage of people reimprisoned is a phenominal 66 percent.

Mr. Ben Bagdikian, in his sixth of a series of eight articles on prison reform, deals with the problem of rehabilitation in the surrounding Washington area.

He discusses the intrinsic problems of staying "clean" on the street after leaving the totally repressive environment of a prison.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

THE SHAME OF THE PRISONS—REHABILITATION: A FRAYED HOPE

(By Leon Dash)

The 12-year-old boy thought he was alone in the dormitory of Cottage 7, sweeping under the beds. But he wasn't alone. A creaking wooden floorboard caused him to turn. A 14-year-old fellow inmate of the old In-

dustrial Home School for Colored Boys (now Junior Village) was sneaking up behind him.

"He said he'd been watching me and said I was either going to fight him or let him have sex with me," Lawrence Smith Jr. recalls.

Smith refused. The bigger boy grabbed him. Smith pushed back. They fought and Smith says he won that battle.

This was one boy's introduction, 18 years ago, to the world of District of Columbia "corrections"—to sexual assaults, fights and beatings behind the walls of institutions where juveniles and adults from Washington have been sent for the announced purpose of being rehabilitated.

In the years since young Smith was first locked up, the D.C. prison system has undergone drastic changes. There have been pioneering reforms that others have seen fit to duplicate.

But today Smith is back in prison. There he joined his father, who preceded him into prison. And while the Smiths' history is not necessarily typical, it tells a lot about the prison system in the District of Columbia.

The longest period the younger Smith (who calls himself Smith-bey) has spent outside of jail since the age of 12 was eight months. He is now 30.

His father, Lawrence Smith Sr., now 47, has just completed more than 12 years at Lorton for the sale of narcotics and for parole violations.

Smith Sr., who was addicted to heroin early in adult life, typifies an older generation of unskilled, undereducated criminals. He talks in a dry, even monotone which lacks the rhetorical cadence and hostility to the "establishment" characteristic of many of the younger Lorton inmates.

In December, 1956, while his son was still at National Training School, Smith Sr. was paroled from Lorton with $45 and what he describes as an "old suit," after serving a three-year sentence. His wife and five other children were living on welfare.

During most of his stay at Lorton Smith Sr. had worked as a grinder in the institution's old foundry—smoothing the rough edges of sewer tops, fire hydrants and police callboxes that were being made for the District government. "Back in those days," the older Smith said, "we were only making $3.60 a month."

Upon release from Lorton, Smith Sr. recalled, there was no sense in looking for foundry work like that he had been doing for three years at Lorton. There were no foundries in Washington. It wasn't too long, he said, before he was back to using heroin and selling it to support himself and his family.

His son, Smith-bey, is representative of the younger, more aggressive inmate at Lorton today. He is six years over the average age of the Correctional Complex's 1,800 inmates, which is 24, but their median level of education is the same as Smith-bey's—eighth grade.

The younger Smith has spent most of the last 18 years inside prisons or hospitals: after the Industrial Home School, then Cedar Knoll in Laurel, Md., the old National Training School for Boys, three federal prisons, the federal drug treatment hospital in Lexington, Ky., almost four years under psychiatric care at St. Elizabeths Hospital and the Lorton Youth Center.

He finally joined his father at the Lorton Correctional Complex last summer following conviction of armed robbery, assault with a dangerous weapon and carrying a concealed weapon. Sentenced to five to 15 years, he'll be eligible for parole when he is 35 years old.

As it happens, Smith-bey's father's sentence expired Jan. 20, following the longest single period he has seen his son since 1954. But Smith Sr. is facing a fresh indictment from 1970 of conspiracy to sell drugs while he was out on parole.

Whatever the differences between father and son, there are important similarities. With the exception of some clerical work the father has done at Lorton, both men lack marketable skills after almost two decades of jail sentences.

And both father and son ended up at Lorton.

Stories such as the Smiths' are not uncommon among Lorton's inmates. Fathers and sons, brothers, cousins and childhood friends have all, together or separately, passed in and out of Lorton's main gate.

Although there are no statistics a large number of the 2,200 inmates at Lorton's Correctional Complex, maximum security facility and Youth Center have been recycled through the District's juvenile delinquent institutions only to end up, finally, as young-adult offenders at Lorton.

The two Smiths typify the depressing cycle of crime and imprisonment, more crime and more imprisonment that seems to characterize the graduates of District reform schools and prisons. The products of chaotic, unproductive backgrounds, they drift into crime and serve time in "correctional" institutions where their problems deepen and they get no practical skills.

THE PRESSURE OF CHANGE

That history illustrates something else: the acute political and public-relations pressures aroused within a community when a prison system tries to change.

In the last four years, the corrections department has undergone drastic changes. They were directed first, and with apparent success, to reducing the incidence of riots, racial battles, homosexual assaults and other destructive forces inside the prisons.

More important, the reforms have tried to alter the endless recycling of former prisoners back into crime. This has been the major concern of the D.C. Department of Corrections since the mid-1960s.

A prison sentence can break up a home and expose a family to the shame and burden of welfare subsistency, and it can increase the chances that the children will turn to crime. It can compound problems of alcohol and drug addiction.

The reforms have had several aims. They have been directed at gradually letting prisoners get used to freedom they will have after they have served their sentences. Another aim has been to teach them skills that will earn them money legally. There have also been efforts to give the prisoners guidance in the personal problems that might have cause their criminal careers in the first place, and which may have been deepened by the experience of being locked up for long periods of time.

The department's innovative programs have been aided by Lorton's location near this city. Most state and federal prisons are in rural areas far from inmate's families and remote from jobs and qualified staffs. But most of the Lorton inmates, over 90 per cent of whom are black, have grown up in Washington. They have family and community ties in Washington, an important element of community-based correctional efforts.

Corrections director Kenneth L. Hardy feels convicts should be released from prisons gradually through community projects that give them a chance to adjust to life outside of prison walls. "Release a man gradually," Hardy said recently. "Give him a chance to re-establish himself, find a job, see his family."

But community-based programs, allowing convicts back onto city streets before their sentences are completed, have met with harsh criticism from the Metropolitan Police Department and officials of the District government and Justice Department, as well as private citizens.

The central issue is new crimes committed by convicts while participating in any one of three community-based programs—halfway houses, weekend evaluative furloughs or "community outreach" programs such as group visits to the city to put on dramas.

DISPUTE OVER HALFWAY HOUSES

Critics of the department's programs, led by Deputy Mayor Graham W. Watt, Police Chief Jerry V. Wilson and a local lawyer now on the City Council, Tedson Meyers, point to crimes against persons as the basis for their concern. Community programs, they contend, expose Washington's citizens to unnecessary danger.

One focus of dispute is the halfway houses, which expanded from one in the fall of 1969 to 13 by June of last year. Part of a police report issued last November lists re-arrests of 34 halfway house residents and of 18 halfway house escapees between July and September.

The combined total of 52 new arrests represents fewer than 10 per cent of the 618 convicts who lived in halfway houses during the three-month period, and of the total, 43 were charged with lesser crimes. But three were charged with homicide (a major sore point with critics) and six with armed robbery.

An October corrections department report says that 81.6 per cent of the men who go through halfway houses were not arrested for new criminal activity. The rate among inmates directly released from Lorton is 69.8 per cent.

"These figures tend to prove," said Stuart N. Adams, the corrections department's associate director for planning and research, "that our halfway house program is working."

But Blair G. Ewing, former director of the city's office of criminal justice plans and analysis, said Adams' statistics give an unclear picture of what is happening inside the halfway houses. Ewing, a consistent critic of the house, said that if there is still an incidence of 23 to 29 per cent of drug use and a 24 per cent rate of escape, then the program is not working as it should.

The central argument about halfway houses is simply not answerable now. Defenders say, in effect, that almost all convicts will be back in society one day, that halfway houses appear to reduce the incidence of repeated offenses and that, therefore, society is better served by such efforts to re-integrate the inmate into the outside world.

Critics, in effect, base their case on the simpler truth that halfway house residents couldn't commit any of these crimes if they were still in Lorton.

Until the data are sufficient to show whether the total number of repeated offenses is reduced or increased by halfway houses, the argument is likely to go on.

Other pieces of evidence are elusive, too. In the past, for example, Allen M. Avery, associate director of community services in the department of corrections, has claimed that most of the problem in halfway houses was residents who had been committed either by the courts or through the District's bail bond agency.

But a breakdown supplied on request by Avery's office showed that 45 of the 52 men rearrested after they had been sent to halfway houses had come either from the Lorton Youth Center, through the parole board or on the recommendation of counselors—and Avery's office has a voice in each of these. Only five of the 52 re-arrested men had been committed by the courts and two were bail-bond felons.

Asked why the data differed from his previous statements. Avery said that in the future a closer check would be kept on how inmates are committed.

OTHER COMMUNITY PROGRAMS

The rapid expansion of community projects and other innovative programs began in 1969 following a disturbance at Lorton the previous year.

Two penologists identified with reintegration programs, M. Robert Montilla and John

O. Boone, were brought into the corrections department with a mandate for reform.

Consistently on the defensive over the last year, both Montilla and Boone insisted their programs had real rehabilitative value that would reduce the number of such classic examples of criminal recidivism as the Smiths. But both men, angered by criticism of their programs and apprehensive about reversion to old custodial policies in which prisons simply hold people until the end of their sentences, resigned at the end of last year.

Last July, Boone was ordered to stop the furlough program. Following 21 drug overdoses and one drug overdose death at Lorton, all of the community-outreach programs were also halted on grounds that these could have been the way convicts got the drugs. Those community-outreach programs in which Lorton inmates make trips to Washington to work with District youths have since been resumed on a restricted basis.

Corrections officials had been pushing community efforts in part because of overcrowding in all of the District's prisons. The renewed overcrowding if the community programs end will lead to a breakdown in their rehabilitative efforts within Lorton, they claim.

Former Lorton superintendent Boone said that idleness, a feeling of hopelessness and lack of motivation caused by "warehousing" prisoners create tensions that lead to strife among inmates.

Programs such as evaluative furloughs or Lorton's Federal City College program provide inmates with high levels of motivation, Boone said. "A man doesn't want to get a DR (disciplinary report) and thereby, lose his privileges," Boone added.

The future of the community programs is now unclear.

All community programs, Deputy Mayor Watt said in a recent interview, will remain in their present status until five-member mayoral committee, chaired by former Corporation Counsel Charles T. Duncan, completes a five-month study of corrections.

What the committee decides will affect not only future prisoners at Lorton but also the citizens of Washington whom Lorton is designed to protect.

The committee's choice is personified by the lives of Lawrence Smith and his son, Smith-bey. The father was kept behind bars as much as possible—arrested first at age 29 and in jails and prisons for 12 of the following 18 years and back in prison again until last January.

And one of his sons has been repeating the same cycle. While father and son were behind bars, the citizens of the District were protected from them; but when they emerged they repeated crimes at an accelerated rate.

The District of Columbia, like the country at large, is now deciding whether the greater threat is to keep criminals off the street as much as possible and then suffer the consequences when the offenders come back, or to have them serve shorter sentences with more time spent in teaching the offender how to live legally and peacefully, with fewer relapses.

After Lorton, an Unreal Half Freedom

David Irving (Beachball) Sims wasn't sure he would make it through a halfway house when he first left Lorton the day before Thanksgiving.

Sims is 23, with an eighth-grade education. He served almost six years of a 5- to 12-year term for manslaughter. Now he was entering a program that allows offenders to hold jobs and visit family and friends, while living under supervision in a halfway house.

In and out of institutions since he was sent to Cedar Knoll in 1963, Sims recalled that it had been a nightmare when he had first gone outside of Lorton last June for an "evaluative furlough" to see whether he could handle life on the outside.

"It just hit me that I was out on the street after five years," he said. "It didn't feel real. I felt like gettin' a taxi and coming back" to Lorton.

And when he first arrived at Community Correctional Center 5 at 1817 13th St. NW last November, he felt the same anxiety. Center 5, which is administered by former correctional officers, has the reputation among District offenders as the toughest halfway house to "walk," or get through.

"Man, you never know about these houses," he said shortly after he arrived. "They might send me back to Lorton today."

But after a two-hour orientation, Sims was granted an afternoon furlough. "I got to get over to Anacostia," Sims said as he waited impatiently for a counselor to open the electrically locked door. Outside, he expressed puzzlement over why he had been assigned to a halfway house in the Shaw area. "I don't even know where I am. I've never been over here before."

But after stops to buy a coat, a bottle of Chivas Regal scotch and two cases of beer, Sims reached the National Capital Housing Authority's Garfield Terrace housing project in Anacostia, where his parents, a sister and most of his childhood friends live.

Sims' mother, a stout, middle-aged woman, was suprised to see him, and said she was glad he was working his way out of prison. Sims' father was not at home.

After a short conversation, Sims changed clothes and left, promising his mother he would see her the next day "for Thanksgiving."

He went to see an old friend who lives nearby. The friend was not at home, but his wife, another childhood friend of Sims', invited him in.

Three youths sitting around the kitchen table momentarily raising their drooping heads when Sims walked through the door. They greeted him halfheartedly through partially closed, bloodshot eyes.

"How ya doin' Irv?" one of them said in a slurred voice. Then he nodded off back to sleep before Sims could answer.

Sims talked briefly with two middle-aged persons who sat in the dimly lit living room, drinking beer and listening to a rock and roll record that played over and over.

Anxious about his 9 p.m. curfew and seemingly uncomfortable, Sims told them he would see them again soon and left.

Outside, while threading his way through the piles of garbage and trash that littered Garfield's grounds, Sims said he would have to stay away from his old friends. "I think they're on dope," he said. "Everyone aroun' here is on dope."

Sims now works at a suburban country club as a kitchen helper, the only daytime job he could find. He is now positive he can "walk" the restrictions of Center 5, but is not sure what will happen if he is released on parole in March.

Faced with parole supervision until 1978, Sims is very unsure of his ability to stay out on "the street" that long.

"I don't know what I'm going to do as far as holding people up. Very few (ex-convicts) stay out there that long."

District of Columbia System's Final Stop

The last stop in the District of Columbia system of criminal justice is the Lorton correctional complex for adult offenders.

Built as the Lorton Reformatory in 1916, the complex is located 21 miles south of Washington near Interstate 95, just on the outskirts of northern Virginia's suburban sprawl. Perched on top of a hill in undulating Fairfax County farmland, the complex's 70-odd acres are surrounded by a 20-foot high chain-link fence topped with barbed wire.

Among inmates, it is known as "The Hill." It has 25 dormitories designed to hold 1,400 prisoners.

Next to "the Hill" is a maximum security prison on 10 acres of land surrounded by a 30-foot high brick wall. Known as "the Wall," the maximum security prison has three double tiered cellblocks in which about 300 inmates spend up to 24 hours a day.

A half-mile away in a grassy 38-acre hollow is the Lorton Youth Center. It is surrounded by two chain-link fences, 15 feet apart, topped with barbed wire. There are four buildings with 324 one-man rooms. An admission building doubles as a dormitory when the number of youths goes above 324 which happens often.

A section of the old Workhouse is now the fenceless minimum custody institution. Located a mile south of the Youth Center, minimum custody has three 100-man dormitories.

LITHUANIAN INDEPENDENCE DAY

Mr. PACKWOOD. Mr. President, I am delighted to join my Senators today in commemorating the 54th anniversary of Lithuania's Declaration of Independence. This is a most appropriate time for the Senate to pay tribute to the Lithuanian fight for freedom which has been long and warmly supported by many Americans.

The history of Russian domination of Lithuania began in 1795 when it was first annexed by Russia. A series of revolts followed, all of which were unsuccessful. After Lithuania's third revolt in 1861, the tsarist government attempted to replace Lithuanian language and traditions with Russian, but through indomitable strength and determination, the Lithuanians were able to maintain their cultural integrity.

During World War I, German occupation of Lithuania brought Russian domination temporarily to an end. On February 16, 1918, the Lithuanian nation declared its independence. This independence, however, was to prove to be short-lived. With the outbreak of the Second World War two decades later, a mutual assistance treaty was forced upon Lithuania by the Soviet Union. Total Soviet control came in 1944 when the Soviet army reoccupied Lithuania.

The United States has never recognized the Soviet incorporation of Lithuania or the other two Baltic States, Estonia and Latvia. We continue to recognize an independent Lithuania and maintain diplomatic relations with the independent Lithuanian legation in Washington.

This policy was reaffirmed in 1967 by Secretary of State Dean Rusk in a letter to Mr. Joseph Kajeckas, chargé d'affaires ad interim of the Lithuanian legation in Washington:

> United States support of the Lithuanian people's just aspirations for freedom and independence is reflected clearly in our refusal to recognize the forcible incorporation of your country into the Soviet Union and in the warm sympathy manifested by the American people in the Luthuanian cause.
>
> In continuing to look resolutely toward a free and independent existence, the Lithuanian people both here and abroad have established a firm foundation for the hope of free men everywhere that the goal of Lithuanian national self-determination will ultimately be realized.

The light of liberty still flickers in these tiny Baltic nations. Let us extend our very best wishes to all Lithuanians on this day of celebration.

LITHUANIAN INDEPENDENCE—1972

Mr. RIBICOFF. Mr. President, I am pleased to be able to take part again in the commemoration of Lithuanian independence.

The passage of time blurs memories and people tend to forget past wrongs. This month, thousands of Americans of Lithuanian descent will seek to remind their fellow Americans of the end of Lithuanian independence as they commemorate two very important occasions in the history of Lithuania. 1972 marks the 721st anniversary of the formation of the Lithuanian State, and the 54th anniversary of the establishment of the Republic of Lithuania.

Normally such notable events in the history of a nation are times of joy and celebration. Unfortunately this has not been the case since all three Baltic States were invaded and occupied by the Soviet Union in 1940. To its credit, our own Government still refuses to recognize the forced incorporation of these three states into the Soviet Union. But this lack of official recognition, along with the diplomatic accreditation by our own country of the representatives of Estonia, Latvia, and Lithuania by themselves, are not enough. We must continue to take every opportunity to call attention to the cynical attitude of the Soviet Union towards these three Baltic States.

Our diplomatic representatives at the United Nations and elsewhere should be prepared to confront the Soviet Union with its acts of aggression against the Baltic States when Soviet spokesmen raise the cry of "imperialism" against our own country. The issue of Baltic independence deserves to be brought up by not only the United Nations, but in other appropriate forums.

The Congress of the United States is already on record regarding this subject. During the 98th Congress, House Concurrent Resolution 416 was adopted, calling for the freedom from Soviet domination of Lithuania, Latvia, and Estonia. In the light of this clear expression of concern by the Congress, our Government should treat the illegal occupation of the Baltic States as a matter of continuing importance.

I hope that the coming year will witness significant progress in the struggle of the people of Lithuania to regain their liberty and independence, and that all the peoples of the Baltic States will some day live in freedom.

I ask unanimous consent that House Concurrent Resolution 416, agreed to by the Senate on October 22, 1966, be printed in the RECORD.

There being no objection, the concurrent resolution (H. Con. Res. 416) was ordered to be printed in the RECORD, as follows:

H. CON. RES. 416

Whereas the subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is an impediment to the promotion of world peace and cooperation; and

Whereas all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, cultural, and religious development; and

Whereas the Baltic peoples of Estonia, Latvia, and Lithuania have been forcibly deprived of these rights by the Government of the Soviet Union; and

Whereas the Government of the Soviet Union, through a program of deportations and resettlement of peoples, continues in its effort to change the ethnic character of the populations of the Baltic States; and

Whereas it has been the firm and consistent policy of the Government of the United States to support the aspirations of Baltic peoples for self-determination and national independence; and

Whereas there exist many historical, cultural, and family ties between the peoples of the Baltic States and the American people: be it

Resolved by the House of Representatives (the Senate concurring), That the House of Representatives of the United States urge the President of the United States—

(a) to direct the attention of world opinion at the United Nations and at other appropriate international forums and by such means as he deems appropriate, to the denial of the rights of self-determination for the peoples of Estonia, Latvia, and Lithuania, and

(b) to bring the force of world opinion to bear on behalf of the restoration of these rights to the Baltic peoples.

EVASION OF ANTITRUST LAWS BY SOFT DRINK INDUSTRY

Mr. HARRIS. Mr. President, during the past year the Coca-Cola Co., and the other big soft drink companies have conducted a lobbying campaign on an unprecedented scale aimed at allowing them to evade the antitrust laws.

On July 15 of last year the Federal Trade Commission issued complaints against Coca-Cola and the six other biggest soft drink companies for violation of the Federal Trade Commission Act. The FTC charged that Coke and the other companies require their franchised bottlers to monopolize the local markets for each brand of soft drink. Since Coca-Cola's contracts with local bottlers restrict the bottlers to limited geographic areas, a grocery or supermarket has only one monopolistic source of supply for bottled Coca-Cola.

As a result of this geographic limitation on competition and the big companies' excessive spending on advertising, the soft drink industry is a shared monopoly, in which the top four companies have 70 percent of the market. Coca-Cola alone has about one third of the market. The FTC says that when all these practices and structure are added up, the consumer pays about 30 percent more than he should everytime he buys a bottle of Coke. That is a 3 cents overcharge on a 10-cent bottle and a $1.5 billion redistribution of income from ordinary Americans to the big soft drink companies.

The Federal Trade Commission has called on Coke and the other companies to stop this kind of bilking of the public. Coca-Cola was not to be so easily challenged however. Even before the FTC complaints were actually issued, the company launched an intense lobbying campaign aimed at the Congress. Simply because of its immense size, Coca-Cola is able to lobby every Senator and Congressman from his home district. Some have suggested that the influence of Coke is more extensive than that of the American Armed Forces. In any case, the company blankets the United States with about 900 local bottlers, more than enough to cover every congressional district.

In early spring Coca-Cola and the other companies mobilized this massive potential political power by directing their bottlers all over the country to bombard local Congressmen and Senators with protests against the FTC's complaint. On May 18, 1971, John S. Knox, Jr., executive director of the Coca-Cola Bottler's Association, wrote a memorandum on this subject to local bottlers throughout the country. Attached to it was a set of sample letters for the bottlers to use in contacting their Congressmen. These samples included such definitive statements as:

My Company is the Coca-Cola Bottling Co., of ———. It is now owned by me and my family, and prior to that was owned by my father, and prior to that was owned by his father. We are the main business in the town of ———. We have a total of ——— employees, including ——— driver-salesmen.

With the blanks filled in, that kind of letter is one thing if it comes from a real small businessman in your home State. But when it is part of a carefully orchestrated lobbying campaign by a billion dollar corporation which reaches into every part of America and most of the world, it is something else entirely. It is a blatant example of the excessive power of big corporations.

This massive lobbying campaign has had its effect. According to staff members at the Federal Trade Commission, the efforts of Coke and the other companies to stir up Congress have made an impact. The FTC has received inquiries from over half the offices on Capitol Hill. Some have contacted the FTC four and five times with complaints from hometown bottlers. Alan Ward, the head of the Commission's Bureau of Competition was quoted last summer as saying, "We have had more letters than I have ever seen." Another FTC staff member reports that over the Christmas adjournment, Congressmen were calling in from their districts to check up on the status of the FTC's complaint before they had to face their local bottlers.

Not content with merely protesting the FTC's effort to enforce the antitrust laws, Coca-Cola and the other companies are also trying to get the antitrust law repealed—just for them. During the last several months, the National Soft Drink Association has circulated on Capitol Hill a draft of a bill to repeal part of the Federal Trade Commission Act for any "trademarked food product." The draft bill includes the appropriate blanks to fill in the date the bill is introduced and the name of the legislator proposing it. At the top of the first page it is kindly pointed out that "House and Senate versions would be identical."

The local bottlers got into this act, too. In a letter to one of our colleagues, one bottler wrote:

In the event that the FTC should rule against our industry, our only hope is that the Congress would enact protective legislation to preserve the franchise system—we are sending a copy of this letter to Mr. Tom Baker, executive vice president of the National Soft Drink Association. We feel sure that Mr. Baker will call on you in the near future to better explain our position. In the meantime we will appreciate your support in this matter.

Following the soft drink companies' intensive lobbying, their bill was finally introduced by a single Congressman on December 13, 1971. Since the Congress reconvened this year, scores of other Congressmen have introduced the same bill.

At first the soft drink industry had some trouble finding a Senate sponsor for their bill. That did not mean they had not been trying. In their search for a Senate sponsor, the industry enlisted the aid of Mr. Earl Kintner, a former Chairman of the Federal Trade Commission under President Eisenhower and now the member of a Washington law firm. Mr. Kintner joined with Tom Baker of the National Soft Drink Association in presenting Senators with the draft of the industry's bill. In fact, on January 22, 1972, in an interview with Associated Press carried in the Washington Post, Mr. Kintner admitted he is lobbying for an exemption from the antitrust laws for the soft drink industry. He said in that interview:

We are indeed trying to protect their territorial franchises by trying to secure legislation to protect their right to sell their products in an assigned territory in competition with other bottled products.

Since Mr. Kintner has been carrying the ball for the soft drink companies, the industry's bill has acquired over 30 cosponsors in the Senate and has been referred to the Judiciary Committee.

I ask unanimous consent to have printed in the RECORD the Federal Trade Commission's complaint against the Coca-Cola Co. This complaint is similar to the Commission's complaint against the other big soft drink companies and describes in some detail the legal and economic arguments for encouraging free enterprise in the soft drink industry.

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

United States of America, before Federal Trade Commission, Docket No. 8855

IN THE MATTER OF THE COCA-COLA CO., A CORPORATION; COCA-COLA BOTTLING CO. (THOMAS), INC., A CORPORATION; COCA-COLA BOTTLING WORKS (THOMAS), INC., A CORPORATION; AND COCA-COLA BOTTLING WORKS 3D, INC., A CORPORATION

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties named in the caption hereof, each of which is hereby made and is sometimes hereinafter referred to as respondent(s), have violated the provisions of Section 5 of the Federal Trade Act Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

Paragraph one: For the purposes of this complaint, the following definitions shall apply:

(a) Bottler—any individual, partnership, corporation, association, or other business or legal entity which purchases respondents' concentrate for use in the manufacture and sale, primarily at wholesale, of respondents' pre-mix or post-mix syrups or soft drink products, or who purchases respondents' pre-mix or post-mix syrups or soft drink products for resale, primarily at wholesale;

(b) Central warehousing—a method of distribution in which soft drink products are received at a storage facility and either resold or delivered to retail outlets or wholesalers;

(c) Concentrate—the basic soft drink ingredient sold to bottlers by respondent, usually as a syrup, and which is combined with water and other ingredients for packaging in bottles or cans for sale and distribution as soft drink products, or is used to make post-mix and pre-mix syrups;

(d) Consignment—a form of distribution in which the consignor retains title, dominion, bears all risks of loss and delivers his products to the consignee who is indistinguishable from a salesman or agent;

(e) Place of business—the location of any facilities available to a bottler without regard to customers or geographic area for production or service in the conduct of business operations, to include but not limited to business headquarters, branch sales offices, warehouses and garages, but specifically excluding the plant at which a bottler combines concentrate with water, and possibly other ingredients, for the packaging of soft drink products;

(f) Post-mix syrup—soft drink concentrate which is used in fountain dispensing or vending equipment and is usually sold by bottlers in steel tanks. A typical post-mix system draws one ounce of syrup from a tank, usually having about a five-gallon capacity, and mixes it at the point of sale with five ounces of carbonated water to produce approximately 600 six-ounce finished soft drink servings per tank;

(g) Pre-mix syrup—although essentially the same syrup as post-mix, a pre-mix system differs from a post-mix system in that it draws from a tank, usually having about a five-gallon capacity, a finished serving of soft drink product containing both syrup and carbonated water, "pre-mixed," to produce 100 six-ounce soft drink servings per tank; and

(h) Soft drink products—nonalcoholic beverages and colas, carbonated and uncarbonated, flavored and non-flavored, sold in bottles and cans, or through pre-mix and post-mix systems or the like.

Paragraph two: Respondent The Coca-Cola Company, sometimes hereinafter referred to as Coca-Cola, is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Delaware. It maintains its office and principal place of business at 310 North Avenue, N.W. Atlanta, Georgia 30313. The Coca-Cola Company and subsidiaries had net sales of $1,185,808,864 (approximately 45% of which is accountable to foreign operations), and assets of $802,100,548 in 1968. In 1968, Coca-Cola made sales to over 900 domestic bottlers located throughout the United States.

Respondent Coca-Cola Bottling Co. (Thomas), Inc., sometimes hereinafter referred to as Thomas Company, is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Delaware. It maintains its office and principal place of business at 1600 American Bank Building, Chattanooga, Tennessee 37402. In 1968, Thomas Company made sales to over 196 bottlers located principally in Indiana, Maryland, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia.

Respondent Coca-Cola Bottling Works (Thomas), Inc., sometimes hereinafter referred to as Thomas Works, is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Delaware. It maintains its office and principal place of business at 1600 American Bank Building, Chattanooga, Tennessee 37402. In 1968, Thomas Works made sales to over 65 bottlers located principally in the States of Kentucky and Tennessee.

Respondent Coca-Cola Bottling Works 3rd, Inc., sometimes hereinafter referred to as Works 3rd, is a corporation organized, existing and conducting its business under and pursuant to the laws of the State of Delaware. It maintains its office and principal place of business at 1600 American Bank Building, Chattanooga, Tennessee 37402. In 1968, Works 3rd made sales to over 25 bottlers located principally in the States of Pennsylvania and New Jersey.

Paragraph Three: Respondent Coca-Cola, through its Coca-Cola U.S.A. division, is engaged principally in the manufacture and sale of soft drink products and concentrate which it sells to over 900 bottlers who purchase the concentrate under a license to produce and sell soft drink products under such trade names of respondent Coca-Cola as "Coca-Cola" ("Coke"), "TAB," "Sprite," 'Fresca," "Fanta" and "Simba." Bottlers combine the concentrate with water and other ingredients and package the mixture in bottles and cans for resale as soft drink products to retailers. In addition to manufacturing and selling soft drink products and concentrate to its bottlers, Coca-Cola operates bottling plants in 27 areas of the United States and sells soft drink products to retailers.

Respondent Thomas Company has operated for many years as a parent bottler under an agreement with Coca-Cola by which Thomas Company was granted certain rights from Coca-Cola with respect to the sale of Coca-Cola soft drink products in certain designated territories. Thomas Company is engaged principally in the purchase of concentrate from Coca-Cola for resale by Thomas Company to numerous bottlers which have obtained licenses from it to bottle and resell certain specified tradename soft drink products of Cocoa-Cola.

Respondent Thomas Works has operated for many years as a parent bottler under an agreement with Coca-Cola by which Thomas Works was granted certain rights from Coca-Cola with respect to the sale of Coca-Cola soft drink products in certain designated territories. Thomas Works is engaged principally in the purchase of concentrate from Coca-Cola for resale by Thomas Company to numerous bottlers which have obtained licenses from it to bottle and resell certain specified tradename soft drink products of Coca-Cola.

Respondent Works 3rd has operated for many years as a parent bottler under an agreement with Coca-Cola by which Works 3rd was granted certain rights from Coca-Cola with respect to the sale of Coca-Cola soft drink products in certain designated territories. Works 3rd is engaged principally in the purchase of concentrate from Coca-Cola for resale by Works 3rd to numerous bottlers which have obtained licenses from it to bottle and resell certain specified trade name soft drink products of Coca-Cola.

Paragraph Four: Respondents are engaged in "commerce" within the meaning of the Federal Trade Commission Act (15 U.S.C. 44) in that a continuous flow of interstate commerce in concentrate and soft drink products exists between their headquarters and production facilities and the numerous bottlers located throughout the United States which purchase their products.

Paragraph Five: In the course and conduct of their businesses, respondents, except to the extent limited by the acts, practices and methods of competition hereinafter al-

leged, have been and are now in competition with other corporations, firms, partnerships and persons engaged in the manufacture, processing, distribution and sale of concentrate and soft drink products in commerce.

Paragraph Six: Respondents have hindered, frustrated, lessened and eliminated competition in the distribution and sale of pre-mix and post-mix syrups and soft drink products sold under their trade names by restricting their bottlers from selling outside of a designated geographical area. This restriction is set forth in the agreement between respondents and their bottlers.

A typical license between respondent Coca-Cola and its bottlers provides that as to a specifically described geographic territory:

". . . Company agrees to furnish to Bottler, and only to furnish for the territory herein referred to, sufficient syrup for bottling purposes to meet the requirements of bottler in the territory herein described.

* * * * *

". . . Company does hereby select bottler as its sole and exclusive customer and licensee for the purpose of bottling the Bottlers' bottle syrup, Coca-Cola, in the territory described.

"[Bottler agrees] . . . not to use trademarks Coca-Cola or Coke, nor bottle nor vend said product except in the territory herein referred to. This limitation, however, is not to prevent Bottler from acquiring similar rights for other territory.

* * * * *

"[Bottler agrees] . . . not to use said distinctive [Coca-Cola] bottle for any other purpose than the bottling of Coca-Cola, and not in any territory except as herein referred to."

A typical license between respondents Coca-Cola Bottling Co. (Thomas), Inc. and Coca-Cola Bottling Works (Thomas), Inc. and the bottlers of each provides in part that licensor, wishing to assign to the bottler certain rights as to a specifically described geographic territory which has been received by approved transfer from The Coca-Cola Company, agrees:

". . . to obtain and furnish to party of the second part [bottler] and only to obtain, for the territory herein referred to, sufficient syrup for bottling purposes to meet the requirements of party of the second part in the territory herein described, provided party of the first [licensor] can obtain the delivery to it of such syrup from The Coca-Cola Company under the contract existing between party of the first part and The Coca-Cola Company.

* * * * *

"[To select bottler] . . . as its sole and exclusive customer and licensee for the purpose of bottling Bottlers' Coca-Cola syrup, and using the name Coca-Cola thereon in the territory herein described."

In consideration therefor, bottler agrees:

". . . Not to use the name Coca-Cola nor bottle nor vend said product except in the territory herein referred to without the written consent of party of the first part and The Coca-Cola Company. This limitation, however, is not to prevent party to the second part from obtaining such rights from parties authorized to use the name Coca-Cola and to bottle and vend said product.

* * * * *

". . . To order, for the purpose of bottling Coca-Cola, the distinctive bottle, and none other, adopted or that may be adopted by party of the first part; to use said distinctive bottle and none other, in bottling Coca-Cola, and not to use said distinctive bottle for any other purpose than the bottling of Coca-Cola, and not in any territory except as herein referred to without the written consent of party to the first part and The Coca-Cola Company."

The license restrictions between Coca-Cola Bottling Works 3rd, Inc. and its bottlers are substantially similar to that of Coca-Cola, Coca-Cola Bottling Co. (Thomas), Inc. and Coca-Cola Bottling Works (Thomas) Inc. Coca-Cola is a party to the agreement between Coca-Cola Bottling Co. (Thomas), Inc., Coca-Cola Bottling Works, Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc. and their bottlers.

Paragraph Seven: The aforesaid agreements used by respondents have had, and may continue to have, the following effects:

(a) Competition between and among respondents' bottlers in the distribution and sale of "Coca-Cola" ("Coke"), "TAB," "Sprite," "Fresca," "Fanta" and "Simba" brands of soft drink products has been eliminated;

(b) Competition between and among Coca-Cola's bottling operations and its bottlers in the distribution and sale of Coca-Cola soft drink products at the wholesale level has been eliminated;

(c) Competition between and among Coca-Cola's bottling operations and bottlers licensed by Coca-Cola Bottling Co. (Thomas), Inc., Coca-Cola Bottling Works (Thomas), Inc., and Coca-Cola Bottling Works 3rd, Inc., in the sale and distribution of Coca-Cola's soft drink products at the wholesale level has been eliminated.

(d) Competition between and among bottlers licensed by Coca-Cola and bottlers licensed by Coca-Cola Bottling Co. (Thomas), Inc., Coca-Cola Bottling Works (Thomas), Inc., and Coca-Cola Bottling Works 3rd, Inc., in the sale and distribution of Coca-Cola soft drink products at the wholesale level has been eliminated;

(e) Innumerable retailers and other customers have been deprived of the right to purchase "Coca-Cola" ("Coke"), "TAB," "Sprite," "Fresca," "Fanta" and "Simba" brands of soft drink products from the bottler of their choice at competitive prices; and

(f) Consumers of "Coca-Cola" ("Coke"), "TAB," "Sprite," "Fresca," "Fanta," and "Simba" brands of soft drink products have been deprived of the opportunity of obtaining such products in an unrestricted market and at competitive prices.

Paragraph Eight: Respondents' contracts, agreements, acts, practices and methods of competition aforesaid have had, and may continue to have, the effect of lessening competition in the advertising, merchandising, distribution, offering for sale and sale of pre-mix and post-mix syrups and soft drink products; deprive, and may continue to deprive, the public of the benefits of competition in the purchase of pre-mix, post-mix and soft drink products; and constitute unfair methods of competition and unfair acts or practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Wherefore, the premises considered, the Federal Trade Commission on this 15th day of July, 1971, issues its complaint against said respondents.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the 14th day of September, A.D. 1971, at 10 a.m., o'clock is hereby fixed as the time and Federal Trade Commission Offices, 1101 Building, 11th & Penna. Avenue, N.W., Washington, D.C. as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the hearing examiner, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to respondents might be inadequate fully to protect the consuming public or the competitive conditions of the soft drink industry, the Commission may order such other relief as it finds necessary or appropriate, or such relief as may be supported by the record to protect the competitive viability of small bottlers.

ORDER

I

It is ordered that The Coca-Cola Company; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc., and the officers, agents, representatives, employees, successors and assigns of each respondent, directly or through any corporate or other device, in connection with the advertising, merchandising, offering for sale and sale or distribution of soft drink products, concentrate, pre-mix syrup or post-mix syrup, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Attempting to enter into, entering into, continuing, maintaining, enforcing or renewing any contract, combination, understanding or agreement, including consignment agreement, to: (a) limit, allocate or restrict the territory in which, or the persons or class or persons (including but not limited to central warehousing customers) to whom soft drink products or pre-mix or post-mix syrups may be sold by bottlers; (b) restrict the location of a bottler's place of business; (c) provide for an allocation of fees between one bottler and other bottlers for sales in any particular geographical area, or to any person, or class of persons (including but not limited to central warehousing customers); or (d) engage in any act, practice or conduct having like or similar purpose or effect.

2. Imposing or attempting to impose any limitations or restrictions respecting: (a) the territories in which, or the persons or class of persons (including but not limited

to central warehousing customers) to whom bottlers may sell pre-mix or post-mix syrups, or soft drink products; (b) the location of the bottler's place of business; (c) the allocation of fees between one bottler and other bottlers for sales in any particular geographical area, or to any person, or class of persons (including but not limited to central warehousing customers); or (d) engaging in any act, practice or conduct having like or similar purpose or effect.

3. Refusing to sell, threatening to refuse to sell or impairing sales to any bottler anything used in the manufacture and sale of soft drink products, including but not limited to, concentrate, pre-mix concentrate, post-mix concentrate, or the container in which they are sold; or in any way penalizing any bottler because of the: (a) territory in which, or the persons or class of persons (including but not limited to central warehousing customers) to whom bottlers sell soft drink products or pre-mix or post-mix syrups; (b) the location of the bottler's place of business; or (c) the refusal of the bottler to allocate fees between himself and other bottlers for sales to any person, or class of persons (including but not limited to central warehousing customers), or in any geographical area.

4. Attempting to enter into, entering into, continuing, maintaining, enforcing or renewing any contract, combination, understanding or agreement, or imposing or attempting to impose any requirement, that any bottler, in any manner, inform it of the territories in which, or the persons or class of persons (including but not limited to central warehousing customers) to whom the bottler sells, or attempts to sell, soft drink products, or pre-mix or post-mix syrups.

II

It is further ordered that respondents, The Coca-Cola Company, Coca-Cola Bottling Co. (Thomas), Inc., Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc., shall within sixty (60) days after service upon them of this order serve upon all bottlers of their soft drink products a copy of this order along with a copy of the attached letter on official company stationery and signed by the president of each respondent.

III

It is further ordered that the respondents, the Coca-Cola Company, Coca-Cola Bottling Co. (Thomas), Inc., Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc., shall forthwith distribute a copy of this order to each of their subsidiaries and operating divisions.

IV

It is further ordered that respondents, The Coca-Cola Company, Coca-Cola Bottling Co. (Thomas), Inc., Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc., notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of the order.

It is further ordered that each respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this 15th day of July, A.D., 1971.

By the Commission.

CHARLES A. TOBIN,
Secretary.

(Official Stationery)

(Date)

DEAR:

The Federal Trade Commission has entered an order against The Coca-Cola Company; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc. which among other things prohibits them from limiting, allocating or restricting the territory, persons or class of persons to whom our bottlers may sell. In addition, the order prohibits The Coca-Cola Company; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc. from restricting the location of the bottler's place of business or requiring an allocation of fees between one bottler and other bottlers for sales to any particular customers in any geographical area.

The Coca-Cola Company; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc. are also prohibited from refusing to sell or threatening to refuse to sell to any bottler anything used in the manufacture and sale of soft drink products. Furthermore, The Coca-Cola Company; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc. and Coca-Cola Bottling Works 3rd, Inc. are prohibited from requiring or requesting any bottler to, in any manner, inform them of the territories in which, or the person or class of persons (including but not limited to central warehousing customers) to whom the bottler sells, or attempts to sell, soft drink products, or pre-mix or post-mix syrups. A copy of the order is attached.

The Federal Trade Commission has expressed its intention to determine the effect upon the marketing of soft drink products caused by the attached order by ascertaining at some future date the extent to which sales of soft drink products by bottlers extend to customers outside of previously established, but now prohibited, territorial restrictions.

Very truly yours,

TRIAL BRIEF FILED PRIOR TO INITIAL PREHEARING CONFERENCE

To: Honorable Andrew C. Goodhope, Hearing Examiner.

I. STATEMENT OF THE CASE

A. Violation charged by the complaint

A violation of the provisions of Section 5 of the Federal Trade Commission Act is charged by the complaint in this matter.[1] Having reason to believe that the respondents have violated the Act in the manner charged, and that a proceeding in respect thereof would be in the public interest, the Commission issued its complaint in this matter on July 15, 1971. Alleged in essence is that the territorial restrictions imposed by respondents on the independent business firms licensed by it to bottle and/or sell Coke products cause an unlawful anticompetitive effect in the marketplace. The complaint charges, and complaint counsel will prove, that such contracts, agreements, acts, practices and methods of competition of the respondents, which restrict these independent bottlers from selling outside a designated geographical area, have had and may continue to:

(1) eliminate competition between and among these independent bottlers in the marketing of Coke brands,

(2) eliminate competition between and among these independent bottlers and between and among respondents' bottling operations in the marketing of Coke brands,

(3) deprive innumerable retailers and other customers of the right to purchase Coke from Coke bottlers of their choice at competitive prices,

(4) deprive consumers of the opportunity of obtaining Coke soft drinks in an unrestricted market and at competitive prices.

Consequently, an unfair method of competition and unfair act or practice, in commerce, in violation of Section 5 of the Federal Trade Commission Act exists in these matters.

B. Answer to the Charge by Respondents

In answer to the complaint, respondents, by separate but substantially similar responses, admit in essence the declaratory, statements as to their being in competition in commerce, and the existence of territorial restrictions and the consequent methods of doing business as set forth in the complaint. Unchallenged in their answers is the complaint assertion that competition is eliminated between and among those independent firms which bottle and/or selling the same Coca-Cola soft drink brands, also at wholesale and retail. Denied are the allegations drawn from those declaratory statements which constitute the basis for the violation charged. Specifically and summarly, the denials and assertions made in respondents' answers can be stated thus:

(1) The Federal Trade Commission has no jurisdiction or authority to modify the judgment of the District Court of Delaware which declared the territorial restrictions to be ancillary to the main purpose of a lawful contract and therefore not illegal (Coke Answer at 4–5; Thomas Answer at 5–6; Replied to hereinafter at VI–1 and V–6, *infra*).

(2) Nonjoinder of indispensible parties, *i.e.*, respondents' bottlers, requires dismissal of the complaint. (Coke Answer at 5; Thomas Answer at 7–8; Replied to hereinafter at VI–2, *infra*.)

(3) This action to the extent that it seeks to modify respondents' contracts is a penalty or forfeiture and is barred by the Statute of Limitations, 28 U.S.C. § 2462. (Coke Answer at 5–6, Thomas Answer at 8; Replied to hereinafter at VI–3, *infra*.)

(4) If the Commission is successful in its actions, respondents will be subject to inconsistent judgments because of the existing District Court of Delaware decree and, thus, respondents' rights to due process of law are violated (Coke Answer at 6–7; Thomas Answer at 8–9; Replied to hereinafter at VI–6, *infra*.)

(5) The result of successful Commission action here would be unfair and anticompetitive (Coke Answer at 6–7; Thomas Answer at par. 8, page 6 and 8–9; Replied to hereinafter at V–4–12, *infra*.)

(6) There is no public interest in this proceeding (Coke Answer at 7; Thomas Answer at 10; Replied to hereinafter at VI–8, *infra*.)

II. STATEMENT OF THE FACTS

The complaint charges respondents with violating Section 5 of the Federal Trade Commission Act through the imposition of territorial restrictions on its bottlers. Such imposition is admitted by the respondents. Respondent Coke has operated under a territorial restriction system since the 1890's.

Respondent Coke had consolidated net sales of $1,185,808,864 (approximately 33% of which is accountable to foreign operations) and consolidated assets of $802,100,548 in 1968. It sold syrup or concentrate to approximately 900 licensed bottlers located throughout the United States. Through its Coca-Cola U.S.A. division respondent Coke is engaged principally in the manufacture and sale of syrup and concentrates under such trade names as "Coca-Cola," "Coke," "TAB," "Sprite," "Fresca," "Fanta" and 'Sim-

[1] Two answers to the complaint have been filed in this matter; one by the respondent The Coca-Cola Company (hereinafter referred to as Coke), and another by respondents Coca-Cola Bottling Co. (Thomas), Inc., Coca-Cola Bottling Works (Thomas), Inc., and Coca-Cola Bottling Works 3rd, Inc. (hereinafter collectively referred to as Thomas).

ba." Also, Coke has subsidiaries which operate bottling plants in 26 cities of the United States and sell soft drink products to retailers in those areas.

Respondent Coke has contractual relationships with the other respondents herein named, Coca-Cola Bottling Co. (Thomas), Inc. and Coca-Cola Bottling Works (Thomas), Inc., whereby these companies operate as parent bottlers, purchasing bottlers' syrup and B–X syrup from Coke for resale to the approximately 900 bottlers of Coke products. Coca-Cola Bottling Works 3rd, Inc., also a respondent hereto, operates as a parent bottler. It, however, operates under a parent contract with Coca-Cola Bottling Co. (Thomas) rather than with Coke. As of June 1968 Thomas had contracts with 122 first line bottlers in Alabama, Delaware, Indiana, Maryland, Mississippi New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia. These bottlers had subcontracts with 45 bottlers located in Indiana, Illinois, Maryland, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia; Thomas Works had contracts with 38 first line bottlers, located in Alabama, Georgia, Kentucky and Tennessee and which had subcontracts with 13 bottlers located in Alabama and Kentucky; Works 3rd had contracts with five first line bottlers in New Jersey and Pennsylvania.

Respondents' bottlers purchase extract or syrup from the respondents, mix the syrup and package the resulting mixtures for distribution to retailers. The agreements between the bottlers and respondents state that the bottlers will confine their sales to an assigned territory, the metes and bounds of which are specified in the agreements.

In recent years sales of canned soft drinks have become significant. Because many bottlers do not have sufficient resources to finance a canning line, they obtain canned soft drink products from Coke, from contract canners, from other bottlers which have canning lines or from canning cooperatives. Canned soft drink products are subject to the same territorial restrictions as are bottled soft drinks.

When it is necessary for bottlers to have canned soft drinks manufactured for them by others, Coke requires its bottlers to enter into agency agreements with the party doing the canning in which the bottler is authorized by Coke to appoint a canner to make canned Coke products. Coke bills the bottler for the syrup used by the canner and the canner agrees that he will not acquire title to the canned products.

An exception to this pattern of territorial restrictions occurs in the instance of postmix syrup which is distributed through 3,600 wholesalers without restriction as to where the postmix syrup may be sold. In contrast to postmix which is freely sold, premix syrup (B–X syrup) is sold by Coke bottlers subject to the same restrictions as are canned and bottled soft drinks.

III. THE VIOLATION CHARGED CONSTITUTES A PER SE VIOLATION

A. An unlawful vertical territorial restriction

Violations of the Sherman Act are also violations of Section 5 of the Federal Trade Commission Act. *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 693 (1948). Territorial restrictions of the same nature as those challenged in this proceeding have been declared unlawful *per se* under the Sherman Act. *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365, 376 (1967). There, the Supreme Court held that, "where a manufacturer *sells* products to its distributor subject to territorial restrictions upon resale, a *per se* violation of the Sherman Act results." Further held was that only under certain restrictive conditions could a manufacturer confine its distributors to specified territories, and then only if "it retains all indicia of ownership, including title, dominion and risk and so long as the dealings in question are indistinguishable in function from agents or salesmen. . . ." 388 U.S. at 381.

As to this matter, respondent makes no attempt to retain title, dominion and risk of loss. Moreover, its bottlers are clearly independent businessmen, not agents. In *Schwinn*, the Court also suggested an exception to the *per se* illegality of territorial restrictions as to new entrants and failing companies. 388 U.S. at 374. However, neither exception is pertinent here as this respondent is neither a new company nor a failing company.

Several lower court decisions, with but one exception, *Tripoli Co.* v. *Wella Corp.*, 425 F.2d 932 (3rd Cir. 1970), have construed *Schwinn* to hold that territorial restrictions are *per se* illegal. *Janel Sales Corp.* v. *Lanvin Perfumes, Inc.*, 396 F.2d 398, 406 (2nd Cir. 1968); *cert. denied*, 393 U.S. 938 (1968); *Interphoto Corp.* v. *Minolta Corp.*, 295 F. Supp. 711, 720, affirming the temporary restraining order requiring shipments of products outside of the area in which the dealer had been restricted, 417 F.2d 621 (2d Cir. 1969); *Sherman* v. *Weber Dental Mfg.*, 285 F. Supp. 114, 116 (E.D. Pa. 1968); *Chapiewsky* v. *G. Heilman Brewing Co.*, 1969 Trade Cases ¶ 72,712 (W.D. Wis. 1969); *Fagan* v. *Sunbeam Lighting Co., Inc., Eastern*, 303 F. Supp. 356, 361 (S.D. Ill. 1969); *United States* v. *Glaxo Group Ltd.*, 302 F. Supp. 1, 8–11 (D.D.C. 1969); (further proceeding) 5 CCH Trade Reg. Rep. ¶ 73,190 (D.D.C. 1970). A good illustration of how the courts have applied the *Schwinn* decision is *United States* v. *Glaxo Group, Ltd.*, 302 F. Supp. 1 (D.D.C. 1969). There a licensor sold a drug product in bulk form to licensees and the licensees agreed not to resell the product in bulk form without receiving the licensor's permission. 302 F. Supp. at 5. The licensees were prohibited from selling the product in any form but a dosage form. The Antitrust Division moved for a partial summary judgment, arguing that the bulk sale restriction was *per se* illegal under *Schwinn*. The court found that whether the product is "finished would appear to be of little competitive, and of no legal, consequence; whether a sale is involved is, under *Schwinn*, the threshold question." 302 F. Supp. at 9 n. 40. *Cf., Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436, 455–457 (1940). The ancillary restraint doctrine, in which the lawfulness of a restraint is tested by the reasonableness of the restraint as measured by the lawful main purpose, was as a result of *Schwinn*, held inapplicable as to such territorial restrictions. Hence, the bulk sale restriction was held a *per se* violation of Section 1 of the Sherman Act. A partial summary judgment was granted. 302 F. Supp. 1, 9–11 (D.D.C. 1969). Furthermore, in a related proceeding in the same case a different judge also held that the bulk sale restriction was a *per se* violation of Section 1 of the Sherman Act. 5 CCH Trade Reg. Rep. ¶ 73,190 (D.D.C. 1970).

Thus, the lower courts have interpreted *Schwinn* as finding that territorial restrictions constitute a *per se* violation of Section 1 of the Sherman Act. In addition, the holding in *Glaxo* demonstrates that the courts will not treat the sale of raw or unfinished materials any differently than the sale of manufactured products. Consequently, the fact that *Schwinn* involved a restriction on the sale of a finished product, *i.e.*, bicycles, and this case involves the sale of an intermediate product, a concentrate which is processed into a finished product, *i.e.*, soft drinks, upon which the restriction is placed, does not affect the legal consequence. In both instances, such vertical restrictions are illegal *per se*.

A limited exception to *Schwinn* was announced in *Tripoli* v. *Wella*, 425 F.2d 932 (3rd Cir. 1970), where the Third Circuit upheld the lawfulness of Wella's policy of restricting the resale of its products, many of which could cause such dangerous effects as blindness, to state-licensed barbers and beauticians. Testing the restriction by the ancillary restraint doctrine, the court concluded that "the licensed user restraint was reasonably ancillary to Wella's lawful purpose of protecting the public from injury and itself from liability." 425 F.2d 932 at 939. Clearly, *Wella* is not relevant here because customer restrictions on the sale of a product which is potentially dangerous to inexperienced purchasers are not involved in this matter. Indeed, few food products exist which are less dangerous than soft drinks. Rather, involved here is a restriction on the area in which independent bottlers can resell their products.

Significantly, the Commission refused an advisory opinion on, among other things, the lawfulness of a proposed distributor agreement which required that distributors prevent its customers from reselling manufacturer's products. 3 CCH Trade Reg. Rep. ¶ 18,730; (Advisory Opinion No. 333). In so doing, the Commission stated that it would not "approve any standards whereby a wholesaler's eligibility for added discounts is contingent upon the imposition of specified restrictions upon his customers by him." *Supra* at ¶ 18,730. Furthermore, *Tripoli* is also inconsistent with *Glaxo*. There the defendant argued that its bulk sale restriction had the purpose of insuring uniform standards of health and safety in the preparation of the final production dosage form. The court held that this argument was inapposite since all restraints on alienation were illegal under the *Schwinn* doctrine. 302 F. Supp. 1, 9 (D.D.C. 1969), *Cf. Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436. 450 (1940).

In *Ethyl, supra*, the Supreme Court condemned under the Sherman Act a licensing program under which the patentee sold a gasoline additive to refiners and prohibited them from selling gasoline containing the product to anyone except those persons designated by the patentee; the licenses also provided for other restrictions on the use of the additive and the manner in which gasoline containing the additive was to be sold. The Court said, "It is not denied, and could not well be, that if appellant's comprehensive control of the market in the distribution of the lead-treated gasoline . . . had been acquired wholly without the aid of the patents, but wholly by the contracts with refiners and jobbers, such control would involve a violation of the Sherman Act." 309 U.S. at 455.

Another case which relied upon *Schwinn* is *Hensley Equipment Co.* v. *Esco Corp.*, 383 F. 2d 252 (5th Cir. 1967), a patent infringement action and a misuse counterclaim. Involved was a grant of a patent license to Caterpillar to manufacture excavating teeth for power shovel buckets in which Caterpillar had agreed that it would restrict the sale of parts made pursuant to the license to its own use and that of its dealers. This restriction on the parts was held to constitute a *per se* violation of Section 1 of the Sherman Act, since the patent protection was exhausted by the first sale by the patentee. The court concluded that it was a *per se* violation of the Sherman Act for a manufacturer to restrict the persons to whom an article might be sold once he parted with dominion. 383 F. 2d at 263.

B. An Unlawful Horizontal Market Division

An unlawful horizontal market division exists between respondent and its bottlers which also is *per se* illegal, regardless of the unlawful vertical market division. The market division allegation in this matter is based upon the fact that respondent's bottler agreements provide that these independent bottlers cannot sell outside of the territory assigned to them by respondent. However, such independent bottlers in the areas in which

respondent has bottling operations are potential competitors of respondent's wholly-owned bottling operations. This potential competition is snuffed out by the territorial restriction provisions in the bottlers' contracts with respondent. By agreeing that they will not compete outside of the territories allocated to them by respondent, the independent bottlers have contracted that they would not compete with respondent's wholly-owned bottling operations. Thus, the bottler contracts constitute a division of markets between competitors, *i.e.*, between the independent bottlers and respondent's wholly-owned bottling operations.

Furthermore, Coke has agreements with Thomas which provide that Thomas sells Coca-Cola "concentrate", *i.e.*, the base which is mixed with sugar and water to make soft drinks, to approximately 223 bottlers of Coke products. Unlike Coke, Thomas does not have bottling operations of its own. Nevertheless, Thomas' bottler contracts are similar to Coke bottler contracts in that they also confine the areas in which Thomas bottlers may compete. Coke consents to each of Thomas' bottler agreements specifically. Consequently, as a result of Coke being a party to the bottler agreements, Coke has agreed with Thomas and Thomas' bottlers that bottlers will not compete with either Coke's wholly-owned bottling operations. Thus, these agreements also constitute horizontal market division agreements as to Thomas as well as to Coke. In view of the substantial sales of respondent's products, this proceeding constitutes a most significant market division case, regardless of its not to be slighted vertical aspects.

Market division agreements between competitors have been found to be illegal *per se* since *United States* v. *Addyston Pipe & Steel Co.*, 175 U.S. 211 (1899). This principle was recently reaffirmed in *Burke* v. *Ford*, 389 U.S. 320 (1967), and *United States* v. *Sealy, Inc.*, 388 U.S. 350 (1967). *See, United States* v. *National Lead Co.*, 332 U.S. 319 (1947), *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158 (1964).

The *Attorney General's Committee to Study the Antitrust Laws* has stated that agreements among competitors to divide markets have no purpose other than the elimination of competition. *Attorney General's Committee to Study the Antitrust Laws* 26 (1955). As the Supreme Court noted in *Burke* v. *Ford*: "When competition is reduced, prices increase and unit sales decrease." 389 U.S. 320, 322 (1967). Thus, the effect of market allocation agreements is similar to price-fixing agreements in that both types of agreements affect price and both are considered *per se* illegal under the antitrust laws.

The recent decision of *United States* v. *Topco Associates, Inc.*, 1970 Trade Cases ¶ 73,338 (N.D. Ill. 1970), *petition for cert. filed*, 39 U.S.L.W. 3362 (Feb. 26, 1971), raises the question of whether all horizontal market division agreements are *per se* illegal. *Topco* involved a member-owned marketing organization which is a common purchasing agent of private label food and non-food products for 25 medium-sized supermarkets. Challenged were the provisions of the membership agreements which specified the areas in which Topco members could sell Topco-label products. Also in connection were the provisions of the agreements which required members to obtain permission to expand the sales of Topco products into another member's territory. The court held that the *per se* illegality of market division agreements did not apply to this arrangement and applied a rule of reason approach to it. It held that the territorial restrictions enabled Topco members "to compete more effectively with national chains whose private label brands are sold exclusively through their own outlets", *supra at* ¶ 89,562, and were therefore lawful. The Antitrust Division is seeking reversal of the lower court opinion. The Solicitor General's jurisdiction statement urged that the Supreme Court take jurisdiction over this case and find the restrictions to be *per se* illegal. The Supreme Court has noted probable jurisdiction. 39 U.S.L.W. 3455 (April 20, 1971).

However, even if the lower court's decision in *Topco* is affirmed by the Supreme Court, it would not affect this proceeding. The rationale of *Topco* is that restrictions imposed by medium-sized firms are lawful as they permit these firms to compete more effectively with large national firms. As is apparent the facts of the soft drink proceeding are significantly different from those in *Topco*. This proceeding involves the largest firms in the soft drink industry. Thus, even if *Topco* is not reversed by the Supreme Court, its holding would be inapplicable to this proceeding. The courts have rejected countervailing power arguments before. *See, Bethlehem Steel Co.* v. *United States*, 168 F. Supp. 576, 618 (S.D.N.Y. 1958).

Respondents assert that the territorial restriction system is an effective method of marketing its products. A similar argument was made in *Schwinn*. In rejecting this argument and instead finding illegal *per se* Schwinn's restriction on the areas in which its retailers and wholesalers could sell. the Court observed:

"But this argument, appealing as it is, is not enough to avoid the Sherman Act proscription, because in a sense, every restrictive practice is designed to augment the profit and competitive position of its participants. Price fixing does so, for example, and so may a well-calculated division of territories." (388 U.S. at 375).

Another similar argument was rejected in *United States* v. *Masonite*, 316 U.S. 265 (1942). Although a price-fixing case, the *Attorney General's Committee to Study the Antitrust Laws* points out the similarity of the two practices. (*See*, discussion at III–5, *supra*). The court in *Masonite* stated:

"Since there was price-fixing, the fact that there were business reasons which made the arrangements desirable to the appellees, the fact that the effect of the combination may have been to increase the distribution of hardboard, without increase of price to the consumer, or even to promote competition between dealers, or the fact that from other points of view the arrangements might be deemed to have desirable consequences would be no more a legal justification for price-fixing than were the 'competitive evils' in the Socony-Vacuum case." 316 U.S. at 276.

Parties to market division agreements have also argued that such an agreement is necessary to protect the members of the agreement from ruinous competition. In 1898 this argument was first rejected in *Addyston Pipe & Steel*, 85 Fed. 271, 219 (1898), *aff'd.*, 175 U.S. 211 (1899) there the court held that: "however great the necessity for curbing themselves by joint agreement from committing financial suicide by ill-advised competition, [the agreement] was void at common law. . . ." Thus, the Court has emphasized that with respect to vertical territorial restrictions and horizontal market division, the only relevant consideration in determining their lawfulness is to ascertain whether the restrictions exist. If they do exist, then they are declared unlawful without any inquiry into their competitive effect.

C. Unjustifiable as a lawful incident of trademark licensing

No Inconsistency Exists Between Valid Trademark Licensing and Trademark Licensees of the Same Licensor Being Free to Sell in Each Other's Territories.

Trademark licensors cannot lawfully restrict the areas in which their trademark licensees can compete. Trademark licensors are not exempted from the antitrust laws and any territorial restrictions imposed under the guise of trademark law are unlawful. By permitting the use of a trademark by a "related company" the Lanham Act permits trademark licensing. 15 U.S.C. § 1055. The Lanham Act defines a related company as "any person who legitimately controls or is controlled . . . in respect to the nature and quality of the goods and services upon which the mark is used." 15 U.S.C § 1127.

When the Lanham Act was being considered the Antitrust Division voiced objections to the bill on the ground that it would be used as a basis for violating the antitrust laws. *Phi Delta Theta Fraternity* v. *J. A. Buchroeder & Co.*, 251 F. Supp. 968, 977–78 (W.D. Mar. 1966), summarizes these objections. To insure that the antitrust laws were not contravened by the Act, Congress inserted the word "legitimate" in the section providing for trademark licensing and in the definition of related companies. Schniderman, *Trademark Licensing—a Saga of Fantasy and Fact*, 14 Law & Contemp. Phob. 248, 261 (1949). The purpose of this was to indicate that trademarks could not be used to violate the antitrust laws. In addition, defendants in trademark infringement suits were granted the affirmative defense "that the mark has been or is being used to violate the antitrust laws of the United States." 15 U.S.C. § 1115(b)(7).

Complaint counsel can find no cases involving trademark licensing in which the courts have prohibited concurrent use by two users of the same trademarked products in the same geographical area on trademark grounds. Such cases as there are concern sales by unrelated companies of different products under the same or similar trademarks. The principle that different sales by different companies under the same trademark in the same area can be unfair competition and may harm the public since there is no guaranty that the products sold will be the same is not here challenged. Indeed, complaint counsel agree with the principle. However, this principle is inapplicable to trademark licensing where, because of the quality control exercised by the licensor, the products sold by the different licensees are the same. The very essence of trademark licensing is the sale of uniform products sold by a number of licensees. Thus, the public can be assured that throughout the country their soft drinks will be the same no matter which licensee bottled the product. This is in accord with the shift in the function of trademarks from being an indication of source to being a guaranty of quality. 3 Callman, *Unfair Competition Trademarks and Monopolies* S 65.2.

That the lawfulness of territorial restrictions in soft drink bottling trademark licenses has been upheld in *Coca-Cola Bottling Co.* v. *Coca-Cola Co.*, 269 Fed. 796,814 (D.C. Del. 1920) constitutes an unwarranted contention. Territorial restrictions as to individual bottler licenses were not involved in this case. Rather, it concerned an agreement in which the bottling company was given the right to establish bottling plants or to have others who would follow Coca-Cola's quality control procedures establish plants in all but a few states in the United States. The bottling company agreed to purchase syrup from Coca-Cola and Coca-Cola agreed not to sell it to anyone in the area licensed to the bottling company. Subsequently hundreds of independent sub-bottlers were established. Following a disagreement about the price of the syrup, Coca-Cola attempted to cancel the agreement and the bottling company sued to enjoin the cancellation. Coca-Cola argued that the territorial grant in the contract was an unlawful restraint of trade. In finding the contract lawful under the ancillary restraint doctrine, the court did not consider the territorial restrictions in the individual bottler contracts but only considered the agreement between Coca-Cola and the bottling company. Moreover, this 1920 district court opin-

ion cannot now be given great weight. The agreement amounted to market division. If litigated today, such market division would be found unlawful since the ancillary restraint doctrine is inapplicable in market division situations as the Court has declared them illegal *per se*.

Another case relied upon to support the argument that the courts have upheld territorial restrictions in trademark licensing is *Dennison Mattress Company* v. *Spring-Air Company*, 308 F. 2d 403 (5th Cir. 1962).

Dennison involved a *Sealy*-like organization in which a number of mattress companies had banded together to organize a corporation in which each mattress company was a stockholder. The member companies followed uniform specifications for the mattress products sold under the common trademark and each member company sold its products in a specified territory. Dennison asserted as a defense to its contractual obligation to pay advertising assessments owing to the umbrella corporation several antitrust defenses including an allegation of territorial restrictions. The Fifth Circuit affirmed the lower court's finding that the antitrust defenses did not relieve Dennison of its contractual obligations. This result seems correct as the Supreme Court has repudiated antitrust defenses to contractual obligations unless enforcement of the contract would involve "one of the very restraints forbidden by the Sherman Act" *Kelly* v. *Kosuga*, 358 U.S. 516, 520 (1959) and the legality of the advertising fees did not seem related to Dennison's liability for the advertising fees. However, we think deciding this case on the basis of a rule of reason approach was incorrect.

The Fifth Circuit's upholding of territorial restrictions was based upon its finding that the licensor had the affirmative duty to invoke quality control over its licensees noting that licensors which failed to impose such control could lose their trademark. The court seemed to link quality control with territorial restrictions without showing how territorial restrictions were necessary to assure apppropriate quality control. The specification of product and production standards should have been sufficient to insure the necessary quality control. And as pointed out *infra* territorial restrictions are a less direct and less certain method of assuring quality control than imposing territorial restrictions. Thus, we assert that the rationale of *Dennison* is incorrect. It should be noted that Spring-Air's victory was not a long-lasting one as some weeks after *Dennison* had been decided, Spring-Air entered into a consent agreement with the Antitrust Division in which it agreed to cease imposing territorial restrictions on its licensees. 1962 CCH Trade Cases Par. 70,402 (N.D. Ill. 1962). Moreover, in *Serta Associates, Inc.* v. *United States*, 393 U.S. 534 (1969) (*per curiam*) and in *United States* v. *Sealy, Inc.*, 388 U.S. 350 (1967) which involved similar facts to *Dennison*, the Court held that the territorial restrictions were illegal *per se*.

Controlling the quality of the products sold by respondents does not compel the confinement of its bottlers to particular territories. A soft drink quality control program does not need to embrace territorial restrictions in order to be effective, and hence such restrictions are not required by the trademark laws.

Competition between trademark licensees is not inconsistent with valid trademark licensing. *Huber Baking Co.* v. *Stroehmann Bros., Co.*, 252 F. 2d 945, 956 (2d Cir. 1958); *cert. denied*, 358 U.S. 829 (1958). Three of the circuits have ruled on the question of whether a territorial restriction will be implied in a trademark license where one is not expressly stated. Two of the circuits have held that where the restriction is not expressly stated they will not imply it, *Parkway Baking Co.* v. *Freihofer Baking Co.*, 255 F. 2d 641 (3rd Cir. 1958); *Pacific Supply Corp.* v. *Farmers Union Central Exch., Inc.*, 318 F. 2d 894 (9th Cir. 1963); *cert. denied*, 375 U.S. 965 (1964), and one circuit has taken the opposite view in a case in which the evidence strongly supported a finding that a restriction had been intended by the parties. *Huber Baking Co.* v. *Stroehmann Bros., Co.*, 252 F. 2d 945 (2d Cir, 1958); *cert. denied*, 358 U.S. 829 (1958). The courts have ordinarily been unwilling to imply a territorial restriction because they have found that since the products sold by the licensees are the same, the public would not be harmed. For example, *Parkway Baking Co.* v. *Freihofer Baking Co.*, *supra* 255 F. 2d at 643; concerned bakery licensees which had licenses to use the secret formula of the licensor, National, to bake and sell bread under a common trademark, Hollywood. Parkway, the licensee in Philadelphia, sold Hollywood bread to American stores at American's warehouse and American delivered some of the bread to its stores in Allentown, the area of the Freihofer licensee. *Supra* at 648–49. In dispute was the question of whether Parkway's sales violated its licensee. The court found that there was no confusion as to source since the source of origin was the licensor in both instances. In addition, the trial court noted that the products sold in both instances were practically identical, thus, implicitly finding that the trademark had fulfilled its function of being a guaranty of quality. *Supra* 134 F. Supp. 823, 825–26 (E.D. Pa. 1957), *aff'd* 255 F. 2d 641 (2d Cir. 1958). Thus, the courts have found that the sale by more than one trademark licensee in an area is not unlawful under the trademark laws.

Analogizing trademark licensing to patent licensing demonstrates that Congress did not intend trademark licensors to impose territorial restrictions on their licensees. Merely because the patent laws arguably permit patentees to limit the territory in which it can make or sell patented products is no reason why this principle should apply to trademark licensing. Patent laws involves a more significant public policy—the encouragement of invention. Trademark laws involves a much less significant public policy aim—the protection of a trademark or trade name. Another significant distinction is that the purported basis for territorial limitations in patent licensing is statutory, 35 U.S.C. § 261. No similar statutory basis exists for territorial limitations in trademark licensing. Congress, however, had the opportunity to provide for trademark licensing a statutory basis as it purportedly did for patent licensing. This Congressional failure to provide such a statutory basis shows clearly that Congress did not intend that territorial restrictions be permitted in trademark licensing. Moreover, several commentators have severely criticized the presumption that Section 261 authorizes territorial limitations in patent licenses. Baxter, *Legal Restrictions on Exploitation of the Patent Monopoly: An Economic Analysis* 76 Yale L.J. 267, 349 (1966) *and Gibbons, Domestic Territorial Restrictions in Patent Transactions and the Antitrust Laws*, 34 Geo. Wash. L. Rev. 893 (1966). These commentators state the purpose of this provision was to allow a territorial assignee the right to sue for patent infringement in his own name and not to authorize territorial restrictions.

Attempts to justify a territorial restriction system as a means of determining which bottler has produced inferior products are based on the assertion that if several bottlers were able to sell in the same area, the licensor would have difficulty in tracing the offending bottler. In a monograph on the subject of territorial restrictions in trademark licensing, the author commented on this contention as follows: "Endeavoring to maintain the quality of a licensee's production through restricting the areas in which he can manufacture and sell goods is akin to cutting down an elm in which a cat has been treed in order to prevent the cat from falling and being hurt. The desired result may or may not be achieved and there are more direct and less drastic ways to achieve it." Dole, *Territorial Trademark Rights and the Antitrust Laws*, 132–33 (1965). The author further observes, "A licensor's quality control should safeguard the integrity of a licensed mark regardless of the number of licensee's selling in the same territory, and confusion as to the identity of the trademark users can be adequately dispelled by requiring that licensees couple their individual trade names or trademarks with display of the licensed mark." *Supra* at 134. Thus, respondent could require that its bottlers affix their name alongside of its name; or if it wishes, a code name designating the bottler could be affixed. This would enable respondent to trace the identity of bottlers whose products are inferior. The public would continue to be protected from inferior products, while receiving the benefits of intrabrand competition.

Antitrust violations cannot be immunized by the use of trademarks. Moreover, in enacting the Lanham Act, Congress cannot be considered as having spoken in terms of the law that existed at that time. Thus, to contend that since vertical territorial restraints were arguably lawful then, vertical territorial restraints are lawful now with respect to trademark licensing would be absurd. In enacting the Lanham Act, Congress was well aware of the fact that the antitrust laws are not static, and that changes in the interpretations of the antitrust laws could be expected to occur in the future. As stated previously, Congress intended that the antitrust laws would apply to trademark licensing. No indication exists that Congress wished to freeze the antitrust laws with respect to trademark licensing to the body of antitrust law as it then existed.

In *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593 (1951), cited with approval in *U.S.* v. *Sealy*, 388 U.S. 350, 356 n. 3 (1967), the Supreme Court held that territorial restrictions in a trademark license can be unlawful where the restrictions are accompanied by price-fixing. Subsequently, *Schwinn*, held vertical territorial restrictions without more as *per se* illegal. This decision cannot be considered inapplicable here merely because *Schwinn* did not involve trademark licensing. That such is the law is established. The Supreme Court stated in *Timken:*

"A trademark merely affords protection to a name, . . . A trademark cannot be legally used as a device for Sherman Act violation. Indeed, the Trademark Act of 1964 itself penalizes use of a mark 'to violate the antitrust laws of the United States'." 341 U.S. at 598–99.

As demonstrated earlier, the protection of a name does not require the imposition of territorial restrictions on trademark licensees. Consequently territorial restrictions in bottling or any other form of trademark licensing do not pose any different problems than the typical supplier-dealer relationship in which territorial restrictions are present. In both instances the loss of intrabrand competition injures the public. The elimination of intrabrand competition has particularly serious anticompetitive effects where, as in this industry, interbrand competition has lost much of its effectiveness due to the strong preferences of consumers for specific soft drink brands. Consequently, the *Schwinn* doctrine is clearly applicable to trademark licensing.

The applicability of *Schwinn* to trademark licensing is made manifest by the manner in which the courts have applied the *Schwinn* doctrine. Although none of the cases have involved trademark licensing as such, that it is applicable to trademark licensing is clear. For example, *United States* v. *Glaxo Group Ltd.*, involved a restriction on a drug company to refrain from reselling a drug

product in any form except individual dosage form. *Supra*, 302 F. Supp. 1, 5 (D.D.C. 1969). The stated purpose of this restriction was to prevent bulk sales to companies who would themselves package the drugs in dosage form. Glaxo argued that this restriction was necessary to insure uniform standards of health and safety in the preparation of a final product. The court rejected this contention finding that the *Schwinn* rule was a *per se* one. *Supra*, at 9. Thus, that the *Schwinn* doctrine is applicable to trademark licensing is manifest.

That *Schwinn* is inapplicable to soft drink bottling because *Schwinn* involved a finished product and this proceeding involves bottlers purchasing concentrate and producing a finished product from it for resale is a distinction without legal significance. In determining whether the sale of the finished product by the bicycle distributor in *Schwinn* or the bottler herein can be controlled by the manufacturer, the finished product concept is clearly inapplicable. Indeed, the soft drink companies have gone far beyond what was attempted in *Schwinn* since they are attempting to restrict the transfer of a product manufactured from an ingredient they have already sold. Both the distributor and the bottler are independent businessmen. Each sells a product that he has purchased—one sells the product in the form in which it was purchased, the other sells the purchased product after manufacturing it into a new form. From the viewpoint of the impact on competition, the effect of the territorial restrictions is identical in both instances—the elimination of intrabrand competition. Our interpretation of *Schwinn* is bolstered by *United States* v. *Glaxo Group Ltd.*, 302 F. Supp. 1,5 (D.D.C. 1969), a case which involved a restriction by a drug company on a licensee selling a drug in any form except individual dosage form. The stated purpose of this was to prevent bulk sales to companies who would themselves package the drugs in dosage form. Glaxo argued that this restriction was necessary to insure uniform standards of health and safety in the preparation of a final product. The Court rejected this contention finding that the *Schwinn* case did apply. *Supra*, 302 F. Supp. at 9.

Distinguishable from Lawful Exclusive Sales Representation

This proceeding is not an attack upon exclusive sales representation. In *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365 (1967), the Court carefully distinguished between situations in which distributors were prohibited from selling outside of an area assigned to them and situations where a manufacturer selects certain customers and agrees to sell to them alone. The Court stated in referring to the latter situation: "[I]f nothing more is involved than vertical 'confinement' of the manufacturer's own sales of the merchandise to selected dealers . . . the restriction, on these facts alone, would not violate the Sherman Act." *Supra* at 376. Immediately prior to this passage the Court cited *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919) which makes apparent that it was doing nothing more than recognizing the existence of the *Colgate* doctrine.

Uncontested is the propriety, of a manufacturer having an exclusive representation system by which it establishes a dealer in a particular individual territory and promises to sell to no one other dealers in that particular territory. Such is manifestly the situation confronted in this matter. This proceeding concerns a territorial restriction system in which bottlers are *forbidden* to sell outside of their designated territory, not an exclusive representation system in which distributors are *free* to sell where and to whom they please.

That territorial restrictions are treated differently from exclusive representation systems can be illustrated by two cases. Interestingly, these cases are frequently cited for the proposition that territorial restrictions are, in fact, only exclusive representation cases. *Packard Motor Car Co.* v. *Webster Motor Car Co.*, 243 F.2d 418 (D.C. Cir. 1957), involved a situation in which the largest Packard dealer in Baltimore, Maryland was losing money. The dealer requested that Packard terminate the other two Packard dealers in Baltimore. Packard agreed to do so and in the resulting suit brought by one of the terminated Packard dealers the Court held that the termination was lawful. The other case, *Schwing Motor Co.* v. *Hudson Sales Co.*, 138 F. Supp. (D. Md. 1956), *aff'd., per curiam*, 239 F.2d 176 (4th Cir. 1956), involved similar facts. In discussing these cases the Court in *White Motor Co.* v. *United States*, 372 U.S. 262, 270 n. 8, (1963) stated that the doctrine of these cases was of limited scope since the manufacturers involved were much smaller than the "Big Three" and had suffered losses in their respective market shares. In conclusion, the Supreme Court noted that: ". . . *the exclusive franchises involved in these cases apparently were not accompanied by territorial restrictions.*" (Emphasis added.)

The Commission has distinguished the two systems. *Snap-On Tools Corp.*, a territorial restriction system case, rejected respondent's argument that *Schwing* and *Packard* were controlling on the question of the lawfulness of its territorial restriction agreements. In finding the restrictions illegal, the Commission held: "The cases relied upon by respondent are of little aid here. *Schwing Motor Car Co.* v. *Hudson Sales Corp.* [citation omitted], and *Packard Motor Car Co.* v. *Webster Motor Car Co.* [citation omitted], involved the entirely different situation of exclusive franchises where the manufacturer agreed to sell to no other dealer in a designated area. No restraint upon the dealer was involved." 59 F.T.C. 1035, 1048 (1961), *rev'd.*, 321 F.2d 825 (7th Cir. 1963), *rev'd.*, in effect, by *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365 (1967). Recently, in *Glaxo, supra*, the Court clearly distinguished between exclusive representation and territorial restrictions. Its final order permitted defendants to grant exclusive distributorships but enjoined defendants:

"From entering into, adhering to, maintaining or claiming any rights under any agreement or understanding with any of its licensees under any United States patent relating to drugs, which prevents, restrains or limits any party thereto from selling any drug in bulk form, or otherwise prevents, restrains or limits *any party thereto in its free choice of customers or persons with whom it chooses to deal.*" (Emphasis added.)

In clarifying that provision of its Final Judgment, the Court declared that such injunction:

"Is not to be construed to prevent defendant from granting exclusive licenses or exclusive distributorships or to grant licenses limited to particular fields of use under any United States patent relating to drugs." *United States* v. *Glaxo Group Limited*, USAC, Civil Action No. 558–68, dated August 12, 1971.

Thus, it would be disingenuous to clothe a territorial system in the garb of an exclusive representation system for the courts and the Commission have treated them differently, finding territorial restrictions illegal and exclusive representation systems legal.

IV. THE RELEVANT MARKETS: INDUSTRY STRUCTURE

A. Boundaries of the product market

The relevant product market herein issue is composed of that constellation of beverage products which, as set forth in the complaint (Paragraph I), includes concentrate, post-mix syrup, pre-mix syrup, and soft drink products, and combinations thereof. Excluded from relevant product market consideration are such beverages as dairy products, dry mixes, fruit and vegetable juices, cider, natural and artificial spring water, coffee and tea. The Standard Industrial Classification (SIC) reference which best describes the industry characterized by this relevant product market is SIC Number 2086: Bottled and Canned Soft Drinks. *Standard Industrial Classification (SIC) Manual*, 50 (1967).

Within the soft drink market two principal identifiable submarkets exist: the diet soft drink and the non-diet soft drink. Within each of these two principal submarkets there are further submarkets by flavoring, e.g., the colas, lemon-limes, root beers, fruit flavors, and the "World's most misunderstood soft drink." A low degree of substitutability exists among the products in each of these product submarkets.

Concentration Levels Among Syrup Manufacturers and Manufacturers and Soft Drink Bottlers. The soft drink industry is composed of essentially two segments; firms like respondent who manufacture concentrate or syrup which is sold to the licensed bottlers who mix the concentrate with various ingredients, and package the resulting mixture for sale to retail outlets as finished soft drinks under respondent's trade names. Concentration in the shipment of syrup is high. In 1969, the top four firms had approximately 70% of the market, and the top eight firms had approximately 80%. *Soft Drink Industry*, 12 (December 31, 1971) (Estimate of industry expert, John Maxwell). The relative positions of the top firms vary in different regions of the country.

Bottler Concentration. While the national concentration level of bottlers is low, this national indicator is not significant since soft drink bottling is a local business. Large numbers of bottlers hold contracts with more than one respondent which makes the possibility of interbrand competition for the brands sold by each bottlers extremely unlikely. As a result purchasers of soft drinks have only a few bottlers with whom they can deal. For example, in 1963 the four firm concentration levels for nine large metropolitan areas averaged 68%, with a range of from 60% to 81%. *Concentration Ratios in Manufacturing Industry, 1963, Part II.* Total sales of soft drink products including pre-mix and post-mix syrup as well as canned and bottled soft drinks amounted to estimated wholesale sales of 4.8 billion dollars in 1970. Sales had grown by almost 10% from 1969. *National Soft Drink Association Progress Report, 1971.* (13)

Merger Trend Among Soft Drink Bottlers. The number of soft drink bottlers has declined from about 5,200 in 1947 to about 4,400 in 1954, and then to about 4,000 in 1958. As recently as 1963, there remained but 3,600. About 3,000 existed in 1967, but this number dropped to about 2,300 by the end of 1970. Significant is that of those 2,300 bottlers remaining in 1970, about 1600 of them were bottlers of the eight firms named as respondents in these matters (Docket Nos. 8853–59). These eight are the largest and most significant soft drink companies in this industry. The remaining bottlers produce lesser known brands; many of which are regional, proprietary, or private label in nature. As will be established at trial, the merger trend among all bottlers is paralleled in the case of respondent's bottlers.

Product Differentiation and Barriers to Entry. Respondent's products, as well as the products of those other respondents, are highly differentiated products. Tremendous sums are expended each year by all of the respondents in a successful effort to create strong consumer preferences for their products. As a result, a low degree of substitutability exists among consumers for these highly differentiated products. Thus, intrabrand competition is largely ineffective. Moreover, further hampering a competitive

market is the fact that barriers to entry in this industry are quite high. New entrants face the difficult task of overcoming the stronger consumer preferences which have been created for the products of established respondents. In fact, recently several major companies have made unsuccessful attempts to enter the soft drink market.

Economic Effects of Territorial Restrictions in a Highly Concentrated Market Having Highly Differentiated Products and High Barriers to Entry. As a result of territorial restrictions all competition between bottlers of the same brand *i.e.*, intrabrand competition, is eliminated. The existence of competition between bottlers of different brands, *i.e.*, interbrand competition, does not diminish the importance of competition between bottlers of the same brands. For prices to be at the lowest level both types of competition must exist. The importance of intrabrand competition is magnified when as here there is an industry in which exists a high concentration level, and where products are highly differentiated and barriers to entry are high. The Cabinet Committee on Price Stability observed that where concentration is high "rivals behave more like monopolists than competitors." *Industrial Structure and Competition Policy, Study Paper Number 2 of the Staff of the Cabinet Committee on Price Stability* 54 (1969). Also stated is that in industries where highly differentiated products exist, high barriers to entry will occur, resulting in higher prices than would be true if competitive economic structure existed. *Supra,* at 43. Consequently, because of the anticompetitive structure of the soft drink industry, elimination of intrabrand competition causes higher prices than would exist if territorial restrictions were eliminated.

B. Appropriate geographic markets

A Relevant Geographic Market is Necessary in Ascertaining the Effects of Territorial Restrictions. Although respondent's products are sold nationally, the restrictions in question, are restrictions on the individual territories of bottlers whose businesses are thereby local in character. Territorial restrictions most typically confine a bottler's operation to a small metropolitan area and certain adjoining territory, or to a part or all of a large metropolitan area.

In *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 336–37, (1962) the Supreme Court noted that as to cases brought under Section 7 of the Clayton Act "the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area." The guiding principle of determining the relevant geographic markets, noted the Courts, is that it be in accord with commercial reality and be "economically significant." *Id.* In view of the localized nature of a bottler's business, the relevant geographic market for determining the effect of respondent's restrictions is the local markets in which the bottlers operate. See, *United States* v. *Maryland & Virginia Milk Producers Ass'n,* 362 U.S. 458 (1960); *United States* v. *Columbia Pictures Corp.,* 189 F. Supp. 153, 192–94 (S.D. N.Y.).

V. THE VIOLATION CHARGED CONSTITUTES AN UNFAIR METHOD OF COMPETITION

Development of Evidence Concerning Effects of Territorial Restrictions As to the Consuming Public, Competitive Conditions In the Soft Drink Industry and the Competitive Viability of Small Bottlers.

A full record relevant to the violation charged will make manifest the unlawfulness of the unfair method of competition here challenged. Such territorial restrictions will be rendered devoid of these defenses which are affirmatively asserted in their support by respondents' answers. A finding that relief from the anticompetitive effect of this unfair method of competition is necessary and appropriate will be apparent from the full record of evidence to be presented. In presenting such evidence, a record as to (1) the existence of the violation charged, (2) the invalidity of those affirmative defenses asserted, and (3) the consequent relief necessary and appropriate will be developed in the case-in-chief. As these three evidentiary factors all have mutual elements that are interrelated, the convenience of all parties to this adjudicatory proceeding, hearing examiner, witnesses and reporter included, will be best served by a logical development of a full record which clearly relates the unlawful nature of the violation charged.

No implication should be drawn that development of a record beyond that necessary for a *per se* case is either inconsistent with or casts doubt upon the fundamental theory of complaint counsel's case as to territorial restrictions in the soft drink industry: The Violation Charged Consistitutes a *per se* Violation of Section 5 of the Federal Trade Commission Act. That a record is to be developed which extends to matters beyond that necessary to establish such a *per se* violation constitutes a manner of proof which is both logical and convenient, and serves the best interests of all here involved. To this end, therefore, the case-in-chief will develop a readily coherent record setting forth fully during one presentation, the anticompetitive implications of the violation as well as illustrating the invalidity of asserted affirmative defenses, and the necessity of appropriate relief.

Indeed, the underlying purpose of this adjudicatory proceeding is to develop in these hearings a full record of evidence upon which the Commission may order such relief as it finds necessary or appropriate. Enforcement of the antitrust laws in such a manner is particularly appropriate as to the administrative law concepts which underly Section 5 of the Federal Trade Commission Act, and the particular expertise embodied in the Commission. See, *FTC* v. *National Lead Co.,* 352 U.S. 419, 428 (1956). As to relief, the preamble to the order accompanying the complaint issued for adjudication states:

"If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions as to respondents might be inadequate fully to protect the consuming public or the competitive conditions of the soft drink industry, the Commission may order such other relief as it finds necessary *or* appropriate, or such relief as may be supported by the record to protect the competitive viability of small bottlers." (Complaint, p. 9) Consequently, besides showing the existence of the *per se* violation charged and the invalidity of the affirmative defenses asserted, the record of evidence developed during the case-in-chief in this matter will also show how the violation constitutes an unfair method of competition as to (a) the consuming public, (b) the competitive conditions of the soft drink industry, and (c) the competitive viability of small bottlers.

Post-complaint discovery will be required prior to presentation of the case-in-chief. Since pre-complaint discovery in this matter was primarily directed to developing a *per se* case, only such evidence as broadly describes the structure of the soft drink industry, the effect of territorial restrictions on the consuming public, competitive conditions of the soft drink industry and the competitive viability of small bottlers is readily at hand. However, as is apparent from but a cursory consideration of this trial brief, these challenged territorial restrictions in the soft drink industry constitute far more than only "reason to believe" that a violation exist. Moreover, existence of the evidence to the "discovered" is known. Requisition of it is now proper. Adjudication of this and its companion matters has been referred to by the industry press as an event having landmark significance in the history of the soft drink industry. Indeed, the high repute of respondents' counsel in all of these matters is confirmation of the significance with which it is regarded by the industry. If in fact this is to be a case of such landmark significance, a full record must be developed for the Commission's consideration. To this end, the discovery soon to be requested of all respondents will be specific, and directed toward evidentiary matters pertaining to the case theory which is made manifest by this trial brief being filed now, even prior to an initial prehearing conference in this matter. Discovery documents appropriate for this purpose are being finalized and will be submitted to respondent and third parties within 10 days of the close of the initial prehearing conferences in these matters.

The propriety and appropriateness of developing a full record is indicated *In the Matter of L. G. Balfour Co.,* Docket No. 8435 (July 29, 1968) which clearly recognized the Commission's responsibility when, like here, an industry-wide practice is challenged, to perform a reasonable evaluation of the competitive situation so as to ascertain whether a particular order would be in accord with the purpose of the laws it seeks to enforce. Indeed, as the Commission must in framing and order in this matter, resolve any doubts regarding the appropriateness of relief in favor of the public interest (see, *U.S.* v. *Baosch & Lomb Optical Co.,* 321 U.S. 707 (1944)), a record will here be developed which will support just such a resolution in the public interest, i.e., "in a manner calculated to foster and promote free competitive enterprise." Employment Act of 1946, 15 U.S.C. § 1021–1024. An appropriate framework for an analysis of the manner in which these territorial restrictions hamper free competitive enterprise and constitute an unfair method of competition is provided by those considerations expressed in the preamble as to (a) the consuming public (b) the competitive conditions of the soft drink industry, and (c) the competitive viability of small bottlers.

A. As to the consuming public

In the marketplace individual preferences are what count in the ledger of social values. The whole concept of efficient resource allocation is built upon the foundamental belief that the consumer is sovereign. The nation's economy traditionally relies upon competition to harness the energies of profit-seeking individuals and firms and allow these energies to serve the consumer effectively. To achieve this end as to the consuming public, buyers and sellers operate in markets under a minimum of restraints on structure and conduct. The goals of each are mutually beneficial to both themselves and the national free economic system. Sellers are vying for rewards obtained through the satisfaction of customers. Customers in turn seek to maximize values by the selection of purchases. Competition enlarges and enriches consumer choice.

As to this matter specifically, as to the consumer the question is the manner in, and the degree to which, competition in the soft drink market serves the consuming public. Does it encourage efficiency and reasonably priced products? Does it result in a *genuine* improvement in quality of output? What are the value relationships between such considerations? These essence of violation charged is a simple one-territorial restrictions which foreclose intrabrand competition. Although these restrictions are imposed by the respondent licensor upon its independent licensed bottlers, the consequent anticompetitive effects of this unlawful restraint does not make itself work clearly manifest in the sales transactions between respondent licensor and independent licensed bottler. Rather,

it is in the subsequent sales transactions in which these bottlers, in marketing their soft drink products to retail outlets are prohibited from engaging in intrabrand competition, that the impaired benefits of a free enterprise system become manifest.

Indeed, an appropriate analogy would be that the consumer could buy a particular brand name automobile from but one dealer in a particular geographical area. As becomes apparent from a consideration of the charged violation's anticompetitive effect upon competition in the soft drink industry as well as the competitive viabilty of small bottlers, the soft drink consuming public is not well served by these territorial restrictions and their consequent foreclosure of intrabrand competition.

B. As to competitive conditions in the soft drink industry

In several specific instances, the fact that competitive conditions of the soft drink industry are severely impaired by these challenged territorial restrictions becomes most apparent. At this early stage of this matter, and in this trial brief filed prior to the initial prehearing conference, the discussion hereinafter set forth is best illustrative of such consequences. In the course of further adjudication, such matters in this regard will be developed on the record with greater specificity.

1. *Territorial Restrictions Prevent Food Retailers From Getting the Benefits of Central Warehouse Delivery.*

Respondents' territorial restrictions foreclose use of more efficient methods of distribution than the currently prevalent store delivery method now in use whereby each bottler services retail stores individually as to the brands it is authorized to market. Bottlers are now, in effect, prohibited from selling to the central warehouse of grocery wholesalers and food chain retailers. Respondents impose such restrictions on the ground that since warehouses cover an area wider than that of one bottler, selling to a central warehouse is the equivalent of selling outside the bottler's specified territory.

Central warehouse delivery has certain inherent cost advantages from the standpoint of both the bottler and the purchaser. Instead of laboriously stacking by hand cases of soft drinks on carts and pulling the cart into each store, forklift trucks can be used to move palletized loads of soft drinks in a central warehouse, and then to load the soft drinks on trucks for delivery to retailers. Also, soft drinks can be shipped into the warehouse by tractor-trailor vans or by rail car. Obviously, central warehouse delivery results in savings of delivery expenses to the bottler.

The advantages of central warehousing to the retailer are manifest. Specifically, however, it must be emphasized that the benefits of central warehouse delivery are not limited to food chain retailers. Other such advantages are available to all food retailers, and is especially beneficial to the smaller retailer. Independent food retailers whether they are supermarket size or corner, convenience store size purchase most of their products from wholesalers who receive truckloads of soft drinks. Many independent retailers belong to cooperative wholesalers in which the retailer members own the warehouse and advertise together. Other independent retailers belong to voluntary groups in which the wholesaler is an independent business but with the retailer members also advertising under a common trade name. Smaller food retailers may purchase grocery products from cash-and-carry warehouses operated by grocery wholesalers.

Bottlers can provide soft drinks to warehouses more cheaply than to individual stores. Delivery of soft drinks to the retailer as part of its regular warehouse shipment from the food wholesaler is a less costly method of delivery. Hence, central warehouse delivery constitutes a more efficient method of distribution than that one now permitted, i.e. direct bottler-to-retail outlet in a certain specified territory. This is so primarily because the delivery costs of truck and driver are spread over many more items. As a result, the lower ultimate cost to the retailer under the central warehouse system enables him to offer lower prices to consumers. Such prices are assured when intrabrand competition is allowed to exist.

To the small food retailer even more so than the large retailer, reducing the number of store deliveries is quite beneficial. The small food retailer frequently has few employees and thus each delivery forces him to take time away from his customers while he checks in the delivery. Instead of six soft drink trucks a week the soft drinks can be delivered as part of the retailer's regular grocery order; freeing the retailer to spend his time more productively with his customers. Other advantages are a reduction in the number of invoices to be processed, and the loss by theft through numerous back door openings.

Retailers and bottlers have been denied the opportunity to determine the benefits of central warehouse delivery of soft drinks. Perhaps retailers prefer delivery by numerous bottlers and bottlers will not wish to make more efficient central warehouse deliveries. However, retailers and bottlers must be permitted to allow the economics of central warehouse delivery and store delivery decide which system they deem best for them rather than having the decision forced upon them by respondents.

2. *Effect of Territorial Restrictions on Prices*

The territorial restrictions within which respondents' bottlers operate do not coincide with the relevant geographic markets in which it is economically feasible for these bottlers to sell soft drinks. Existence of such imposition upon bottlers of a gerrymandered, unrealistic and uneconomic market is illustrated by an examination of the markets served by private label bottlers i.e., bottlers manufacturing soft drinks primarily for sale to grocery wholesalers and chain stores under its owner or the purchaser's name. These markets encompass much broader areas than the arbitrarily drawn ones served by respondents' bottlers. Private label bottlers sell in as large an area as they find distribution economically feasible. Moreover, in those few instances where territorial restrictions have broken down as to respondents' bottlers, they too have found it economically feasible to transport soft drinks over a much greater distance than the perimeters of the territorial boundaries set by respondents' fiat and not market realities.

Also significant is that some of respondents' bottlers operate in much larger territories than others. The reason for their larger territories, however is not the result of the normal competitive processes. Instead it is the result of such larger bottlers having acquired their neighboring bottlers; or more rarely, of having the good fortune to have originally been allotted large pieces of real estate. Finally, in some areas of the nation, regional soft drink companies exist, these companies generally sell their products bearing their brand name in a more extensive geographic area than do respondents' bottlers. In summary, that respondents' bottlers can economically serve much wider areas than they currently do is made manifest by comparison of accepted food retailing markets and the territories of those bottlers located in that area.

In most geographic areas the warehouses operated by cooperative wholesale grocers, voluntary wholesale grocers and supermarkets, distribute food products over an area spanning many of respondents' bottlers. For example, a wholesaler grocer may from one warehouse serve an area in excess of one hundred fifty miles in every direction; an area in which ten or more of respondents' bottlers may operate. The areas served by these warehouses are generally similar in scope to the area served by bottlers who are unencumbered by territorial restrictions or by those of respondents' bottlers which may have chosen to participate in intrabrand competition in this free enterprise system.

The operators of grocery warehouse frequently will, upon completion of their grocery deliveries to retailers return to the warehouse with a load of merchandise from some nearby producer instead of returning empty. This practice of greater equipment maximization is called "backhauling." Any bottler who is within the delivery area could easily sell these warehouses; whether by use of such backhauling from its bottling plant by central warehouse customers or by making large unit palletized deliveries to central warehouse customers with its own trucks.

Significant price differences exist among respondents' bottlers within a relevant geographic area within which they could economically market if the restrictions were ended. In the absence of the restrictions, the desire wholesalers and retailers to purchase their products at the lowest price level would cause the wholesale prices of soft drinks within a relevant geographic area to gravitate toward the lowest price offered by one of respondents' bottlers. Indeed, such is a function of the free enterprise system.

3. Territorial Restrictions Subvert the Policies Enunciated in Section 7 of the Clayton Act and Sections 2(d) and 2(e) of the Robinson-Patman Act by Rendering these Laws Nugatory as to Soft Drinks:

In enacting Section 7 of the Clayton Act, Congress sought to assure the Federal Trade Commission and the courts the power to deal with the increasing trend toward concentration. *Brown Shoe Co.* v. *United States* 370 U.S. 294, 317–18 (1962).

Because territorial restrictions foreclose any possibility of intrabrand competition between respondent's bottlers, courts and the Commission cannot easily prevent anticompetitive acquisitions from occurring. This is so because, since respondents' bottlers do not compete with each other, acquisitions by such bottlers do not diminish competition. A recognized merger wave among bottlers began over a decade of years ago and has continued to gather momentum. Unless territorial restrictions are declared unlawful the Congressional mandate that anticompetitive mergers be checked will not be satisfied. Surely Congress did not intend to have its will subverted by private parties who claim exclusion from the competitive free enterprise system which the antitrust laws seek to assure.

Similarly, Sections 2(d)a 2(e) of the Robinson-Patman Act, 15 U.S.C. 13(d), 13(e), prohibit a seller from granting promotional allowances or services to customers unless they are available to all competing customers on *proportionately* equal terms. That is another portion of the antitrust laws regulating free competitive enterprise with which respondents need not concern itself. As their bottlers, customers clearly do not compete with each other, now due to the territorial restrictions which are imposed upon them, this statute is also unenforceable. Thus, if respondents discriminate in the granting of services and allowances, neither the discriminated party nor the Commission can seek a remedy. The law abhors such a situation.

In enacting Section 7 of the Clayton Act and Sections 2(d) and 2(e) of the Robinson-Patman Act, Congress did not carve out any exemption for the soft drink industry. Yet, the current situation is as if Congress had exempted these respondents and their bottlers. The merger wave in soft drink bottling can continue unabated, as can discrimina-

tion in the granting of allowances and services. Nothing can be done about these situations so long as territorial restrictions continue. Important Congressional policies such as these cannot be easily subverted.

C. As to the competitive viability of small bottlers

Territorial Restrictions Here Challenged Have Adverse Economic Effects Upon Small Bottlers. Predictions of doom for small bottlers without territorial protection are at least questionable if one considers only successful small business operations in other industries which do not have such restrictions. But there are other obvious flaws in this argument.

The assumption that territorial protection preserves small businesses has no more validity for the soft drink industry than it does for other businesses. The steady and sharpening decline in the number of small bottlers in recent years, the loss of market share to private brand bottlers, and other similar development well illustrate the present vulnerability of those small bottlers whose territories limit their competitive capabilities. Survival or success under the present territorially-limited system thus may not depend on a bottlers' industry, judgment, or skill, the economies of his operations or the quality of his service, as much as it does on the boundaries of his territory.

Proscribing competitive opportunities for growth cannot really protect the inefficient, even if that was desirable. Such restrictions as these here challenged do limit the competitiveness of the efficient large and small bottlers.

That certainly is undesirable. Moreover in some instances the territories of bottlers are too small to support a plant of efficient size. Because of the territorial restrictions such smaller bottlers cannot attempt to expand their territories so as to have a large enough marketing area to support an efficient plant. Consequently, these bottlers have the choices of continuing to operate a high cost plant, sell out to a neighboring bottler or purchase a neighboring bottler.

Although there is ample reason to doubt that the territorial limitations "protect" small bottlers, the Commission has in the preamble specifically expressed its concern about the implications for small bottlers of the relief proposed in the complaint. The Commission has adequate power to tailor its orders in this matter so as to remedy the violations and minimize the possible damage to small bottlers. Possibly, an appropriate order might require some divestiture of assets, forbid or only conditionally permit certain types of transactions, and preserve some territorial limitations for a further period of time. Finally, nothing in the Commission's action is designed to have any effect on bottlers' claims against their licensors or damages caused by reason of the antitrust violations charged in these actions.

VI. AFFIRMATIVE DEFENSES ASSERTED BY RESPONDENTS

A. Prior court decree deprives Commission of jurisdiction

Asserted by respondent is that, to the extent that this proceeding seeks to alter, modify, or otherwise affect the rights and obligations of respondent under a prior judgment, *The Coca-Cola Bottling Co.* v. *The Coca-Cola Co.*, 269 F. 796 (D. Del. 1920), the Federal Trade Commission is without jurisdiction or authority to ask. (Coke Answer, pp 4–5, Thomas Answer, pp 6–7).

However, in so doing respondents must rely heavily on a consent decree resulting from the 1920 proceeding in the federal District Court which they assert upholds the lawfulness of the territorial restriction provisions of the type here challenged in this matter by the Federal Trade Commission. As illustrated by that case after discovering how profitable the bottling business was, Coke attempted to cancel the agreement it had made with the Thomas Bottling Co. which gave to Thomas the exclusive right to bottle soft drinks under the Coca-Cola trademark in all but a few states. The contention made there by Coke and relied upon as to this matter, was that Coke had violated the Sherman Act by entering into such a territorial restriction with Thomas, which itself had subsequently subdivided its territory. The Court, however, held the contract lawful under the ancillary restraint doctrine, and thus no violation of the Sherman Act was found to support the Coke contention.

Such result was in a court of equity, and did justice to the parties there involved. However, it should not be relied upon in this proceeding. At issue there was a contractual action. Although a contract may be invalidated if it violated the antitrust laws, it is fundamentally inequitable to allow one contracting party to use its own wrongdoing to invalidate a contract.

Moreover, a decision in favor of Coke would have furthered monopoly. In this regard the court stated that:

"[T]he effect of the contract . . . was the complete severance of the bottling business from the business of supplying soda fountains with the syrup, while the result which the defendant seeks under statutes intended to prevent monopoly would give to the defendant a complete and exclusive monopoly of both the fountain and the bottling business. The accomplishment of this result through the instrumentality of the anti-monopoly statutes would, indeed, be unique." 296 F. at 813.

In this proceeding, restrictions are to be sought as part of an appropriate remedy which would prevent respondents from making any such acquisition of bottling companies. (See Trial Brief, pp. VII–1 *infra*).

Not considered by the district court were the territorial restrictions in the individual bottler contracts. Rather, only considered was the agreement between Coke and Thomas. Although the individual bottlers became bound by a later consent decree, the actual issue of individual bottler restrictions was not dealt with specifically in this decision and because of the consent decree procedure, was never fully adjudicated by the court.

B. Failure to join indispensable parties; i.e., the bottlers

Asserted by respondents is that the complaint in this proceeding in challenging certain provisions of contracts between respondents and third parties, i.e., the bottlers, has failed to join in this proceeding such third parties, which are alleged to be indispensable hereto because such contracts have been judicially held to be valid and lawful transfers of "property rights", and "perpetual" in value. (Coke Answer, p. 5; Thomas Answer, pp. 7–8.)

Although raised by answers as an affirmative defense (Answer, p. 1–5), this question is also asserted in a separate motion to dismiss filed August [31, 1971 by Dr. Pepper]. An answer to such motion of Dr. Pepper was filed September 9, 1971. As this answer fully responds to the contention, no further discussion of the matter appears warranted at this time.

Nevertheless, because this contention is one raised by all respondents but Royal Crown in each of these substantially identical matters (Docket Nos. 8853–59), and also reasserted by motion it presents a legal question having like factual background as to all respondents; and thus, a matter well suited for disposition in a common manner at one time to all matters, and at one pre-hearing conference if such hearing is deemed necessary. By its nature, these contentions are of the type which can appropriately be resolved prior to the commencement of hearings.

C. Neither the statute of limitation bar this proceeding, nor does laches

As to the Statute of Limitations: Respondents assert that the Federal Trade Commission is prevented from proceeding in this matter by virtue of the statute of limitations, 28 U.S.C. § 2462 (1965). (Coke Answer, pp. 5–6; Thomas Answer, p. 8.) It reads in pertinent part as follows:

". . . an action, suit or proceeding for enforcement of any civil fine, penalty or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if the offender or property is found within the United States in order that proper service can be made thereon."

An antitrust proceeding such as the present one is not the type of action intended to be covered by the above statute. Clearly, this proceeding does not seek to enforce a "civil fine, penalty or forfeiture." Because the primary purpose of the antitrust laws, and especially the Federal Trade Commission Act, is to restore competition rather than punish offenders, application here of the statute of limitations concept is unwarranted. *U.S.* v. *duPont & Co.*, 366 U.S. 316, 326 (1961).

In private treble damage actions, which would appear to be more in the nature of penalty or forfeiture actions than suits in the public interest, it is well settled that such actions are compensatory rather than in the nature of a penalty or forfeiture. Thus, 28 U.S.C. § 2462 is held not applicable. *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 203 U.S. 390, 397 (1966); *Huntington* v. *Attrell*, 146 U.S. 657, 668 (1892); *Brody* v. *Daly*, 175 U.S. 148, 155, 156 (1899); *Greene* v. *Lans Amusement Co.*, 145 F. Supp. 346 (D.C. Ga. 1956); *Florida Wholesale Drug* v. *Ronson Art Metal Works*, 110 F. Supp. 573 (D.C.N.J. 1953).

Civil cases brought by the government have reached the same conclusion. In *FTC* v. *Ruberoid Co.*, 343 U.S. 470 (1952), a price discrimination case under § 2(a) of the Robinson-Patman Act, respondent attached the breadth of the order. The court stated, "Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future." 343 U.S. at 473. See also, *U.S.* v. *National Lead Co.*, 366 U.S. 316, 326–327 (1961) "Courts are not authorized in civil proceedings to punish antitrust violators, and relief must not be punitive."; *Hartford-Empire Co.* v. *U.S.*, 323 U.S. 386, 409 (1945), *clarified*, 324 U.S. 570 (1945). Therefore, neither 28 U.S.C. § 2462 nor any statute of limitations concept is applicable to this proceeding.

As to Laches: The Federal Trade Commission is not guilty of laches in filing this complaint at this time. The equitable doctrine that the alleged practice have been in open and widespread use for over sixty years is of no relevance to the timeliness of these proceedings. Moreover, even if a laches-like situation is shown to exist, this cannot operate as a bar to governmental action in the public interest such as is inherent in these proceedings.

The inapplicability of a laches concept has long been recognized in Federal Trade Commission actions. In *F.T.C.* v. *Algoma Lumber Co.*, 291 U.S. 67 (1934), the Commission alleged that respondent's use of the name "California white pine" for its timber products was a deceptive practice in violation of § 5. Respondent asserted that it had used this name for over 30 years without fraudulent design. In dismissing this defense, Justice Cardozo said:

"There is no bar through lapse of time to a proceeding in the public interest to set an industry in order by removing the occasion for deception or mistake unless submission has gone so far that the occasion for misunderstanding, or for any so widespread as to be worthy of correction is already at an end.

. . . Till then, with every new transaction there is a repetition of the wrong." 291 U.S. at 80.

In an earlier opinion, the Court had said that "as a general rule laches or neglect of duty on the part of officers of the Government is no defense to a suit by it to enforce a public right or protect a public interest." *Utah Power & Light Co.* v. *U.S.*, 243 U.S. 389, 409 (1917). This rule was reiterated in a recent deceptive advertising case brought by the Federal Trade Commission. *U.S.* v. *Vulcanized Rubber and Plastics Co.*, 178 F. Supp. 723, 726 (E.D. Pa. 1959), *aff'd*, 288 F. 2d 257, *cert. denied*, 368 U.S. 821. See also, *FTC* v. *Bunte Bros.*, 312 U.S. 349, 352 (1941).

The defense of laches has long been held inapplicable in suits by the United States when asserting its rights as a sovereign to enforce a public policy. See, VI *Toulmin Antitrust Laws*, § 18.9 (1951). In a conspiracy action under the §§ 1 and 2 of the Sherman Act the court in *United States* v. *General Instrument Corp.*, 87 F. Supp. 157, 164 (D. N.J. 1949), stated in response to the defense of laches:

"To develop the facts necessary to initate an action of the scope here involved required a tremendous investigatory task. The plantiff was not placed on notice leading to a reasonable belief of suppression of completion in violation of the Sherman Act in the production of variable condensers until sometime during the war emergency a bottleneck developed in variable condenser production. Its proofs included many documents designed to show the situation of the defendation the setting in which the alleged conspiracy was established, the state of the industry within which the alleged conspiracy operated, and those preliminary and collateral matters necessary to present the alleged conspiracy in its context of operating facts. These necessitated minute and detailed study to develop the facts. Furthermore, since the United States is asserting right as a sovereign to enforce a public policy, this defense as a matter of law is inapplicable, for the United States is not the nominal but the real plantiff. *U.S.* v. *Beebe*, 127 U.S. 338, 344, *U.S.* v *Insley*, 130 U.S. 263, 266, 9 S. Ct. 485, 32 L.Ed. 968." *U.S.* v. *General Instrument Corp.*, 87 F. Supp 157, 164 (D. N.J. 1949).

See also, *U.S.* v. *California*, 332 U.S. 19 (1947); *U.S.* v. *Summerlin*, 310 U.S. 414 (1940). On the basis of these precedents any contention that laches bars this proceeding should be dismissed summarily.

D. Violation of due process results possible subjection to conflicting decrees

An issue of possibly conflicting decrees is said to arise from the possibility that the Commission will find territorial restrictions unlawful which, respondents argue, would be inconsistent with the final decree in *The Coca-Cola Bottling Co.* [*Thomas*] v. *The Coca-Cola Co.* [*Coke*] *supra*. The decree entered in that 1920 case was a contract entered in the form of a consent judgment following the decision and while the case was upon appeal. That contract provided, among other things, that Coke could not sell in Thomas' territory or permit anyone else to do so without Thomas' consent.

Asserted by both respondents Coke and Thomas is that if this Commission proceeding results is a finding that territorial restrictions are unlawful, and that the finding is affirmed by appellate courts, that respondents will be forced to disobey either the Commission order prohibiting the restriction or the 1920 decree of the District Court.

Specifically, Paragraph 8 of the judgment provides that Coke would not have the right to sell within the territory of Thomas nor could Coke "permit or license anyone else to do so" without Thomas' permission. Thus, the contract does not prohibit the 223 bottlers of Coke products which have their contracts with Thomas from competing with each other nor does it prohibit the approximately 650 Coke bottlers who are parties to contracts with Coke, not Thomas, with competing with each other. Consequently, no inconsistency exists between the two decrees as to this type of competition here in issue. What is clearly prohibited is that Coke itself cannot sell its products within the Thomas bottlers' territories. A prohibition on Coke competing with its bottlers for a period of time is contemplated by complaint counsel and is discussed in the remedy section.

In many ways the potential conflict in this matter is similar to that presented in *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683 (1948). There the Supreme Court held a multiple basing point pricing system employed by 74 members of the Cement Institute to be a violation of the Federal Trade Commission Act. Defendants argued that the Commission's decision was inconsistent with a case previously brought by the Department of Justice against many of the same defendants as to the *FTC* v. *Cement Institute* proceeding. That previous decision, *Cement Mfgrs. Protective Assoc.* v. *United States*, 268 US.. 588 (1925), "the *Old Cement* case," found that the multiple basing point pricing system was lawful under Section 1 of the Sherman Act.

Rejecting the argument that the earlier decision estopped the Commission, the Supreme Court held:

"The Court's holding in the *Old Cement* case would not have been inconsistent with a judgment sustaining the Commission's order here, even had the two cases been before this court on the same day."

Also noted was that the issues were somewhat different, and that:

"In the second place, individual conduct, or concerted conduct, which falls short of being a Sherman Act violation may as a matter of law constitute an 'unfair method of competition' prohibited by the Federal Trade Commission Act. . . . The Commission and the courts were to determine what conduct, even though it might then be short of a Sherman Act violation was an 'unfair method of competition'." *Supra*, at 708.

The Court further stated in this regard that Congress' enactment of the Federal Trade Commission had as its purpose the supplementing of the enforcement of the Sherman Act 333 U.S. at 692. Thus, the Court recognized that a Sherman Act action could result in a dismissal of the action. This is essentially what happened in the *"Coke* v. *Thomas"* case—a Sherman Act issue was raised as to the division of the bottling business from the fountain business. There the court found that no violation had occurred. More significant here, however, is that the court did not find that territorial restrictions as to individual bottler contracts were lawful. This issue was dealt with only to the extent discussed earlier, and then only in a settlement agreement between the parties which was entered as a consent judgment.

In *Cement Institute*, the Supreme Court recognized that subsequent actions against the identical conduct might be brought by the Commission, the result of which could result in the conduct being declared illegal under the Commission's broader statute. Thus, the earlier judgment would be subservient to the Commission's since Congress had clearly intended the Commission to supplement antitrust enforcement and not be hindered by the Sherman Act cases in doing so. Certainly Congress did not intend a private settlement agreement prior in 1920 between two private parties, when charged in 1971 by the Commission, to interfere with the Commission's determination as to whether the challenged conduct of the two parties is lawful.

E. The proceedings are devoid of public interest

But to read the trial brief, indeed if only to scan its table of contents, makes manifest the invalidity of the contention that these proceedings are devoid of public interest. Its issue is a per se violation. The Commission has indicated its reason to believe that respondents have violated the Federal Trade Commission Act. Consequently, the proceedings are in the public interest See *Hershey Chocolate Co.* v. *FTC*, 121 F. 2d 968 (3d Cir. 1951); *Hills Bros.* v. *FTC* 9 F. 2d 481 (2d Cir. 1926), *cert denied*, 270 U.S. 662 (1926). (Coke Answer, p. 7, Thomas Answer, p. 10).

VII. AN APPROPRIATE REMEDY

Prohibiting Vertical Integration. As will be developed by the record in this matter, the prohibition of vertical integration between respondents and bottling companies for a period of time appears an appropriate part of any relief ordered in this matter. Since the very reason for this proceeding is to stimulate intrabrand competition, to eliminate territorial restrictions while doing nothing to prevent respondents from acquiring potential competing bottling companies would be anomalous.

Respondents Coke and PepsiCo, are the largest bottlers in the United States. Coke has bottling operations in 26 areas and has sales of approximately $123 million in 1967. PepsiCo has bottling operations in 25 areas, and has sales of approximately $116 million in 1967. Other soft drink companies have much less extensive bottling operations but may be tempted to integrate forward when the territorial restrictions are eliminated.

Because of the potential anticompetitive effects of dual distribution in this industry, any order should prohibit respondents from making any acquisitions of bottling companies for a period of years. For the same reason, the order should prohibit respondents from integrating into bottling by establishing new plants in the territories of other bottlers. Also, respondents' wholly-owned bottlers should be ordered to adhere to existing territorial boundaries for a period of years; however, such an area would not extend this prohibition on sales to customers that ship the products outside of the bottlers' territories.

A prohibition on building new plants and on restricting the companies to their current territories would provide a period of time in which small bottlers could merge into, efficient medium-sized units, thereby becoming better able to compete with their licensors' bottling operations when these restrictions are eventually removed. By restricting the soft drink companies from engaging in these activities and by bringing proceedings against anticompetitive acquisitions of smaller bottlers by large bottlers, the smaller bottlers will inevitably merge into medium-sized units. These units will be sufficiently large to have the necessary economies of scale needed to compete with large bottlers. This suggested policy is in accord with the Commission's recent decision in *Kennecott Copper Corp.*, 3 Trade Reg. Rept. par. 19,619, at 21,668–69 (F.T.C. 1971). Noted there was the desirability that merger activity be channelled toward smaller firms. Also, this remedial devise would protect small bottlers from being driven out of business by dual distribution practices of respondents.

VIII. CONCLUSION

In conclusion, that this brief is being filed at a time even prior to the initial prehearing conference in this matter is a fact which cannot pass without comment. Moreover, six other similar trial briefs are being filed this week in those soft drink territorial restriction matters which are companion cases to this proceeding. Of course, all such briefs are readily available to all respondents in all seven of these substantially identical pend-

ing matters. Consequently, at an early stage in these proceedings the theory of the complaint counsel's case-in-chief and remedial action thought appropriate has been set forth in detail for respondents enlightment. Moreover, complaint counsel did so in compliance with an order, the principle rational of which had been subsequently rendered moot by the denial of the requested consolidation of all seven of these matters now pending to the extent stated. (See Orders dated September 7, 1971 and September 29, 1971.)

No dissatisfaction is indicated by the required compliance with the order. Indeed, hopefully this early effort will promote an expeditious adjudication of these matters. Nevertheless, to this end, similar early filing by each respondent of a like effort in response to that now filed would appear appropriate. Also, being set forth at such an early date, certain latitude is sought within which to further develop and supplement the concepts and arguments expressed herein. This is especially so, under the circumstances here present, where the anticipated post complaint discovery has to date not yet been sought. However, of most immediate significance is that respondents file in the immediate future a response hereto so that all parties in this matter may be equally informed, and put on notice of each others' contentions, at these initial stages in this proceedings.

For the foregoing reasons, as heretofore set forth in this brief, complaint counsel submit that, based upon a complete record of reliable, probative, and substantial evidence, the violation charged by the complaint will be proved to constitute an unfair method of competition and unfair acts or practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act; and consequently, the entering by the hearing examiner of an initial decision stating such findings, setting forth appropriate conclusions, and containing the requisite order would be appropriate.

Respectfully submitted.

ROBERT B. LEE,
DAVID I. WILSON,
Complaint Counsel.

Dated: October 18, 1971.

COMMEMORATION OF LITHUANIAN INDEPENDENCE

Mr. PROXMIRE. Mr. President, it is my privilege today to pay tribute to the gallant and courageous people of Lithuania who today celebrate the 54th anniversary of Lithuanian independence. On February 16, 1918, after centuries of forced servitude to the crowns of Poland, Germany, and Russia, these determined people proudly proclaimed the new independent Republic of Lithuania.

As freedom came to this citadel of Christianity on the Baltic it nobly assumed all the responsibilities concomitant with democracy. Soon the new representatives of the Lithuanian people began to institute land reforms, reestablish industry and transportation facilities, and undertake the resolution of social and educational problems. Their commitment and perserverance in the struggle for liberty for over two decades earned the young republic the sobriquet of "Little America." It was with great pride that this Nation looked upon the progress and success of her sister state.

But this joy was shortlived when, in 1940, Soviet troops marched into the Baltic and once again occupied Lithuania along with Latvia and Estonia. This act stands as one of the foremost violations of international law in the history of the civilized world. Those valiant Lithuanians, either living under Russian rule or scattered throughout the free world, are living testimony to Soviet tyranny. Those too young to remember or understand this shameful deed need only recall the Russian invasion of Czechoslovakia in 1968 for a recent repetitive example.

The flame of freedom remains kindled in these brave people of the Baltic as Lithuanians everywhere continue to work and pray for a new day of independence. Theirs has been a long struggle, but they remain undaunted. As they celebrate their day of glory the United States joins in their denunciation of Soviet oppression. Throughout the past 22 years our Government has continued to recognize the Baltic governments-in-exile as the true representatives of the peoples of Lithuania, Latvia, and Estonia.

Today, as we speak in honor of that great moment of independence 54 years ago, all Americans should recommit themselves to those principles of freedom and justice which the Lithuanians proudly propounded in 1918.

THE NEW HAMPSHIRE SOIL CONSERVATION PROGRAM CONTINUES ITS EXCELLENCE

Mr. McINTYRE. Mr. President, I had the chance to meet this morning in my office with leaders of the New Hampshire soil conservation program.

Present were the State conservationist, Don Burbank, of Durham, Mr. Richard Vappi, of Moultonboro, the president of the New Hampshire Association of Conservation Districts, and his lovely wife; Mr. Robert Hibbard, of Loudon, Mr. R. S. Berry, of Stratton, and Mr. John York, of Kensington, the past president of the Association of Conservation Districts.

They presented me with the 1971 report of accomplishments for the districts in New Hampshire.

Once again I was deeply impressed with what has been accomplished by this vital program. This is truly one of our finest programs because it is a significant partnership of Federal, State, local, and individual effort to preserve our natural resources and make this a better nation for now and for future generations.

I wish to compliment the leaders who visited with me for their dedication to this cause and through them the thousands of others in New Hampshire who participate in this program and the millions throughout the Nation who work with the U.S. Soil Conservation Service and the conservation districts who accomplish so much with so little.

I am deeply concerned that the administration has called for a cutback of $23 million in soil conservation funds for this year. This cutback will strike a particular blow at the corps of environmental conservationists. I for one will have to see a lot more justification than is currently available to support any such cut in this most important program.

Mr. President, so that Senators may be aware of the many and significant accomplishments in soil conservation in New Hampshire this year, I ask unanimous consent to have printed in the RECORD the written material presented to me this morning on 1971 conservation highlights in New Hampshire.

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

IN PARTNERSHIP WITH CONSERVATION DISTRICTS AND OTHERS

One of the strengths of the conservation movement in New Hampshire is the dedicated service and cooperation from the many agencies and organizations. Among the most important of these agencies is the local conservation district.

The Soil Conservation Service provides technical assistance to all who advance the district's objective of using and treating our soil and water resources as needed within their capabilities.

Funds and services from local and state government, private individuals and organizations have all helped to promote the conservation effort. These contributions in 1971 were estimated to be $395,000. Conservation districts continue to seek ways to acquire funds to support an Executive Secretary and staff to more adequately support and carry out the District program.

ASSISTANCE TO INDIVIDUALS AND GROUPS

During 1971, the Soil Conservation Service provided technical assistance to 6,868 landowners and groups in solving their soil and water problems. The following are some of the major conservation practices applied during the year:

Diversions, 6,143 feet.
Fish Stream Improvement, 15,800 feet.
Hedgerow Planting, 8,500 feet.
Drainage Field Ditches, 20,155 feet.
Tile Drains, 46,275 feet.
Pasture and Hayland Management, 9,087 acres
Ponds, 166 number.
Access Roads, 255,278 feet.
Recreation Trail and Walkways, 73,300 feet.
Wildlife Wetland Management, 1,573 feet.
Wildlife Upland Management, 7,660 acres.
Woodland Improvement Harvest, 2,164 acres.
Land Adequately Treated, 41,711 acres.

OTHER ACCOMPLISHMENTS

Soil Survey, 192,501 acres.
Conservation Plans Prepared, 117 number.
New District Cooperators, 330 number.
Resource Inventories and Evaluations, 3,523 number.

ASSISTANCE TO COMMUNITIES

Our challenge in New Hampshire is to get conservation principles into the political decision-making process for land and water use decisions—at state and community level; to accelerate greatly the soil survey mapping, especially in the southern part of the state; and to base land use on its ability to sustain use and retain the quality of the base for future use.

Town meeting 1971 saw community consideration of a number of planning and environmental warrants. The positive votings on some of the items on the warrants are as follows: 21 communities established conservation commissions; 24 communities voted to join new or existing regional planning commissions; 9 communities voted to establish planning boards; 8 communities passed land use regulations; and 20 communities voted authority to planning boards to review subdivisions.

Some of the highlights of the assistance given to communities in 1971 included:

Assistance in the evaluation of 10 sites as possible locations for 5 new school plants.

Evaluation of 22 sites as to suitability for sanitary landfill operations for 25 towns.

Help officials in 15 towns prepare resource

plans for the development of water supplies for rural fire suppression.

Provide technical assistance for installation of 23 reservoirs and 43 suction-type hydrants as part of town fire suppression plans.

Provide resource data to 31 towns for use in developing or amending land use regulations.

ASSISTANCE THROUGH THE RESOURCE CONSERVATION AND DEVELOPMENT—NORTH COUNTRY PROJECT—COOS, CARROLL AND GRAFTON COUNTIES

The North Country Resource Conservation and Development (RC&D) Project continues to coordinate a multi-agency effort that is adding to the well-being of New Hampshire's northernmost people through resource development. RC&D is the catalyst that is making things happen.

Throughout the north country men and machines are at work on various kinds of community resource improvement: a housing development for the elderly is going up in Littleton; nature trails and labs are being installed at several project area schools; 6,000 junk cars have been collected and sent on their way; a low-cost incinerator for small town use is being developed; eroding streambanks are being riprapped; recreation areas are being developed; and large tracts of low value forests are being renovated.

The 28 new requests for community assistance in 1970–71 make a total of 63 requests that are now being investigated and planned, 32 that have been planned and are being installed, and 25 that have been completed this past year. These 120 active and completed project measures represent an estimated increase in annual gross income in the project area of over $2.75 million.

ASSISTANCE IN CONSERVATION EDUCATION

Some of the major conservation gains during 1971 are that most colleges and secondary schools are setting up curricula for teaching conservation principles and developing conservation standards for various uses of resources.

Teachers' workshops, supported by schools and conservation agencies, give classroom knowledge of resource conservation and its importance to America.

This past year several of our personnel participated in a teachers' workshop held at Mr. Cardigan Lodge. Approximately 40 teachers at the elementary, high school and college level attended the one-week session. Many of our other people gave talks to students in the classrooms.

The Soil Conservation Service provided planning assistance to 17 schools for the development of outdoor laboratories for teaching about natural resources.

ASSISTANCE IN SOIL SURVEYS

Modern soil surveys have been published for Merrimack, Rockingham, and Belknap Counties. Strafford County is scheduled for publication in 1972. The published soil survey identifies the local of each kind of soil in the county on aerial photographs. The narrative of these publications provides valuable information for land use planning activities.

Ceremonies to commemorate the completion of the soil survey field work in Strafford County were held on William Champlin property in Rochester.,

Individual community soil reports and maps used in connection with land use planning have been prepared at the request oi more than 40 communities throughout the State.

Three thousand one hundred requests for soil survey data were serviced this past year for landowners and developers in connection with applications to the State for the construction of sewage or waste disposal systems.

ASSISTANCE THROUGH SMALL WATERSHED PROGRAMS

Seventeen PL 566 watershed applications have been received. The total drainage area of these watersheds covers approximately one-fifth of the state. Two watershed projects have been completed and four more are currently under construction. The estimated cost of these six projects is $18.8 million, of which $11.8 million is PL 566 funds. These projects will provide over one-half million dollars of average annual benefits to local communities.

The Sugar River Watershed, the largest project planned to date, involves a total expenditure of $8 million, of which about one-half is PL 566 funds. In addition to land treatment, the plan includes ten floodwater retarding structures, six of which are multiple-purpose sites providing nearly 1,200 acres of water for recreation.

A work plan for Indian Brook watershed located in the town of Lancaster is in the final stages of development. This plan includes channel improvement and to structures for flood protection of agricultural and urban land. One structure is a multiple purpose fish and wildlife development which is being financed jointly with PL 566 funds and state funds through the New Hampshire Fish and Game Department and Water Resources Board.

A contract was awarded this year for the design of recreation facilities which will be a part of the total recreational development on the 135-acre multiple purpose flood control recreation dam in the Dead River Watershed near Berlin, New Hampshire.

Over $700,000 of watershed construction work was completed during the past year. This work included the completion of two construction contracts in the Souhegan River watershed located in Hillsborough County—consisting of one flood control dam containing 195,000 cubic yards of earth fill and a fish and wildlife development—and three flood control structures in the Baker River Watershed project located in Grafton County.

ASSISTANCE THROUGH FLOOD HAZARD ANALYSIS PROGRAM

There is an urgent need to initiate a program to plan for the orderly development of the land susceptible to flood hazard. Flood hazard analyses with a joint coordinated priority approach are a logical basis for developing the needed technical data for realistic flood plain land use and management programs.

In this connection, a flood hazard analysis study has been initiated by the Soil Conservation Service, New Hampshire Office of State Planning, and the town of Lancaster to delineate flood hazard areas in the town. It is anticipated that the study will be completed and a report prepared in 1972.

RIVER BASINS PROGRAM

The Soil Conservation Service in New Hampshire is providing USDA leadership in the New England River Basins Commission and in the Connecticut River Basin (Type 2) Study.

The Connecticut River Basin Comprehensive Plan has been completed. The Appendix on agriculture defines water and related land resource problems, needs and solutions. An environmental statement was prepared jointly by all agencies invoved in the study. The comprehensive plan and the environmental statement, along with comments, were submitted by the New England River Basins Commission to the Water Resources Council this past fall.

AIKEN, S.C., MARCH OF DIMES CAMPAIGN

Mr. THURMOND. Mr. President, students from the University of South Carolina, Aiken Regional Campus and Aiken High School recently held a marathon flag football game which lasted for 72 hours.

In this effort for the March of Dimes, they collected in excess of $2,300. Fifty-three young men started the game, but only 45 were able to finish. Following the game, the local March of Dimes organization and the city of Aiken each presented certificates of appreciation to the players. USCA sophomore Ronnie Abney, chairman of the teenage program for the March of Dimes, received a special commendation, and his mother, Mrs. Betty Abney, was named the marathon mother.

The game's statistics are to be filed with the Guiness World Book of Records and hopefully to be entered as the longest nonstop football game, 72 hours.

In light of the criticism youth are receiving today, we are very proud of the youth in Aiken, especially since they had to overcome many obstacles in order to hold the marathon football game.

Mr. President, I ask unanimous consent that an article which appeared in The Aiken Standard of Aiken, S.C., on December 31, 1971, entitled, "Capacity Crowd on Hand for End of Record Game," and an article which appeared in the Augusta Chronicle, of Augusta, Ga., on December 31, entitled, "1764–1150 Totals More Than $2,000 for Dimes March," be printed in the RECORD.

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

[From the Aiken, S.C., Standard, Dec. 31, 1971]

CAPACITY CROWD ON HAND FOR END OF RECORD GAME

(By Charles Henshaw)

A capacity crowd of around 1,000 persons turned out last night for the final play of the 72-Hour March of Dimes Flag Football Game. It was nearly four times the amount which was on hand for the kickoff Monday.

As the final seconds closed on the world's longest football game (USCA scrambled into a lineup, and hurried a 30-yard pass). It was incomplete, but USCA won anyway, soundly defeating Aiken, 1,764–1,150, probably the world's highest football score.

The game's statistics are to be filed with the Guiness World Book of Records and hopefully to be entered as the longest nonstop football game, 72 hours.

More than $2200 was collected for the March of Dimes. Approximately, $2,000 was taken at the gate in donations, concessions added $200, and the game ball was auctioned off for $65 to the Farmers and Merchants Bank. March of Dimes official Lee Downes said that exact totals will not be available until Monday.

Fifty-three young men started the game, but only 45 were able to finish. Amidst a number of minor injuries, one player collapsed from exhaustion, one sustained three cracked ribs, one a severely injured wrist, and another had his lower front teeth loosened. The last casualty was Roland Windham, Jr., who was briefly hospitalized yesterday with an inflamed knee condition. Of the 53, only one left the game out of disenchantment.

Following the game the local March of Dimes organization and the City of Aiken each presented certificates of appreciation to the players. USCA sophomore Ronnie Abney, chairman of the Teen-Age Program of the March of Dimes, received a special commendation, and his mother, Betty Abney, was named the Marathon Mother.

Chairman of the Aiken County March of Dimes, John Thomas, called the game a "tremendous effort." "I'm sorry we didn't gross as much as the kids thought it would, but it will help our other programs. It put

the Aiken County March of Dimes on the map."

The players had hoped to raise $1,000 for every 24 hours they were on the field.

[From the Augusta (Ga.) Chronicle, Dec. 31, 1971]

1764–1150 TOTALS MORE THAN $2,000 FOR DIMES MARCH

(By Ed Kuhn)

AIKEN, S.C.—The final score was 1764 to 1150 and it wasn't a high scoring basketball game either.

It was football and USC/Aiken defeated Aiken High School in what it believed will stand as the longest flag football game on record after 72 hours of continuous play which ended here Thursday night.

The marathon contest began Monday at Eustis field and was played for the benefit of the March of Dimes. The opposing teams were made up of volunteers from the Aiken regional campus of the University of South Carolina and Aiken area high school students.

Numbering 49 in all, the players raised over $2,000 dollars for the March of Dimes fund and established themselves as the self-proclaimed world's champion marathon flag football players.

"We're expecting a few disputes as to the validity of our claim to the record, but we feel ours is unique and will stand because of the way we set it up," said Ron Abney a student at USC/Aiken and originator of the contest. "We've already had a call from Louisiana State University and some people out there claim they played for 10 days and nights but we don't think they played with the same people for that long."

Abney and the remainder of the participants believe their record will hold because there were no substitutes for the original group which started Monday night.

"This is the uniqueness of our game," Abney continued. "We allowed players to sign up until the opening kickoff Monday, but didn't go outside for any help after that."

Fifty-three players started the game Monday night and played in shifts round the clock while sleeping in tents. Injuries cut the number to 49 at the climax Thursday. The majority of injuries were pulled muscles and bruises with the exception of 17-year-old Roland Windham who was hospitalized with torn ligaments in his left knee.

John Thomas, chairman of the Aiken County March of Dimes, called the game a "tremendous effort" by the students. Each player was presented a certificate of appreciation from the city of Aiken and the March of Dimes. The game ball was auctioned at the end of the game and was sold to the Farmers and Merchants Bank of Aiken for $65.

Among the individual records established in the 72-hour contest were longest continuous play set by Abney and Mike Gray. Both played non-stop for eight hours. High individual scores were Chuck Jones who had 29 touchdowns, Hank Morris with 28 and Levi Chavous at 25.

No evidence of an existing record has yet been discovered, but the players have made an effort to locate one. Inquiries have been forwarded to the Library of Congress as well as to Sen. Strom Thurmond and Rep. Bryan Dorn of South Carolina.

"We're going to make every effort to find a record but if we don't find one, and we haven't done so yet, we'll just submit ourselves as the record holders and wait for somebody to say differently," Abney added.

FALLOUT FROM NIXON'S EMBRACE OF BRAZIL

Mr. CHURCH. Mr. President, when the head of Brazil's military regime, General Emilio Garrastazu Medici, visited Washington in December, he was received with full pomp by the White House. President Nixon bestowed a fulsome accolade on the military president when he said that the whole of Latin America would go the way Brazil went. Since Brazil has been a military dictatorship since 1964, such a comment was not well received by those Nations that still conduct their affairs of state within a framework of democracy. Even nondemocracies were upset that the U.S. President would designate one country as the future star. According to a dispatch in the Financial Times of London, Nixon's embrace of Medici "brought out suspicions that Washington is using the Brazilian Government as a stalking horse for its strategies." This would imply a policy for the benefit of American-based multinational corporations, extensive counterrevolutionary activity, and a multitude of authoritarian regimes throughout the hemisphere.

I ask unanimous consent that a dispatch by Hugh O'Shaughnessy be printed in the RECORD.

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

[From the Financial Times, London, Jan. 14, 1972]

WHY NIXON BEFRIENDS BRAZIL

(By Hugh O'Shaughnessy, Latin America Correspondent)

A month ago President Nixon bestowed a fulsome accolade of international recognition on Brazil by receiving in Washington General Emilio Garrastazú Médici, that country's president, as part of a series of meetings with such Western leaders as Georges Pompidou, Edward Heath and Willy Brandt.

Since then the effects of Mr. Nixon's signal mark of attention towards Brazil and its military government have become clear. In Brazilian official circles Mr. Nixon's diplomacy is yielding its benefits and can be counted a success. In the rest of Latin America the results have not been so positive for Washington.

Last month's encounter was deliberately played up by the White House. The Brazilian President's visit was, it was said, within the contexts of Mr. Nixon's consultations with the leaders of friendly countries before his historic departure for Peking and Moscow. In that context Brazil was also the representative of the U.S.'s Latin American neighbors and of Washington's allies among the developing countries.

From the Brazilian end the Itamarati, Brazil's skillful Foreign Office, made it clear that Médici was going to Nixon to talk "as an equal."

The common Brazilian attitude might be best illustrated by the remark of the former Finance Minister and one of the principal architects of Brazil's recent economic growth, Sr. Roberto Campos. "The U.S.," he said, "is about to relinquish its leadership role in Latin America while we are prepared to take on part of the vacated responsibility."

The visit put the seal on the close collaboration that has existed between Washington and Brasilia since 1964 when the Brazilian military overthrew President João Goulart, the last civilian leader in Brazil.

The U.S. used its political and economic leverage against the populist left-wing Goulart administration long before it actually fells and the then U.S. envoy in Brazil, Mr. Lincoln Gordon, complimented the new military junta some hours before President Goulart actually yielded up office.

As the military in Brazil reversed Goulart's policies of hostility to U.S. foreign policy objectives and to U.S. business so Washington stepped up its monetary and technical assistance.

The amount of monetary assistance that Washington has given to the Brazilians since 1964 comes to around $2,000 m. and has actually exceeded the estimated total worth of U.S. investments in the country, large though these are. As Senator Frank Church, Chairman of the U.S. Senate's Subcommittee on Western Hemisphere Affairs, acidly remarked in hearings in Washington last year, "So we have pumped in $2 billion since 1964 to protect a favourable climate of investment that amounts to about $1.6 billion."

FRIENDLY

Senator Church was consciously caricaturing the situation. But Washington's help to Brasilia has not been and is not wholly aimed at protecting U.S. investment. The thinking behind the flow of funds was summed up during the Médici visit when Mr. Nixon said that the whole of Latin America would go the way Brazil went.

The U.S. Ambassador in Brasilia, Mr. William Rountree, told the Brazilian Senate succintly: "Brazil is essential to the security of the United States."

A friendly Brazil is not just a convenience for U.S. investors but a great political and military advantage for the State Department and the Pentagon, deserving of a very high insurance premium.

Just how solid has been the political underpinning of the Brazilian Government which has accompanied the flow of aid dollars was revealed at Senator Church's hearing on U.S.-Brazilian relations in Washington last year. Speaking before Senator Church's subcommittee General George S. Beatty, chairman of the U.S. delegation to the Joint Brazil-U.S. Military Commission, agreed that the Pentagon was helping the Brazilian Government in a bewildering number of techniques of government. They included "censorship, chemical and biological operations, briefings on the CIA, clandestine operations, communism and democracy, counter-guerrilla operations, dissent in the U.S., electronic warfare and counter-measures, the use of informants, counter-intelligence, subversion, espionage and counter-espionage, interrogation of prisoners and suspects, handling mass rallies and meetings, nuclear weapons effects, psychological operations, raids and searches, terror and undercover operations."

This "public safety programme," having largely achieved its purpose of assisting the Brazilian military to master their political opponents, is to be phased out this year. There is no sign, however, that U.S. financial aid will falter and indeed may have to be reinforced if, as many believe will occur soon, Brazil finds herself in foreign exchange difficulties.

The Médici visit before Christmas therefore put elegant frills on a cake which had been baking in the oven for six years. It also served to tone down those differences of opinion that have sprung up between Washington and Brasilia, notably about Brazil's claim to 200 miles of territorial water and the U.S. reluctance to continue to co-operate in the International Coffee Organization. Mr. Nixon's red carpet has pleased and flattered a friendly government in the most effective possible fashion and ensured continuing co-operation.

The ripples that the visit has been causing in the rest of Latin America have however done something to counter the benefits for President Nixon and the State Department. The visit has rekindled the old rivalries and fears that the Spanish-speaking countries have in the past felt towards the Portuguese-speaking giant. (By population and area Brazil is about twice as big as the largest Spanish-speaking republic, Mexico.) It has also brought out suspicions that Washington, which is currently assuming a "low profile policy" in Latin America, is in fact

using the Brazilian Government as a stalking horse for its strategies.

CRITICISM

Hardly had General Médici left Washington before President Rafael Caldera of Venezuela came out with a strong personal statement which, while not specifically naming Brazil, rejected the idea that many Latin American country could exercise any "hegemony" over the rest of the region. Mexican officials let it be known that they were unhappy with the contrast between the red carpet treatment that General Médici received and the informality in which President Nixon met President Echeverria earlier last year.

In Peru and Argentina the Press has been active in criticising the visit. The usually staid Buenos Aires daily *El Cronista* claimed that the bad social and economic conditions in much of Brazil made nonsense of any Brazilian aspirations to great power status. "There is not much difference between the Brazilian North-East and Patrice Lumumba's Congo," it editorialised.

President Lanusse of Argentina will be visiting Brasilia at the beginning of March to make his own judgment of Brazil's intentions. Meanwhile, it is clear that Argentina is seeking to join with the countries of the Pacific coast of South America in forming some sort of diplomatic and economic counterweight to growing Brazilian aspirations.

FOREIGN TRADE

Mr. HARTKE. Mr. President, the recent closing of the Bendix Co. plant in York, Pa., brings into sharp focus the need for the prompt passage of S. 2592, the Foreign Trade and Investment Act of 1972, which I introduced in September of the last session. Like many other American companies, Bendix has responded to a tariff code loophole that encourages American capital to seek a foreign home. Six hundred Bendix workers have now joined the more than 60,000 Americans that have lost their jobs to this loophole in the last 5 years.

Present tariff law permits manufactured items to be exported for assembly and reimported with a tariff charged only on the value added by low paid foreign labor. Mexico has attracted a particularly large number of firms in part because of its proximity, but largely because of the Mexican Government's border industrialization program. Under this program, Mexico offers wholly owned subsidiaries of foreign companies many special privileges such as leasing arrangements, work permits for key personnel, and duty free import of machinery, raw material, and supplies.

All the labor, however, except the managers, must be Mexican, and the products must be exported. Since wages in this region vary between 20 cents and 55 cents an hour, it comes as no surprise that the program has been spectacularly successful. Since its inception, the number of U.S. companies operating on Mexican soil has jumped from 30 to 290, and is expected to top 330 by the end of this year.

Partially fabricated products are sent to Mexican plants for processing or assembling, then shipped back across the border for final finishing, which in many cases is as simple as affixing a "Made in U.S." label and then sold to U.S. consumers at current U.S. prices.

The result is an ill thought through foreign aid measure in which the American working man with years of seniority pays with his job and often his future. And this catastrophe is being repeated and will continue to be repeated until we face the harsh realities of exported jobs and the failure of national trade policy. I believe that a remedy for these ills is to be found in the Foreign Trade and Investment Act of 1972.

TOTAL FORCE PLANNING

Mr. DOMINICK. Mr. President, Secretary of Defense Melvin R. Laird has been presenting to the Committee on Armed Services his statement in support of the fiscal year 1973 defense budget and the defense program for the 5-year period from fiscal year 1973 to fiscal year 1977.

Over the next few weeks those of us on the committee will hear from other Department of Defense witnesses on specific aspects of the program outlined by Secretary Laird and will make our analysis and recommendation to the full Senate. While we will probably not agree with every aspect of the Department's request, I am impressed with the comprehensiveness of the program outlined by the Secretary. In essence, he has laid it on the line and has given an excellent outline of the administration's program to continue its strategy of realistic deterrence.

Mr. President, I would especially invite the attention of Senators to that portion of Secretary Laird's statement dealing with total-force planning. This is the real meat of the defense request and it warrants the serious attention of all of us if we are to make an objective and realistic judgment as to our national security requirements. It is also an area with which the American people should become familiar.

Mr. President, I ask unanimous consent that the portion of Secretary Laird's statement entitled "Total Force Planning To Implement the Strategy" be printed in the RECORD.

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

III. TOTAL FORCE PLANNING TO IMPLEMENT THE STRATEGY

A. THE FY 1973 BUDGET AND THE FIVE-YEAR PROGRAM

I presented to you last year the first Five-Year Defense Program of this Administration, indicating that we had essentially completed the transition from the expanded force levels needed to fight the Vietnam conflict to our baseline force for future planning. In the program I am presenting to you today, we are maintaining the baseline while designing the Nixon Doctrine forces needed to implement our strategy. The proposed peacetime force structure is, in my judgment, adequate to fulfill the basic planning requirements which I will discuss presently. However, this judgment is conditioned on effective implementation of the Total Force Concept—both with regard to increasing the capability of our own Reserve and Guard Forces, and with respect to our allies' willingness to continue improving their active and reserve forces. Table 2 at the end of this Report provides a summary of the forces we now plan to maintain over the FY 1973–1977 period.

In the following sections, I will discuss many of the specific programs we are recommending in the FY 1973 Budget to preserve baseline capabilities; to provide for readiness, modernization and improvement in needed baseline capabilities; and to create additional options for new forces should future events require them.

Before turning to the specifics of our programs, I would like to discuss briefly the major trends in the FY 1973 Defense Budget. The FY 1973 budget I am presenting today is designed to provide a balanced program across the spectrum of capabilities required to implement our National Security Strategy of Realistic Deterrence.

1. Financial highlights

Budget authority requested for FY 1973 totals $83.4 billion. This is an increase of $6.3 billion over FY 1972, and represents 29.8% of the total Federal Budget, the lowest level in 23 years. It should be noted that a large part, a total of $4.1 billion or 65% of the $6.3 billion increase represents increases in the cost of military, civilian and retired pay.

Defense outlays for FY 1973 are estimated at $76.5 billion, up by $700 million from FY 1972. Here again, the increase is much less than that for other federal programs. Defense outlays represent 30% of the federal budget in FY 1973, the lowest level since FY 1950. The percentage of the GNP devoted to Defense continues to decline—from 7.0% in FY 1972 to 6.4% in FY 1973. This is a 22 year low.

We also are requesting a supplemental appropriation for FY 1972 totaling $141 million in R. D. T. & E. and $113.8 million in procurement funds. Only essential programs that in our judgment could not await the availability of FY 1973 funds have been included in this important request. We have proposed in our supplemental request additional funding to accelerate important programs within amounts that have already been authorized for appropriations during FY 1972.

b. Major program highlights

The FY 1973 Budget provides significant increases in the following areas:

Budget authority for strategic nuclear forces will increase by $1.2 billion, including a major step to strengthen the sea-based element (ULMS) of our deterrent and to procure a new Advanced Airborne Command Post (AABNCP). A major part of the supplemental proposed for FY 1972 is to be applied to these two programs. We are also continuing development of the B–1 strategic bomber to provide an option to improve that element of our deterrent forces for the 1980's and beyond.

Budget authority for research and development will increase by $1.0 billion, to provide the increased effort needed to maintain our technological superiority. The remainder of the FY 1972 supplemental will also be applied to R. & D.

Budget authority for shipbuilding and conversion will increase by over $500 million to a level more than two times the 1966–1970 average, demonstrating our emphasis on modernizing and maintaining a strong Navy.

Budget authority for Guard and Reserve Forces will increase by over $600 million, reflecting their increased role under the Total Force Concept and the need to prepare them to augment the active forces in any future contingency.

Training, medical and general personnel programs will increase by $1.8 billion in FY 1973. This indicates the emphasis placed on personnel-oriented program as we move toward a zero draft and an All-Volunteer Force, as well as the increased costs of military retired pay and medical care and other support for active and retired military personnel.

Support to other nations increases $300 million, reflecting a larger increase for Military Assistance, offset by reduced requirements for support of Vietnamese and other Free World forces.

As for specific programs, in the strategic forces area major increases are proposed for the B–1, the sea-based missile force, Airborne Warning and Control System (AWACS), Safeguard and the AABNCP. General purpose force funding increases are included for a fourth nuclear-powered aircraft carrier, the Air Force's new F–15 fighter, the Navy's new Patrol Frigate, and nuclear attack submarines.

Total military and civilian defense manpower is expected to be 3,394,000 at the end of FY 1973, the lowest level since 1950, This total represents a decrease of 38,000 from FY 1972, and its is 1,440,000 below the Vietnam war peak of FY 1968. Military manpower is down 1,189,000 and civilian manpower 251,000 from 1968 peaks. Over this same period defense-related employment in industry will also register a decline of about 1.3 million.

The dollar outlays for manpower continue to increase. Pay and related costs have increased from 53% of the budget in FY 1972 to about 56% in FY 1973, compared with 52% in FY 1971 and only 43% in FY 1964. However, budget authority for manpower is roughly constant at 53% for both FY 1972 and FY 1973.

As we proceed towards an all-volunteer force and as we seek to make military service more attractive and more rewarding, we can expect upward pressures on manpower costs to continue. We will continue our efforts to bring them into a more realistic balance with our other critical needs. It will not be easy to strike a balance between our equipment needs and our manpower needs. I believe, however, that the FY 1973 Budget will provide the minimum funds needed for both manpower and equipment and will give us the force capability and readiness which are essential for the National Security Strategy of Realistic Deterrence.

B. MILITARY STRATEGY AND FORCE PLANNING

Our goal is to deter war. The military means to this deterrence goal require maintenance of military forces—sufficient for deterrence and adequate in size and readiness, when combined with the forces of our allies—to defend our vital interests in the event of conflict.

In defense planning, the resources available to meet thet requirements of Free World security include both active and reserve components of U.S. forces, the forces of our allies, and the additional military capabilities of our allies and friends that can be made available through provision of appropriate security assistance programs.

History has shown the disparity between plans for and use of military force. We cannot predict in specific detail how our military forecs might be used in any given situation. We can, however, specify what we want them to be able to do, provide some inherent flexibility, and estimate what they can do in likely situations. We must be sure that our forces provide relevant power—power to reduce the probability of conflict; power to fight, if necessary, in defense of our interests.

Our FY 1973 Budget plus certain programs contained in the FY 1972 Supplemental request reflect in particular our concern about the nuclear threat posed by the Soviet Union. The programs we are proposing are the minimum required, in my judgment, to provide forces and development programs necessary to maintain our strategic sufficiency.

While our planned five year strategic force program reflects tentative decisions about deployment of certain forces under development, it is designed for maximum flexibility in order to take account of developments either in the threat or at SALT.

Our theater and tactical nuclear capable forces also serve an essential role in the spectrum of deterrence. To be a realistic deterrent, these forces must possess a credible and effective theater nuclear capability, backed by U.S. strategic forces. While these forces are designed primarily to deter nuclear conflict, they also serve to help deter conventional aggression because of the uncertainty surrounding the circumstances under which theater nuclear weapons might be employed. Our planning calls for moderate improvements in our current capabilities in this area.

Our force planning objective for theater conventional warfare is to provide for adequate ground, air, naval and mobility forces—active and reserve, allied and U.S.—which in combination with our nuclear forces will deter such conflict. This requires an effective and visible U.S. and allied capability to cope with major USSR or PRC aggression against any country or area vital to our interests.

We recognize that subtheater/localized conflict cannot be controlled or prevented by the unilateral fiat of any major power, and that such conflicts can erupt periodically and, in some cases, unexpectedly.

Force planning for both theater and subtheater conventional conflict involves the most appropriate application of the Total Force Concept. We have therefore established the following guidelines:

Friendly countries should be encouraged to increase their regional and self-defense efforts, with due regard for maintenance of international economic stability.

Security assistance should help foster regional security arrangements, so that individual country defense burdens are kept within practicable limits and regional arms races are avoided.

Allied forces may be structured in a balanced fashion in anticipation of unilateral defense; or emphasis may be placed on developing forces—particularly those for ground combat—capable of operating effectively with U.S. support forces. Determination of which objective is most appropriate will depend on individual circumstances.

The forms of security assistance will be chosen in accordance with local requirements, cost and availability.

The U.S. general purpose force structure can be adjusted further when allied defense assets already on hand can perform the same function adequately. Similarly, future allied capabilities often will be able to substitute for U.S. forces. Where possible, we should support this local force development with appropriate security assistance.

Any redeployments of U.S. forces presently stationed in forward positions will be carried out consistent with maintenance of adequate Free World forces to support our interests and those of our allies.

Four general categories, consistent with the above guidelines, govern our planning under the Total Force Concept. They facilitate, where appropriate, an orderly progression from heavy reliance on U.S. forces to increasing reliance on indigenous forces. These categories are:

Combined force planning assumes integration of U.S. forces with local forces and calls for force plans to be developed in close consultation with allies. Examples include NATO, Korea and Vietnam through the completion of Phase I of Vietnamization last year. This planning reflects detailed consideration of all assets available to the various countries in fulfilling necessary requirements for deterrent forces in peacetime and effective combat forces should deterrence fail.

Complementary force planning assumes U.S. obligations of some military nature to help defend a particular country under attack but generally does not include prepositioned, integrated U.S. forces on the ground during peacetime. This planning also is developed in close consultation with friends and allies. Examples include Thailand, Japan, and Vietnam until Phase II of Vietnamization is completed. The primary consideration with regard to U.S. forces is the role these forces would play in the event of conflict in augmenting national forces in areas where local capability is low or marginal. Primary reliance should be placed on the use of local manpower and the development of self-sufficient local capabilities against large scale external aggression, with the U.S. providing specialized support and necessary assistance, designed to augment local forces.

Supplementary force planning reflects a U.S. role in supplementing local capabilities primarily through the provision of appropriate security assistance. This planning emphasizes making available the requisite training, equipment and supplies to improve the deterrent forces of our friends and allies. Examples include Indonesia, Cambodia and certain countries in the Middle East.

Unilateral U.S. force planning reflects U.S. requirements for responding to contingencies where U.S. interests or obligations are at stake. This would involve only U.S. forces in situations where we would not expect active support from others.

As I noted earlier in my statement, an attempt to integrate more closely available Free World resources will require many changes in our past approaches—changes which pose difficulties in both understanding and implementing effective programs.

While we are making substantial progress in our efforts to implement these total force planning guidelines, it will take time to complete the adjustment from the rigidities of the past to the realities of the future. These adjustments can and must continue to be made, both in our own force planning and in our planning with our allies.

Let me now turn to a discussion of the details of the program which we are recommending to you for the forthcoming year, after which I will highlight some of the initiatives we are pursuing in our own force planning and in our relations with our allies.

C. STRATEGIC NUCLEAR FORCES FOR DETERRENCE

"Our forces must be maintained at a level sufficient to make it clear that even an all-out surprise attack on the United States by the USSR would not cripple our capability to retaliate. Our forces must also be capable of flexible application. A simple "assured destruction" doctrine does not meet our present requirements for a flexible range of strategic options. No President should be left with only one strategic course of action, particularly that of ordering the mass destruction of enemy civilians and facilities." President's Foreign Policy Report to Congress, 1972.

1. Strategic sufficiency and the implications for force planning

In deterring strategic nuclear warfare, i.e., enemy use of nuclear weapons involving a direct attack on the U.S., primary reliance will continue to be placed on U.S. strategic deterrent forces.

In planning these forces, we have certain objectives derived from the sufficiency criteria. As explained last year these include:

Maintaining an adequate second-strike capability to deter an all-out surprise attack on our strategic forces.

Providing no incentive for the Soviet Union to strike the United States first in a crisis.

Preventing the Soviet Union from gaining the ability to cause considerably greater urban/industrial destruction than the United States could inflict on the Soviets in a nuclear war.

Defending against damage from small attacks or accidental launches.

I want to note, however, the these criteria are under intensive review in light of the changing strategic conditions, including the momentum of Soviet and Chinese nuclear capabilities, and potential outcomes in the Strategic Arms Limitation Talks (SALT).

As the President has stated, sufficiency includes maintaining forces adequate to prevent our allies, as well as the U.S., from being coerced. Therefore, we also plan our strategic nuclear forces so that they will enhance our theater nuclear capabilities and the nuclear capabilities of our allies to deter attacks on them by strategic or other nuclear forces.

In order to maintain needed flexibility, we design our forces so that we have strategic alternatives available for use depending on the nature or level of provocation. This means capabilities that enable us to carry out an appropriate response without necessarily resorting to mass urban and industrial destruction.

Turning to specifics in our planning, although each element of our strategic offensive forces at the present time possesses a substantial capability in its own right, we plan to maintain a combination of land and sea-based missiles and manned bombers during the program period. This will enable us to take advantage of the unique capabilities inherent in these different systems to provide a hedge against enemy technological breakthroughs or unforeseen operational failures, either of which might adversely affect our deterrent, and to complicate Soviet and PRC offensive and defensive strategic planning.

In our strategic defensive planning, we are designing our forces in accordance with the objectives already described, especially the deployment of defenses that limit damage from small attacks or accidental launches to a low level.

Our objectives for air defense of the United States include:

Deterring air attacks by defending strategic retaliatory forces, and key military and urban/industrial targets.

Defending the National Command Authority.

Limiting damage from deliberate or unauthorized small air attacks.

Restricting the unauthorized overflight of U.S. airspace.

Warning against ballistic missile attack on the U.S. will be based on maintaining a highly reliable warning network with adequate coverage. We seek to minimize the susceptibility of this network to any countermeasures. Furthermore, command and control systems should be secure, reliable, flexible, and survivable to insure that strategic forces are immediately responsive to political and military decisions.

In our research and development planning for strategic offensive forces, we are directing our efforts toward vigorous programs emphasizing innovation, flexibility, diversification, and survivability rather than, as some believe, the maintenance of a large independent retaliatory capability in each of the current force components. We are examining new concepts for future strategic offensive forces, keyed to an approach that diversifies U.S. programs if additional capabilities are needed in the future.

Our continuing analyses of strategic force effectiveness indicates that planned strategic forces should continue to provide an adequate deterrent for the near term. We have reliable and survivable strategic retaliatory forces today, and their capabilities for retaliation cannot be denied by nuclear attack in the near term.

2. The planned fiscal year 1973 strategic forces

No major changes in deployed U.S. strategic retaliatory forces will be evident in FY 1973, although we are continuing to make qualitative improvements in our forces. At the end of that fiscal year, our strategic offensive force levels will continue to include 1,000 Minuteman missiles, 54 Titan missiles, 455 B–52 aircraft (26 squadrons) , 72 FB–111 aircraft (four squadrons), and 656 Polaris and Poseidon missiles carried in 41 nuclear submarines. In the strategic defensive forces, we will reduce to 585 manned interceptors and 755 surface-to-air missiles on site, together with associated warning and command and control systems.

With planned modernization, and with a phased Safeguard deployment as appropriate, these strategic force strengths represent our baseline planning forces for the future.

3. Major strategic force programs

The major programs for improvement and modernization discussed in the following sections are designed to provide capabilities to fulfill the basic planning objections I noted earlier, while at the same time preserving flexibility to adjust capabilities in the future if necessary. A summary of the FY 1973 programs, and the FY 1971 and FY 1972 effort, is shown on the following page.

a. The strategic retaliatory force

In the strategic offensive forces area, we continue to move forward with planned improvements to all elements of our deterrent in light of the continuing momentum of the Soviet threat.

SELECTED STRATEGIC FORCES PROGRAMS

[In millions of dollars]

	Fiscal year—		
	1971 actual funding	1972 planned funding	1973 proposed funding
Reliable, survivable retaliatory forces:			
Development and procurement of new undersea long range missile system (ULMS)	44	140	942
Continued development of new strategic bomber, B–1	75	370	445
Development and continued procurement of short range attack missile (SRAM) and modification of aircraft	281	383	314
Continued development of subsonic cruise armed decoy (SCAD)		10	49
Continued procurement of Minuteman III and Minuteman force modernization (inc dev costs)	695	848	837
Conversion of SSBNs to Poseidon configuration, continued procurement of Poseidon missiles and associated effort	952	766	751
Development of advanced ballistic reentry systems and technology	100	104	104
Reconnaissance, early warning, and air defense:			
Development and deployment of advanced airborne command post (AABNCP)	1	120	141
Continued development and production of air borne warning and control system (AWACS), and over the horizon radar (OTH)	92	142	474
Continued deployment of new satellite strategic surveillance system and development of follow-on systems	105	86	80
Ballistic missile defense:			
Continued deployment of Safeguard	1,369	1,117	1,483
Identification and development of advanced ballistic missile defense technology by the Army's ballistic missile defense agency	104	96	102
Prototype development of hard-site defense	25	60	80
Civil defense O. & M	73	78	88

Last year I reported to you that we had made some hard decisions with regard to development of certain strategic force programs and that we would continue to keep this area under close review. In light of continued developments in the threat, we have decided this year to accelerate development of the Undersea Long-Range Missile System (ULMS), as well as moving forward with development of the B–1 bomber.

Undersea Long-Range Missile Systems (ULMS). The continuing Soviet strategic offensive force buildup, with its long term implications, convinced us that we need to undertake a major new strategic initiative. This step must signal to the Soviets and our allies that we have the will and the resources to maintain sufficient strategic forces in the face of a growing Soviet threat. It would be diplomatically and politically unacceptable for the U.S. to allow the Soviets to achieve a large numerical superiority in both land-based and sea-based strategic missiles. Moreover, there would be an increasing military risk that future technological advances in conjunction with much larger numbers of Soviet strategic missiles, might offset the qualitative improvements we are planning for our land-based strategic forces.

I have carefully reviewed all alternatives for new strategic initiatives and have decided that acceleration of the ULMS program is the most appropriate alternative, since the at sea portion of our sea-based strategic forces has the best long term prospect for high pre-launch survivability. The Navy assures me that this acceleration will permit deployment of the first ULMS submarine in 1978, at least 2–3 years earlier than would have been the case in the regular program.

In reaching this decision, we considered a range of alternatives, including further modification to existing submarines and construction of additional submarines using the basic design for the latest POSEIDON submarines. We concluded that acceleration of the ULMS development program was the best possible course of action available for several reasons including:

First: The ULMS program is already underway as a major development program. It therefore does not involve disruption of ongoing programs which already have high priority, such as the POSEIDON conversions and construction of nuclear attack submarines.

Second: ULMS offers the best technical program currently available to provide future sea-based strategic force capability. It makes the greatest use of new submarine quieting technology, and is capable of carrying a larger ballistic missile than can be fitted in existing submarines. The option to deploy this larger missile provides flexibility for increased range, and hence larger operating area at sea, or alternatively a capability to carry large, more advanced penetration payloads at less range, should this be desirable in the future.

Third: Deployment of ULMS, with a capability to carry a greater number of large missiles, means that a given nuclear payload can be deployed with fewer boats and crews.

Finally: The ULMS missile development program will permit an option to retrofit the shorter range ULMS I missile into POSEIDON submarines in the future, should that be desirable.

A total of $942 million is being requested for the ULMS program in FY 1973.

The ULMS program we are proposing will be discussed in further detail by other witnesses before the Congress. I am confident Congress will understand the need for accelerating the ULMS program, and will continue to provide this program the excellent support which it has received in the past.

The B–1 Strategic Bomber. The FY 1973 Budget includes $445 million to continue engineering development of the B–1 intercontinental bomber, intended to replace the aging B–52 fleet. The B–1 is being designed to improve capabilities over the B–52 through faster reaction, increased resistance to nuclear effects, shorter escape times, longer range, greater payload, higher speeds at both high and low altitudes, reduced infrared signatures, decreased radar cross sections, and greatly increased ECM capabilities. In total, these increased capabilities would enhance pre-launch survivability and penetration capabilities of the manned bomber force for the post 1980 time period.

The B–1 is being developed in such a manner as to minimize concurrency between development and production. In this respect, there will be about one year of flight testing on the prototypes before a production decision is necessary. This approach would permit us to have the B–1 operational in meaningful numbers by the early 1980's.

As Secretary Seamans indicated during his recent appearance before the Congress, the B–1 engineering development contract with North American Rockwell is a "Cost Plus Incentive Fee" contract with no provision for a buy option. I want to emphasize that we will not commit the B–1 to production before performance requirements are demonstrated. The program provides for seven basic milestones, and was changed significantly last year when two test aircraft were eliminated and other adjustments made in the development program. The first flight is scheduled for April 1974.

Other Programs. As I noted last year, to enhance the prelaunch survivability of our current strategic bomber force against the Soviet submarine-launched ballistic missile threat, alert aircraft are being dispersed over a greater number of bases, generally further inland than in the past. Nineteen satellite bases, each with austere facilities to support aircraft, will be in operation by the end of FY 1973. We are continuing to examine options for more extensive interior basing of this force, and other means to further improve prelaunch survivability against a broad range of potential threats—the one of most concern being a postulated improvement of submarine-launched ballastic missiles, which would decrease the warning time available to the bomber force.

To improve the capability of the B–52 and FB–111 bomber force to penetrate improved defenses postulated for the latter half of this decade, we are requesting $314 million in FY 1973 to: (1) procure Short Range Attack Missiles (SRAM); and (2) modify 92 B–52 aircraft to carry SRAMs. In addition, we are requesting $49 million to continue development of the Subsonic Cruise Armed Decoy (SCAD) to counter projected improvements in Soviet area air defenses for the late 1970s. Both SRAM and SCAD will be compatible with the B–1.

SCAD, which is expected to have a range of several hundred miles, will simulate the radar characteristics of a bomber, thereby presenting many additional incoming objects that the Soviets must counter with area defenses. The SCAD is also being designed to accept, with minimum modifications, incorporation of a warhead with associated improved guidance and increased range. We presently plan to produce prototypes of key SCAD subsystems—engines and avionics—prior to making a decision to produce the system.

The SRAM carries a nuclear warhead and travels at supersonic speed. It gives the attacking plane a capability to "stand off" from a target and avoid terminal anti-aircraft defenses, or the capability to suppress the defenses and penetrate to the target. After a favorable test program, the Air Force entered into full production of the missile last year.

We are continuing the program to deploy MIRVs in our Minuteman and Poseidon missiles. We consider this program essential to preserve the credibility of U.S. deterrent forces when faced with the growing Soviet strategic threat. The MIRV program provides a number of small, independently-targetable warheads on a single missile. Should part of our missile force be unexpectedly and severely degraded by Soviet pre-emptive actions, the increased number of warheads provided by the remaining MIRV missiles will insure that we have enough warheads to attack essential soft urban/industrial targets in the Soviet Union. At the same time, the MIRV program gives us increased confidence in our ability to penetrate Soviet ABM defenses, even if part of our missile force were destroyed.

Including MIRV, several major programs for the improvement and modernization of our land-based missile force are now underway, with a total funding requested of $837 million. The budget includes $415 million to procure a quantity of Minuteman IIIs, toward a planning objective of 550 missiles. The force modernization program includes upgrading Minuteman silos in order to reduce their vulnerability to nuclear blast and radiation effects. This upgrading program is coordinated with the replacement of Minuteman I by Minuteman III missiles to complete both the silo upgrading and Minuteman III deployment programs efficiently.

In addition, our Safeguard deployments will provide active defense of a part of our ICBM forces, and we are continuing prototype development of Hardsite Defense (HSD) to provide an option to protect our land based ballistic missiles against threats greater than those with which Safeguard is designed to cope. I will discuss these programs and their relation to our overall planning in a later section.

We are continuing to convert Polaris submarines to carry the Poseidon MIRV missile. The Poseidon development test program was completed in June 1970. Through February 1972, there have been 24 missiles fired from operational submarines. The Budget includes $751 million to convert more submarines, procure more missiles and provide long lead items for conversions planned next year. Funding for the Poseidon submarine conversion program should be completed in FY 1974, with the exception of outfitting and postdelivery costs.

One other important developmental effort that we are continuing in the strategic offensive area is the Advanced Ballistic Reentry Systems (ABRES) program. We plan to continue our investigations of several types of re-entry systems, and are requesting $104 million in FY 1973 for this effort. Dr. Foster will discuss the details of this program with you.

b. Strategic Command and Control

As I explained earlier in this chapter we seek reliable, flexible and survivable command and control systems. The growing threat from Soviet strategic forces makes early improvements to our national command and control system imperative. The most critical need is for a survivable, enduring command post. Over the years, we have concluded that the best solution to this problem for the foreseeable future is to go airborne with adequate command, control and communications facilities on board. Accordingly, we have decided to move ahead and request funds for procurement of new aircraft for this purpose.

Our current airborne command and control system is deficient in that it lacks capacity for added communications and data processing equipment. We need to improve the survivability of the system, and to provide the more secure communications needed for control and execution of the forces, the long endurance, the space for sufficient high level staff to support the National Command Authorities, and the space for the battle staff and equipments which provide the information needed in the critical decision-making process.

Earliest possible correction of deficiencies is essential. We believe that by moving vigorously now we can greatly improve our command and control posture by early 1975. To achieve this goal, the first steps are to acquire aircraft with the size and endurance needed and to initiate acquisition of the new on-board facilities.

To perform the command and control job, a fleet of seven AABNCP aircraft is needed. We requested $119.8 million in our FY 1972 Supplemental request to purchase the first Boeing 747 aircraft and related electronics. We propose to purchase two more aircraft in FY 1973 and one additional aircraft in 1974 to achieve early correction of our deficiencies. The initial aircraft will provide some important improvements in our capability by 1973. Three of these first four aircraft will use the existing EC–135 electronic equipment and the fourth will be used for a special electromagnetic pulse test program and as a test bed for the development and operational testing of those new equipments which will be needed. By providing a larger, more capable aircraft, even with the present electronic equipment, we will be able to obtain greater endurance, more flexibility, capacity for larger battle staffs, and additional space to put improved communications and automatic data processing as it becomes available.

To provide a much needed improvement in Naval and Air Force communications, and to strengthen the survivability and flexibility of our control and communications to the strategic bomber forces as well as the SLBM forces, we have initiated in FY 1973 a new communications satellite program for air and sea-mobile users-Fleetsatcom.

c. Strategic Defensive Forces

1. Air Defense

At the end of FY 1972 the air defense forces will include a total of 27 squadrons of interceptors and a number of Nike Hercules and BOMARC surface-to-air missile units. In FY 1973, no changes are planned in the total number of interceptor squadrons, but in keeping with our Total Force Concept, Air National Guard Air Defense forces are programmed to assume a greater share of the aerospace defense mission. At the end of FY 1973 they should include 4 squadrons of F–106s, 10 of F–102s, and 6 of F–101s. The other main force changes planned are reductions in BOMARC surface-to-air missiles, which back up our manned interceptor force, and the Back-up Interceptor Control (BUIC) sites, which provide backup air defense command and control.

Our air defense systems have not in the past been able to meet all of the objectives assigned to them. Command and control systems have been vulnerable, warning systems have been unable to detect all incoming aircraft using low-level penetration tactics, and our interceptors are too few in number and lack the "look-down shoot-down" capability required against low-flying bombers.

Because of this vulnerability and the reduced effectiveness of parts of our present

air defense forces, we have decided to make some selected reductions in the current force levels, accepting some additional risks in the near term while pursuing development of more effective air defense components for the future.

To fulfill our air defense objectives we propose to continue research and development efforts that will give us the option to deploy an effective, survivable, modernized air defense force. Our FY 1973 Budget includes research and development funds for two key systems: the CONUS Over-the-Horizon radar (OTH-B), and the Airborne Warning and Control System (AWACS). We are also requesting funds to procure three AWACS test aircraft that could later be reconfigured as operational aircraft.

The Conus OTH–B radar system is important because it offers the potential to provide distant, all-altitude detection of approaching aircraft. Tests now being conducted should soon provide performance data essential to a deployment decision.

AWACS will provide the capability to detect and track aircraft flying at all altitudes, against the surface clutter over land or sea. Two prototype radars are being prepared for flight testing in military versions of the Boeing 707 commercial jet aircraft and the tests should be completed in late 1972. We can then select the better radar system, and decide in light of circumstances at that time whether to proceed with the final stages of system development.

AWACS will also have the capability to serve as an aircraft control center for tactical air forces. In this role AWACS would improve the effectiveness of our tactical air forces by providing an aerial platform for the detection and identification of hostile aircraft and the direction and control of friendly aircraft assigned to counter those threats. The tactical AWACS would replace several airborne elements of the existing system used in the command and control of deployed tactical air forces.

We are examining the feasibility of using aircraft now under development as the basic airframe for an Improved Manned Interceptor (IMI); which would complement AWACS by providing "look-down shoot-down" capability with high endurance and good firepower. In addition, the Army surface-to-air missile system (SAM–D), currently under development primarily for field army use, may prove useful in a Conus air defense role in the future as a replacement for the Nike-Hercules system.

2. Missile warning and space systems

Early warning of ICBM attack will continue to be provided by the Ballistic Missile Early Warning System (BMEWS) radars and the "forward scatter" Over-the-Horizon (OTH) radar system. At the present time, the 474N system (SLBM detection and radar warning net) which can give only limited warning of an SLBM attack, has been improved with the addition of a long-range radar along the east coast in fiscal year 1972. However, because of the restricted capabilities in these systems, a new satellite early warning system is being designed to meet requirements that BMEWS, OTH and 474N cannot fill. This advanced system will complement our radars in providing early warning of ICBM, SLBM and Fractional Orbital Bombardment System (FOBS) launches. The system will greatly improve the overall capability of our warning network, especially against SLBM launches.

Satellite tracking and identification is now provided by the existing USAF Spacetrack system and the Navy's SPASUR system; both are tied into the North American Air Defense Command and supported by the Space Defense Center for continuous space object cataloguing.

3. Ballistic missile defense

a. Safeguard

The Safeguard Anti-Ballistic Missile Defense System has been and continues to be designed to achieve several objectives outlined by the President to counter a combination of Soviet and Chinese threats. They include:

"Protection of our land-based retaliatory forces against a direct attack by the Soviet Union.

"Defense of the American people against the kind of nuclear attack which the Peoples Republic of China is likely to be able to mount within the decade.

"Protection against the possibility of accidental attacks from any source."

A review was conducted again this year in accordance with the President's commitment of March 14, 1969. This review of Safeguard includes:

Technical Progress: The technical effort on Safeguard over the past year has progressed very satisfactorily and there are no technical problems which would affect a decision to continue the Safeguard deployment in FY 1973.

Test results have been excellent. The second phase of the Safeguard system test program began in the Fall of 1971. Of the seven tests conducted so far in this series, all have been successful.

Construction at the Grand Forks site is on schedule and about 80% complete. Construction at Malmstrom has been delayed by about one year by labor problems with corresponding delay in site readiness to early 1976. Construction at Malmstrom has been restarted.

All of the Safeguard ground equipment for Grand Forks and Malmstrom is under contract and procurement of equipment has been initiated for the Whiteman site.

Threat: The momentum of the Soviet nuclear threat continues and the nuclear capability of the Peoples Republic of China is increasing. (This is detailed elsewhere in this Defense Report.)

Diplomatic Context: Negotiations on Strategic Arms Limitation (SALT) continue. Current focus in SALT is towards obtaining an initial agreement covering ABM systems together with some limitation on offensive missile systems. However, we cannot at this time be certain that a SALT agreement will be reached or what the provisions of an agreement would be.

For FY 1973, we propose to:

a. Proceed with the planned deployment at the four Minuteman sites.

b. Continue with area defense research and development under Safeguard and the Advanced BMD program.

c. Initiate advanced preparations for defense of the NCA at Washington, D.C.

d. Continue wtih the Hardsite Prototype development program discussed below.

This overall ABM program would:

Enhance probabilities for SALT success by maintaining both the flexibility and the strength of the President's negotiating position.

Provide a level of protection, dependent upon the nature and severity of the attack, for Minuteman, and command and control centers in the central United States (Omaha and Colorado Springs) at the earliest possible time, and a base for defense of inland bomber bases with improved area defense components.

Provide the means of affording added valuable time for decision-making and delegation of authority in the event of an attack on Washington, D.C.

Provide a continued option for introduction of advanced area defense at a later time, should this become necessary due to threat developments.

Provide the base for augmenting Safeguard defense of Minuteman sites with Hardsite Defense if threat developments warrant.

b. Prototype Hardsite Defense Program

With significant qualitative improvements in Soviet ICBMs even without increases in the number of Soviet ICBMs, the postulated threat to Minuteman in the last half of the 1970s could grow to a level beyond the capabilities of the four site Safeguard defense of Minuteman. Therefore, we propose a FY 1973 Hardsite program funded at $80 million in RDT&E funds plus $20 million in construction that would permit initial deployment of the system in the late 1970s.

4. Civil defense

We are proposing a limited number of changes in the civil defense program for FY 1973, including:

Enhancement of state and local capability in attacks and other disasters;

Reorientation of the program to emphasize, wherever possible, available protection from nuclear weapon effects and natural disasters.

Shifting of some on-going programs to systems that would only be implemented in a crisis in order to reduce peace-time costs and prevent rapid obsolescence.

Major elements of the new program include (a) maintenance of the current shelter system, but reorienting marking, stocking and home survey programs toward crisis implemented activities; (b) for shelter survey, creation of State Engineer Support Groups to give participating states the in-house capability to replace Federal Engineering Support currently provided; (c) use of analytical techniques to determine the most likely hazards for each community in the event of nuclear war, e.g., blast, fire, fallout; and (d) development of guidance for local governments based on risk analysis, to include evacuation planning guidance for high risk areas.

During 1972 a prototype low frequency warning system will undergo final testing. It is expected to be operational by early 1973.

The budget includes $88.1 million for Civil Defense. As in the past, a sizeable portion of the funds requested are for assisting State and local Civil Defense activities.

D. THEATER NUCLEAR FORCES FOR DETERRENCE

"The nuclear capability of our strategic and theater nuclear forces serves as a deterrent to full-scale Soviet attack on NATO Europe or Chinese attack on our Asian allies." President's Foreign Policy Report to Congress 1970 and 1971.

In deterring theater nuclear warfare, i.e., enemy use of nuclear weapons overseas without a direct attack on the U.S., primary responsibility remains with the United States, but certain of our allies share in this responsibility by virtue of their own nuclear capabilities.

As I noted last year, with the rough equality of U.S. and Soviet strategic force capabilities, reliance on strategic weapons alone is not sufficient for an effective deterrent. Our theater nuclear forces add to the deterrence of theater conventional wars in Europe and Asia; potential opponents cannot be sure that major conventional aggression would not be met with the use of nuclear weapons. The threat of escalation to strategic nuclear war remains a part of successful deterrence at this level.

Our planning reflects a continued requirement to relate our nuclear weapon posture in the theater to our conventional posture in such a way that we have realistic options in the theater which do not require sole reliance on strategic nuclear weapons. Thus, we plan to maintain nuclear capabilities that contribute to realistic deterrence, while allowing for maximum flexibility or response in every major contingency we plan for should deterrence fail.

We are continuing to evaluate the long-term structure of our nuclear programs. Our current capabilities in theater assets, include tactical aircraft, missiles, rockets, field artillery, and atomic demolition munitions. Research and development and weapon improvement programs are moving forward in this area, to insure that our weapons and the associated command and control systems have adequate capability and continue to emphasize minimum chance of accident. These programs will permit the continued sufficiency of our theater nuclear forces as an essential element of our deterrent posture.

BEFORE WE VOTE NEW TAXES, LET US MAKE THE ONES WE HAVE NOW WORK

Mr. CHURCH. Mr. President, there is a great deal of rumor and speculation these days about what is described as a value-added tax, which is in reality a national sales tax. It is said we will soon have a proposal before us on this matter.

I might suggest that before the Nixon administration, or anyone else for that matter, rushes to institute a new tax upon the American people—a tax, incidentally, which will be regressive in nature, taxing the low- and middle-income American at a greater rate than the high income American—a close look be taken at the billions of dollars that escape taxation under the current maze of income tax exemptions, deductions, and special breaks.

An excellent editorial appeared in the February 15, 1972, edition of the Washington Post describing the need for and the difficulty of achieving true tax reform. I ask unanimous consent that it be printed in the RECORD.

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

TAX REFORM SHOULD COME FIRST

The Federal income tax law, in all its complexities, can be used to encourage almost anything. It encourages people to contribute to churches and charities and schools, to explore for oil, to buy houses and stocks and municipal bonds, to create retirement funds, to invest in apartment buildings and farms and cattle, to give away money before they die, and to do all sorts of other things. For a long time, its rate structure encouraged people to get married. Now, it seems, the changes made by Congress in 1969 encourage them to do something less than get married if each prospective spouse has an income. That, at least, is one lesson that can be drawn from recent news stories about the tax situation or a young local couple; they are paying higher taxes as a married couple than they would if they were not married.

This list, and it could be much longer, points out the fact that the basic purpose of the income tax—to raise money according to the ability of people to pay—was deserted long ago. It was lost in the struggle made by many groups of citizens for special treatment and in the effort of Congress to use tax provisions to foster other goals. But with the government looking for new sources of revenue, such as the proposed value-added tax, it is time for a full re-evaluation of the income tax. That is what a group of liberal Democrats in the House of Representatives is seeking and it was their pressure to which Rep. Wilbur Mills yielded when he asked the President this week to make proposals on tax reform.

The problems inherent in such reform, to be sure, are extremely difficult. One man's tax loophole is another's well-deserved right. And the kind of conduct one group wants to foster with a tax deduction may be precisely what another group wishes to discourage. Take, for example, three of the recent changes. The child-care deduction created last year helps lower- and middle-income families, unlike most deductions which help high-income taxpayers; it encourages the women in these families to work. The political contributions deduction also created last year helps politicians; it is designed to encourage more people to get involved in politics. The change in the rate structure involving working couples benefits unmarried taxpayers who had complained bitterly about the old system; but it has the curious side-effect of penalizing working couples largely because the tax law does not recognize the economic value of housework performed by a wife.

Each of these situations—and all the other loopholes or incentives, whichever you want to call them—has a built-in lobby behind it. Each lobby, or at least most of them, has a substantial argument supporting its own special benefit. But when all of them are taken together, they skew the tax structure so badly that the figures you see on that tax form—14 to 70 per cent—are almost meaningless. A recent study by Joseph A. Pechman and Benjamin A. Okner of the Brookings Institution shows that the effective tax rate runs from under 2 per cent below $5,000 gross income to about 32 per cent at $1,000,000.

Talk about tax reform in an election year may well be futile. All the political pros say it is. But the fact they say so merely underlines the need for reform. The loopholes, the gimmicks, the incentives are of such value to particular groups of people that many of them are willing to put substantial sums into political campaigns in order to assure their continued existence. Thus, in many instances, campaign contributions can be traced directly to tax benefits. So it is heartening to see some members of Congress who are at least willing to bring the matter up in an election year. Sooner or later the issue is going to have to be faced squarely. It, rather than the value-added tax, ought to be given first priority by this administration, and any other, in the search for more federal revenues.

WILL THERE BE PEACE IN ULSTER?

Mr. HARTKE. Mr. President, today I wish, to announce my cosponsorship of the resolution (S. Res. 180) introduced by Senators RIBICOFF and KENNEDY which calls for an end to the violence and bloodshed in Northern Ireland and sets forth the principles upon which a genuine solution must be based.

The recent death of 13 citizens underlines the severity of the situation. Unfortunately this is just the latest example of the violence and bloodshed that is rampant in Ulster. The need is pressing to end this violence, and to end it immediately. Along with Senate colleagues, I beseech the British Government to bring about the immediate resolution of the turmoil that is striking at the very fiber of the United Kingdom.

There are those who admonish us not to raise our voices to protest the violence that reigns in Northern Ireland. They say that it is an internal matter within the United Kingdom. I say that no citizen of the world should be afraid to speak out to condemn violence and injustice where it exists.

Unfortunately, the administration has chosen to remain silent on the tragedy of Northern Ireland. This is not the first time that they have refused to condemn violence and repression. The Nixon administration has not only refused to condemn the military junta in Greece which is strangling civil liberties in that country, they have cultivated relations with it. The administration has refused to condemn the atrocities committed by the Pakistan Army against the people of Bangladesh. If the United States is to be respected for its dedication to justice and equality for all people, then it must not be afraid to make its voice heard when such is denied to citizens of the world. Because of the U.S. position as a world leader, the failure to voice its concern is often interpreted as a condonation of oppressive policies.

I am pleased to join those Members of the Senate who have not been afraid to speak out on the tragedy in Northern Ireland. Mr. President, I ask unanimous consent that a recent article by Ted Lewis be printed in the RECORD. The article makes some salient points concerning the role of the United States in speaking out on the injustices in Northern Ireland.

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

CAPITOL STUFF

(By Ted Lewis)

WASHINGTON, February 1.—The administration's insistence that this government has no business sticking its official nose into the Northern Ireland crisis raises a question of considerable political and diplomatic significance.

The issue has been suitably pinpointed by Sen. Abraham Ribicoff (D-Conn.). He and Sen. Edward M. Kennedy are sponsoring a Senate resolution calling for the withdrawal of all British troops from riot-wracked Ulster. Ribicoff takes the view that a flareup of injustice anywhere in the world requires an American condemnatory response.

THE ULSTER ISSUE SUITABLY PINPOINTED

In contrast, the administration takes the hard line that the niceties of diplomatic tradition must be followed—that what has been tragically happening in Northern Ireland is an internal matter within the United Kingdom. In other words, our official stand on the moral issue of justice is limited to what transpires between nations, not within any country.

Let's admit, the hypocrisy in this official stance is sufficient to make one's blood boil, and we are not referring only to Irish-Americans.

Consider just one case: The slaying of millions of East Pakistanis by troops from West Pakistan. To this day, this government has not condemned the Bangladesh massacre—on the grounds, basically, that the mass blood-letting was within the borders of another sovereign nation, hence none of our official business.

This is a hands-off policy that is actually a relic of the horse-and-buggy past, when protocol and striped pants set the style for relations between nations. And it comes in handy to fall back on when a moral issue arises that we want to sidestep. On the other hand, when it is considered in our interest to intervene in an internal crisis of another country, the record shows we have not hesitated to do so, and not necessarily to prevent injustice.

Greece, for example, is now run by a mili-

tary junta to our liking. And we are now squeezing Chile by withholding foreign aid funds because that country's regime is not to our liking.

What has been happening in Northern Ireland is of great American concern for a much more solid reason that the motives that prompted our moral intervention or abstinence policies in Greece and East Pakistan. American interest in freedom for Ireland goes way back to the days before establishment of the Irish Free State under De Valera. Millions were raised in America for the IRA. The Ulster issue has figured in many an American election in an oblique religious way.

So the idea that Ribicoff and Kennedy are intruding into the foreign policy-making prerogatives of the State Department by sounding off at present at the British may be legally correct, but not politically sound. As Ribicoff said today, "It's just too bad" that the British are angry with him and Kenendy and the administration provoked by his "meddling."

"I intend to speak up against injustice wherever it occurs in the world," Ribicoff said, "and I think the time has come for people to speak out on problems not just in their own back yard."

ALARMIST VIEWS OF LAST FALL WERE WARRANTED

Now, way back last October, when Ribicoff and Kennedy first offered their resolution calling for British troops to pull out of Northern Ireland, they were accused of simply playing partisan politics with the issue. There were cracks about how both were sounding off only because of the big Irish vote in their home states.

The British press taunted them with smug arrogance. "Ulster is not Britain's Vietnam," said one London newspaper commentator. Even the Irish Independent, of Dublin, which proclaims itself as "Ireland's national newspaper," chided the two senators for their warning that Ireland was on the brink of civil war.

But Sunday's slayings of 13 civilians in Londonderry by British troops is sufficient proof that Kennedy's and Ribicoff's alarmist views of last fall were warranted. And in the process, they have succeeded in raising the possibility that the Senate may act on the issue, even though the administration refuses to get involved.

A RESOLUTION IN INTEREST OF HALTING BLOODSHED

The Ribicoff-Kennedy resolution is, of course, only a gesture of rebuke to the British. It simpy would put the Senate on record as favoring the withdrawal of British troops in the interest of halting the bloodshed. But it does provide a means of permitting a moral gesture against injustice—and gestures of this kind are in the American tradition.

Kennedy's co-sponsorship of the proposal is, incidentally, in the family tradition. Back in 1957, his elder brother, John F. Kennedy, then a senator, dared similarly to act on his own in connection with Algeria's effort to be independent. He called on the Eisenhower administration to end its acquiescence to French repressive measures in Algeria.

He was accused at home of meddling, and in France of jeopardizing U.S.-French friendly diplomatic relations. Secretary of State Dulles said Algeria was France's problem, not ours. But it wasn't long before Charles de Gaulle made Algeria independent.

LITHUANIAN INDEPENDENCE DAY

Mr. GRIFFIN. Mr. President, free men everywhere join the people of Lithuania in marking February 16 as a day of sadness and a day of renewal. It is the 53d anniversary of Lithuanian Independence.

On February 16, 1918, the free Lithuanian State was born. It followed true democratic principles for more than 20 years before it was overrun in 1940.

For more than 30 years now, the heroic people of that nation have resisted totalitarian oppression while looking to the day when freedom will be restored.

The people of Lithuania and the millions of Lithuanian Americans who observe this day with both pride and sadness deserve the admiration of us all.

Rather than accept defeat and bondage, Lithuanians in the home country and those who have taken up citizenship elsewhere look to the day when freedom will return to their native land.

As a citizen and a U.S. Senator, I take pride in knowing that the United States has not recognized the forcible annexation of Lithuania.

We can observe Lithuanian Independence Day by renewing our dedication to the democratic principles that are denied those in Lithuania.

PUBLICATION OF RULES OF PROCEDURE OF SELECT COMMITTEE ON STANDARDS AND CONDUCT

Mr. STENNIS. Mr. President, as required by the Legislative Reorganization Act of 1970, I submit herewith for publication in the RECORD the Rules of Procedure adopted by the Select Committee on Standards and Conduct:

RULES OF PROCEDURE

Resolved, That the Select Committee on Standards and Conduct, United States Senate, adopt the following rules governing the procedure for the Committee:

1. *Meeting time.*—The meetings of the Committee shall be on the first Monday of each month at 10:30 a.m. or upon call of the Chairman.

2. *Organization.*—Upon the convening of each Congress, the Committee shall organize itself by electing a chairman and a vice chairman, adopting rules of procedure, and confirming staff members.

3. *Quorum.*—A majority of the Members of the Committee shall constitute a quorum for the transaction of business, except that two Members shall constitute a quorum for the purpose of taking sworn testimony.

4. *Proxies.*—A Member may vote by special proxy on any issue which comes before the Committee for decision except as otherwise designated in these rules.

5. *Record of Committee action.*—The Chief Counsel of the Committee shall keep or cause to be kept a complete record of all Committee action. Such record shall include a record of the votes on any question on which a record vote is demanded.

6. *Public hearings.*—All hearings conducted by this Committee shall be open to the public, except executive sessions for voting or where the Chairman orders an executive session. The Committee, by a majority vote, may order a public session at any time. In making such determination, the Committee will take into account evidence which may tend to defame or otherwise adversely affect the reputation of any person.

7. *Secrecy of executive testimony.*—All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the Committee.

8. *Stenographic record of testimony.*—An accurate stenographic record shall be kept of the testimony of all witnesses in executive or public hearings. The record of his own testimony, whether in public or executive session, shall be made available for inspection by a witness or his counsel under Committee supervision; a copy of any testimony given in public session, or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session, shall be made available to any witness at his expense if he so requests.

9. *Release of reports to public.* No Committee report or document shall be released to the public in whole or in part without the approval of a majority of the Committee. In case the Committee is unable to reach a unanimous decision, separate views or reports may be presented and printed by any Member or Members of the Committee.

10. *Subpenas.*—Subpenas may be issued by the Committee Chairman or any other Member designated by him, and may be served by any person designated by the Chairman or Member. The Chairman or any Member may administer oaths to witnesses.

11. *Swearing of witnesses.*—All witnesses at public or executive hearings who testify to matters of fact shall be sworn unless the Chairman, for good cause, decides that a witness does not have to be sworn.

12. *Counsel for witnesses.*—Any witness summoned to a public or executive hearing may be accompanied by counsel of his own choosing who shall be permitted while the witness is testifying to advise him of his legal rights.

13. *Right to submit interrogatories.*—Any person who is the subject of an investigation in public hearings may submit to the Chairman of the Committee questions in writing for the cross-examination of other witnesses called by the Committee. With the consent of a majority of the Members of the Committee present and voting, these questions shall be put to the witnesses by the Chairman, by a Member of the Committee, or by counsel of the Committee.

14. *Written witness statements.*—Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the counsel or Chairman of the Committee 24 hours in advance of the hearings at which the statement is to be presented. The Committee shall determine whether such statement may be read or placed in the record of the hearing.

15. *Prohibition of cameras.*—Television, motion picture and other cameras and lights will not be permitted to operate during a hearing.

16. *Interrogation of witnesses.*—Interrogation of witnesses at Committee hearings shall be conducted on behalf of the Committee by Members and authorized Committee staff members only.

17. *Right to testify.*—Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a Committee Member or counsel, tends to defame him or otherwise adversely affect his reputation, may (a) request to appear personally before the Committee to testify in his own behalf, or, in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the Committee for its consideration and action.

18. *Confirmation of staff.*—All staff members shall be confirmed by a majority of the Committee.

19. *Changing rules.*—These rules may be modified, amended, or repealed by a decision of the Committee, provided that a notice in writing of the proposed change has been given to each Member.

PEKING SUMMIT AND RELATIONS WITH JAPAN, INDIA, AND THE SOVIET UNION

Mr. CHURCH. Mr. President, I support President Nixon's move to open a dialog with China's leaders. This is something which had to be done. Our former ambassador to the United Nations and a successful diplomat for 40 years, Charles W. Yost, agrees with this effort, considering it a "useful and important" development, but "only if the administration also moves promptly and unequivocally to restore our relations with Japan and India, and if in the future it resists the temptation crudely to play Soviets and Chinese against each other.

I ask unanimous consent that Mr. Yost's article, published in The Washington Post of February 15, 1972, be printed in the RECORD.

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

IS THE PEKING SUMMIT WORTHWHILE?

(By Charles W. Yost)

The attention of much of the world will be focused during the remainder of this month on one of the most spectacular and unexpected events of recent times—the visit of an American President to Peking. However, the important question is whether this event will prove to be only a spectacle—a "super colossal" TV show—or whether it will have substantial and lasting results.

Certainly the President was wise and bold to break the absurd taboo which has so long separated the United States from the government of the most populous country in the world. Relations with the People's Republic of China should have been "normalized" long ago, but from a domestic point of view this could best be done by a Republican president who had for years opposed it. To turn about face on this issue was a real act of statesmanship.

I am one of those who believe that, in general, summit meetings between the leaders of powerful states, particularly adversary states, are desirable. They are of course best if they can produce or lead toward significant agreements, as it is hoped the Moscow summit in May will do.

It is my belief, however, that, even if they do not produce immediate agreements, and as long as expectations about them have not been raised too high, summits may serve a useful purpose. They enable leaders to obtain a personal "feel" of each other and, if managed with restraint and sophistication, can clear up delusions and misunderstandings which could otherwise, over time, cause very serious trouble. There would be real advantage in their being undertaken periodically, and as routinely as possible.

Do these remarks apply to the forthcoming Peking summit? Not entirely. This is a very special case.

The President himself has been careful to emphasize that immediate, substantial agreements are not to be expected. The political differences between the two governments are too deep-seated to permit of more than minor symbolic understandings at such an early stage in the thaw.

As far as concrete issues are concerned, what the Chinese most want from the United States is an abandonment of Taiwan. It is quite clear that the President could not and would not, for both domestic and strategic reasons, give them satisfaction on this score. He will presumably merely repeat the rather ambiguous conventional formulas he has used before.

What the Americans most want from China is help in persuading Hanoi to agree to a Vietnam settlement acceptable to us. Since the "war aims" of the administration and of Hanoi remain incompatible, and both Hanoi and Peking have rejected the President's latest "peace proposals," this also will not happen. Peking will no more abandon or coerce Hanoi than we will abandon or coerce Taiwan.

One must also admit that the Peking summit has already had some serious negative consequences as far as the United States is concerned. The expectation of it presumably played a major part in our disastrous and otherwise inexplicable "tilt" toward Pakistan and against India throughout last year.

Failure to consult Japan in advance, and apparent continued failure by the President to reassure Prime Minister Sato at San Clemente last month, have, together with brusk Zig-zags in our economic policy, seriously undermined our most important Asiatic alliance.

As the Japanese ambassador said in a speech just after the San Clemente meeting, the President's trip to China might "be the beginning of a process of unraveling our mutual security in the far east." One immediate consequence was no doubt the visit of Soviet Foreign Minister Andrei Gromyko to Tokyo a short time ago.

If the Peking summit is unlikely to produce any significant agreements, and if it has had these unfortunate side effects on the two other great Asian states hitherto most friendly to us, why was it undertaken?

Those outside the government—indeed, many inside—can only speculate about the reasons. Presumably gamesmanship vis-a-vis the Soviets, spectacularly indicating that the game of two has become a game of three, was an important element. It remains to be seen whether the United States really has much to gain from this rather old-fashioned and hazardous kind of gamesmanship.

One also cannot help feel that the selection of 1972 for the visit is not without some domestic political significance. However, there is a question whether many Americans will vote either for or against the President simply because he paid a spectacular but, as far as they can see, not particularly consequential visit to Peking.

Nevertheless, adding up all the pluses and minuses, I should be inclined to consider the meeting useful and important. What counts most is that it gives the greatest possible impetus to the restoration of normal relations between two of the world's greatest powers. It brings to a dramatic close 20 years of senseless divorce.

The ledger will be well balanced, however, only if the administration also moves promptly and unequivocally to restore our relations with Japan and India and if in the future it resists the temptation crudely to play Soviets and Chinese against each other.

LITHUANIAN INDEPENDENCE DAY

Mr. PELL. Mr. President, today is a day of bittersweet significance for the many Americans of Lithuanian descent. It was on this day, in 1918, 54 years ago, that the people of Lithuania realized a cherished dream—independence from foreign domination. This remarkable people have a long and varied history and a rich cultural heritage dating from the 13th century when the several principalities were united into one great kingdom. This cultural heritage sustained the Lithuanian people through centuries of foreign oppression until the collapse of Germany and Russia at the end of World War I made independence possible. On February 16, 1918, a 20-man national council, headed by Antonas Smetona, proclaimed Lithuania a free and independent republic.

The interval between the two World Wars was a period of great accomplishment for the Lithuanian people. Land reform was instituted, industries established, transportation facilities expanded, a national education system created, and much social legislation enacted. The people were happy and content despite ominous rumblings on their borders until June 22, 1940. On this day, the Soviet Union, taking advantage of the opportunity afforded by its pact with Nazi Germany, forcibly incorporated Lithuania unto the U.S.S.R. as its 14th "Republic." Those who dared to resist, and there were many, were executed or deported to Siberia and, except for the period of Nazi occupation, the small country has been under Soviet rule ever since. Needless to say, the United States has never recognized this brutal takeover.

Thus, February 16 is celebrated by the over 1 million Americans of Lithuanian descent with a certain note of sadness for the lost freedom of their ancestral homeland. It is altogether fitting that their fellow Americans, as freedom loving people, join with them in their observance and in their hope that Lithuania will once again be free.

CONCENTRATION OF POWER

Mr. HARRIS. Mr. President, a recent article in the New York Times entitled "How Big Is Too Big?" deals with the problems which big brother IBM is giving to the data-processing industry—and to the Justice Department, which has filed an antitrust suit against the corporation.

I think that the article will be of interest to any Senator who, like myself, has become increasingly concerned by the concentration of economic power—and political power—in the hands of a few powerful corporations.

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

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

How Big Is Too Big?

(By William D. Smith)

Should the International Business Machines Corporation be broken up?

Can I.B.M. be broken up without retarding the progress of computer technology domestically or damaging United States trade and its international balance of payments?

If I.B.M. should and could be broken up, what would be the best way to do it?

I.B.M. is easily the biggest company in the computer business and the three questions are by far the most important issues facing an industry that is the world's fastest growing and in the next decade may become the largest as well, surpassing automobiles and oil.

The questions are not academic. I.B.M. is involved in seven antitrust suits including one filed by the Justice Department as its last act under the Administration of President Lyndon B. Johnson. All the units are in various pretrial stages.

The search in the courts for answers to the questions could result in major changes in the interpretation and enforcement of United States antitrust laws.

How the questions are resolved will have

grave effects far beyond the industry, for the computer is no simple tool and information processing has come to permeate every aspect of our national life from the ghetto to the moon.

The trend toward computer omnipresence seems likely to continue and accelerate.

Some 142,400 computers, including minicomputers, are installed around the world. Of this total, 84,600 are in the United States.

I.B.M. has installed, by value, 53 per cent of the computers outside the United States and 71 per cent of the equipment in this country.

I.B.M.'s domination of its market is probably the greatest by a single company of a major industry.

A survey of I.B.M. competitors, industry consultants, economists, lawyers and other interested and informed sources on the initial three questions has resulted in a wide variety of proffered solutions. Some surprising supporters for I.B.M. were discovered and some unexpected opponents.

Solutions ranged from breaking up I.B.M. into 20 or more units to leaving "well enough alone."

Many people asked not to be quoted, giving a variety of reasons.

Dr. John W. Mauchley, one of the discoverers of the electronic computer, voiced the most common theme.

"It is a very complex issue," he said. "A sensible approach to the matter is essential.

"Informed and responsible opinion must be brought to bear on the issues to prevent the uninformed and irresponsible from making the ultimate decisions."

Another comment that recurred came from a professor at a leading Eastern university who is considered a major thinker in the information-processing field. He said:

"There is no focus in official circles anywhere in the United States on computers and the importance of the technology as a great national asset."

That some people have made up their minds on the issues is obvious from the fact that I.B.M. is now involved in seven antitrust actions, four of which the company considers major.

The most important of these is Case 69 Civil 200, filed before the United States District Court for the Southern District of New York by the Justice Department under President Johnson in December 1969.

Other major actions are the Control Data Corporation vs. I.B.M.; the Greyhound Computer Corporation vs. I.B.M., and the Telex Corporation vs. I.B.M. The remaining suits were brought by International Data Terminals, Inc., M.D.C. Data Centers, Inc., Symbolic Control, Inc., and a counterclaim to an I.B.M. suit, by V.I.P. Systems, Inc.

The Greyhound suit is furthest along. A spring trial date is expected in this suit, and a decision is likely around midyear.

The Government case charges that I.B.M. has monopolized the general-purpose-computer market by combining the price of hardware, software and support services; by pricing new computers at unusually low profit levels; by announcing new computer models when it knew it was unlikely to be able to deliver such models within the announced time, and by granting discriminatory price discounts to educational institutions.

In April, 1971. the Government filed a motion asking that a Federal District Court judge be named to hear all the pretrial discovery of pertinent information in order to expedite the case. The judge declined to consider the motion until all vacancies on the court were filled. The vacancies have now been filled and the Justice Department has renewed its request.

Thomas D. Barr of Cravath, Swaine & Moore, I.B.M.'s law firm, has opposed the motion, noting that the computer company has asked the Government to participate in the discovery process in the Control Data case, which is considerably further along.

The Government has been accused in some quarters of "dragging its feet" in the case, of being inadequately staffed to handle I.B.M.'s large legal operation and of having little or no knowledge of the computer industry.

An executive of an I.B.M. competitor said:

"The Government wouldn't know what to do with I.B.M. if it wins the case. If the Justice Department out of hand had the right to order I.B.M. to do what Justice wanted, they couldn't do anything because they haven't the foggiest idea of what the industry is all about."

The Justice Department denies all of these allegations. "We feel confident that we can take on the best," a spokesman said. "This is the most important case in the division and has more people and resources devoted to it than any other matter."

The Justice Department spokesman said that the department had 300 lawyers, all of whom could become involved in the I.B.M. case if necessary. He added that the department had 120 antitrust actions pending.

The Government spokesman said that the department had been studying how to restructure I.B.M. if the case were won.

Raymond Carlson and Joseph H. Widmar are heading the Government's case. Both lawyers were prominent figures in the consent decree worked out with the International Telephone and Telegraph Company under which it was allowed to keep the previous acquired Hartford Fire Insurance Company and all of the Grinnell Corporation except for its fire-protection division. In return I.T.T. agreed to divest itself of the Avis Rent A Car System and the Canteen Corporation, among others.

The Government spokesman said he could not estimate a date for the trial.

"We are actively pushing to get the case to trial," he said. "Should I.B.M. decide that they don't want to fight and offer to give necessary relief through a consent decree, we would of course, accept since the objectives we seek would be obtained at a saving of time and money for all parties."

But a consent decree is precisely what should not happen, according to some critics of I.B.M.

One of these, William G. Shepard, professor of economics at the University of Michigan and former economic adviser to the anti-trust division of the Justice Department under the Johnson Administration, said:

"Setting by consent decree would be a clear error because it would suppress the kind of information the public needs for an intelligent choice.

"Whether and how the eventual restructuring of I.B.M. might occur depends on the facts that the court should hear."

Professor Shepard, who recommended that the Justice Department file its case, criticizes the department for letting itself in for a massive collection of data on the industry, "much of it useless to the case."

Others disagree with this assessment. Robert B. Forest, editor of Datamation Magazine, the leading trade journal in the field, believes that the very collection of the data is a major benefit to the industry and the nation.

"Nearly every other industry in the country has a data base and indices by which its performance and its relationship to the economy can be measured," Mr. Forest said.

"This paradoxically is not true of information processing. The data base being acquired can be used by the Government to make available for the first time critical information on the size and shape of our nation's most important industry."

Critics of I.B.M. and the Justice Department charge that every day of delay allows I.B.M. to make from $1-million to $3-million, "because of its monopoly position," a cost, they say, ultimately paid by the public.

"Delay is the great worm in the antitrust bud and I.B.M. is playing it very skillfully," according to Professor Shepard.

Others would disagree with this opinion, Mr. Forest said:

"It seems to me that before we go off half-cocked, creating cures that may be more dangerous than the disease, we might try to get some facts assembled."

Antitrust plays an important part in the American economy. The common law, statute and court interpretations outlawing price-fixing, group boycotts, geographical division of markets and other monopolistic practices reflect the primary American commitment to private enterprise in a blend of Government and private decision-making and to competition as the chief regulating force in the economy.

The antitrust laws have on rare occasions been used to break up existing combinations. The most important cases involved the Standard Oil Company (New Jersey) and the American Tobacco Company. In 1911, the Supreme Court ordered the dissolution of each, setting forth in the process the "rule of reason."

It stated, in effect, that big was not necessarily synonomous with bad, and that only trusts that had achieved size through predatory practices, as had Standard Oil and American Tobacco, were to be dissolved. "Good trusts," as it found the United States Steel Corporation to be nine years later, would be permitted to continue.

A decision involving the Aluminum Corporation of America in 1945, to a large degree, revised the "rule of reason." Alcoa's sin was size, not predatory behavior.

It should be noted, however, that the Government did not break up Alcoa, nor did it break up the United Shoe Machinery Company in a similar case in 1953. It forced other remedies.

"A number of parties are asking that I.B.M. be broken up," one of the nation's leading antitrust lawyers said.

"History and precedent indicate that the courts are very reluctant to break up existing companies.

"If unlawful monopolization is proven, then relief would be what is necessary to restore the competitive situation. Logically this could well mean breaking up I.B.M.

"But I.B.M. did not get where it is by acquisition, and it would seem contrary to the national ethos to punish someone for being better."

I.B.M. has declined to discuss the antitrust question, saying that the matter is still under litigation.

The company has 110 lawyers on its staff, with five working on the antitrust problem full time, according to a source close to the company. In addition, the company has outside counsel.

The company's legal operation is headed by a vice president, Nicholas deB. Katzenbach, former Attorney General of the United States during the Johnson Administration.

I.B.M.'s position on the issue can only be gleaned from past statements and from unofficial sources inside and outside the company.

I.B.M. strongly believes that it has been the major impetus in the creation and promotion of the information-processing industry. All of its supporters and even many o its critics agree.

Kenneth Olsen, head of the Digital Equipment Corporation, one of the most successful companies in the industry and an I.B.M. competitor, said:

"The whole industry owes its growth to I.B.M. We have all benefited from their integrity and their building of customer confidence in computers."

I.B.M. also maintains that information-processing is not an equipment-and-parts business but a complex systems business that

requires total involvement between company and customer.

I.B.M. has also argued that, rather than a monopoly situation, the industry is highly competitive, with an ever-increasing number of companies. It has pointed out that, although it has grown tremendously, the industry has grown faster, and that I.B.M.'s share of the market has, in fact, slightly decreased in recent years.

I.B.M. might also be expected to point to the major role it plays in overseas markets and the importance of the money it brings back to America's balance of payments.

I.B.M.'s most vocal critic has been Joan M. Van Horn, who heads VIP Systems, Inc., of Washington. I.B.M. sued Miss Van Horn for back payments on equipment. Miss Van Horn fired back with a counterclaim and has not stopped setting off verbal and written missiles since.

Miss Van Horn wants I.B.M. broken up into many small, independent corporations. Not subsidiaries, but separate, divested entities. "The split should be many, not just a few; probably by product, or even by plant, the basic economic unit of production, each with its own marketing force," Miss Van Horn said.

"I believe in addition that each spun-off company should be enjoined from selling complete systems or facilities management services and confined to selling computer components for at least 20 years.

"I.B.M. has never introduced a new product except in response to competition. And as the competition erodes, the prospects for our industry grow dimmer. I.B.M.'s economic domination of the industry does not benefit its customers by any economies or scale.

"However, its very presence makes it almost impossible for competition and would-be competitors to obtain adequate financing or a viable share of the market."

Miss Van Horn's opinions have resulted in considerable response, both favorable and unfavorable.

Dick Brandon of Brandon Applied Systems, Inc., computer consultants, said:

"It is impossible to break I.B.M. up into many small pieces without destroying the industry as we know it today. It would create chaos.

"I.B.M. should not be broken up. It is not the answer to the problem. I would prefer to compete against one I.B.M. than two, three, four, or even eight similarly managed competitors without the present gloves that have been tied on in fear of antitrust action."

William C. Norris, chairman of Control Data, is probably I.B.M.'s longest standing and most angry critic. Because Control Data is involved in litigation with I.B.M., Mr. Norris was more restrained than usual, but he asserted, Control Data is firmly convinced that structural relief is essential if competition is to be restored to the industry.

"The effects of I.B.M.'s monopoly and the vulnerability of all competitors are made clear by R.C.A.'s departure from the field," he added. "We feel that appropriate relief must be considered in its entirety and not be limited to divestiture."

A major competitor speaking off the record declared:

"Hell, yes, I.B.M. is a monopoly, but the ideas to break it into a number of small manufacturing companies are crazy. Something must be done so that I.B.M.'s efficiency is not destroyed while still giving competition a fair chance."

He suggested breaking I.B.M. into overseas and domestic operations. Then he would chop off the leasing operation from the manufacturing. Beyond this, he proposed that industry standards be set by a broadly based group rather than let I.B.M. set de facto standards and thereby put competition way behind in developing systems. He also proposed the opening of all I.B.M. research to the general public to create a more competitive situation.

Burke Marshall, a former Assistant Attorney General who later joined I.B.M. as a vice president and general counsel and who is now a deputy dean of the Yale Law School, said:

"The issue should probably be looked at in terms of who would be helped? Look at the constituencies, employees, customers, competitors, technological development, national economy.

"The answer in all cases would appear to be that they would not be helped. The suit, therefore, would appear to be for public policy reasons rather than general welfare."

Mr. Marshall emphasized before commenting that, while he would try to be objective, "you should make clear that I am still on a small retainer from I.B.M."

Herbert W. Robinson, an independent consultant who formerly headed the C.E.I.R. Corporation, a large software concern, contended that, "I.B.M. could kill anyone it wished to, but money is being wasted by I.B.M. to keep competitors alive."

"Break up the company and you unleash a number of monsters," he added. "A better solution would be to have a consent decree where I.B.M. would be forced to limit its growth to zero over the next 10 years or until it fell to about 50 per cent of the market. Put it into a straitjacket until the small boys grow."

A variation on this theme was advanced by a former I.B.M. executive who has become a competitor.

"The best way to do it is to set a market share for I.B.M., around 50 per cent, and then tell I.B.M. to arrive at it by any means they want by the end of a set period of time. Why should the Government worry about it when I.B.M. knows itself best and has the brains to handle the matter?"

John Diebold of the Diebold Group, the man who is credited with giving the word "automation" its present meaning, believes that it would not be in the public interest to break up I.B.M.

"I.B.M. is not a monopoly," he asserted. "There are many other players in the industry, among them some of the largest companies in the world. I find it hard to see who, other than competitors, and they only in the short run, would gain from a split of I.B.M. The United States balance of payments would certainly be hurt and badly."

Richard L. Caveney, president of the Computer Peripheral Manufacturers Association, is adamant that I.B.M. should be broken up. He suggests that it be split into four separate segments: manufacturing, leasing, sales and service, and a parent holding company.

Mr. Caveney did not feel too optimistic about a breakup occurring. He contends that the legislative and executive branches of government are nothing but tools of big business.

Lawrence Spitters, president of Memorex Corporation, a manufacturer of peripheral equipment, advocates a breakup of I.B.M. and the issuance of guidelines so that I.B.M. is forced to release its standards for equipment two years in advance of production.

Some informed people in the industry have little sympathy for the third-party peripheral manufacturers. "They are nothing but parasites living off I.B.M. and the other mainframe manufacturers" Ted Wittington, a computer expert for Arthur D. Little, Inc., commented.

Mr. Wittington maintained that I.B.M. should not be broken up, but that possibly some form of restraint should be placed on the company's ability to use the full weight of its greater resources. He suggested that the company could be regulated like the American Telephone and Telegraph Company as to prices and profit.

James Peacock, managing editor of the E.D.P. Industry Report, a highly respected newsletter, said:

"The objective of establishing a more competitive computer industry will not be served by breaking up I.B.M. It would damage the position of the United States in international commerce and would not lead to more prosperity for competitors."

He suggested, however, that I.B.M. be forbidden to offer selective discounts, that there be a one-year delay between the announcement by I.B.M. of a change in marketing policy or practice and its implementation, and that leases by I.B.M. of more than one year be prohibited.

Mr. Forest of Datamation commented: "There is not much doubt in our minds that I.B.M. maintains a rather unhealthy headlock, if not a stranglehold, on most segments of the information-processing industry."

"As clear and present as the danger seems, the possible solutions remain murky at best. Breaking up I.B.M. could create several monsters instead of one. Preventing the manufacturers from renting or leasing would turn the industry over to the financial community. We prefer I.B.M., thank you."

And so it goes. It should be remembered, however, that the computer has the potential to become either the greatest boon mankind has ever discovered or an electronic devil straight out of the pages of "1984." Some people even suggest that George Orwell's timing is just about right.

I.B.M.'s Role

I.B.M., its supporters and even many of its critics contend that the company has been the major impetus in the creation and promotion of information processing.

I.B.M. looks at information processing not as an equipment-and-parts business but as a complex systems business that requires total involvement between supplier and customer. It sees its job as providing solutions to customer problems in partnership with the customer.

The company has argued that the computer industry, rather than being a monopoly situation, is highly competitive, with an ever-increasing number of companies. It has pointed out that, although it has grown tremendously, the industry has grown faster, and that I.B.M.'s share of the market has, in fact, slightly decreased in recent years.

I.B.M. might also be expected to emphasize the major role it plays in overseas markets and the importance of the money it brings back to the United States balance of payments.

REPRESENTATIVE JAMES R. MANN AT THE LAW ENFORCEMENT CENTER GROUNDBREAKING IN GREENVILLE, S.C.

Mr. THURMOND. Mr. President, it is comforting to note that more and more people are becoming aware of the problem relating to rising crime in our country. Although there has been a slight decrease in the rate by which crime is increasing, it is, nevertheless, still increasing.

I am greatly encouraged when Government officials speak out to encourage those on the State and local levels who are endeavoring to meet this problem.

On January 21, 1972, Representative James R. Mann, of the Fourth Congressional District of South Carolina, spoke in Greenville, S.C., during the groundbreaking ceremonies for their law enforcement center.

His remarks are highly appropriate and deserve to be read and considered by all of us.

Mr. President, I ask unanimous consent that the speech be printed in the Record.

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

LAW ENFORCEMENT SPEECH

This ground breaking is evidence of a new awareness of the needs of law enforcement in Greenville County. Too long have we settled for patch work repairs when major surgery was required. Much of the credit for this new awakening must go to our leaders of local government. Prompted by a realization that better jail conditions would increase respect for law and order and would contribute toward the rehabilitation of those taken into custody the Greenville County Legislative Delegation and the Mayor and City Council about four years ago requested that the city and county planning staff make a detailed study of detention facilities in Greenville County. This resulted in a report by the Greenville County Planning Commission of August, 1968 wherein the Planning Commission recommended the development of a law enforcement or public safety center complex, to include a detention facility, law enforcement headquarters, court facilities and a civil defense operating center.

Fortunately this recommendation did not fall upon barren ground. One of the advantages accruing from the reapportionment decisions was the development of viable county governments in the State of South Carolina. The Greenville County Council is an example of that viable county government. Its initiative, its boldness, have taken some people by surprise, but it filled a vacuum that needed filling. As an elected governing body it affords to the citizenry of this county a responsive agency through which to govern themselves. Our hats are off to those who served it as members during its formative days. They were quick to recognize the shortcomings of law enforcement in Greenville County, and this law enforcement center is an example of that recognition. The pressing need has caused them to proceed with minimal assistance from state or federal governments, based upon their belief that the people of Greenville County deserved better law and were willing to foot the bill for such facilities. It is my hope that additional assistance will be coming from the Appalachian Regional Commission, which has helped already, and the Law Enforcement Assistance Administration.

The County Council is to be commended for its further initiative in law enforcement in that it caused to be created a Law Enforcement Study Committee which had made further recommendations with reference to the improvement of law enforcement throughout Greenville County and its subdivisions. The proliferation of law enforcement agencies in our county and in our state has permitted the highly sophisticated and even the amateur criminal to wander between jurisdictions with relative impunity. Thus it is that Greenville County shows up poorly in law enforcement statistics. The Police Service Bureau recommended by the Law Enforcement Committee and endorsed in principle by the Greenville County Council is a minimum step toward meeting the needs of a sophisticated coordinated and cooperative law enforcement system. Most of the law enforcement agencies in Greenville County are incapable from their own budget and from their limited numbers of personnel to provide the sophisticated services with reference to communications, identification, drugs, and many other facets of the law enforcement problem, that can be provided by a cooperative effort such as the Police Service Bureau. Even greater cooperation and further consolidation should be considered as we seek to close the loopholes and to improve the machinery of law enforcement.

One must pay tribute to the devotion and diligence of the law enforcement officers of all branches of law enforcement in Greenville County, the Sheriff's office, the Greenville City Police Department, and the police departments of the various municipalities as they over the years have fought the good fight with too few people, too little equipment, too little training. What they lacked in assets they tried to make up in long hours and devotion to duty, but as indicated earlier we have sought to combat the problem with minor patch work rather than major surgery.

Of course law enforcement machinery is not all that is required to fight rising crime in the United States. As the oft-quoted Frenchman de Toqueville said "There is no country in the world in which everything can be provided for by the laws, or in which political institutions can prove a substitute for common sense and public morality." Every citizen, every business, every civic organization, every educational institution, every religious institution and every governmental institution should be involved, and coordinated if possible, in the solution of criminal behaviour. We cannot resort to the simplistic answer that poverty, inadequate housing or lack of education are the causes or that their elimination are the cure. Affluence, resort to escape through alcohol and drugs, a seeking after security, an absence of a viable religious faith, all of these and many more are significant factors in the causes of crime.

Thus it is that today we can all resolve to make a new beginning and seek the goals of prevention of crime, quick solution and punishment of crime, fairness in the administration of justice, and the establishment of a correctional system that will return its products as useful members of society. This is not an impossible dream, and if we are to improve the quality of life in Greenville County, and yea, in this Great Country of ours, we must each be willing to devote a part of our time and more of our assets to achieve domestic peace and happiness for ourselves and those generations yet to come. Thus it is that I look with pride upon this site, upon those individuals who have brought it thus far, and upon the people of Greenville County who will support it to fruition.

THE ROLE OF RECREATION IN CORRECTIONS

Mr. HARTKE. Mr. President, we must all admit that our system of crime control and criminal justice is not working and that the situation is becoming more acute every day. Within the past year the crime rate has continued to rise and we have witnessed a series of disorders within our criminal justice system.

The recent prison tragedies have made us painfully aware of the severe crisis that exists in the correctional institutions of our Nation. Too often, prisons have become hostile environments in which we simply detain offenders for a period of time. We must demand institutions that foster the development of those incarcerated into responsible members of their communities.

Many programs and proposals for change have been offered. But one area that has often been overlooked is the role of recreation in the correctional system. One noted authority who has pursued the role of recreation as a therapeutic device is Mr. Carroll R. Hormachea, director of the institute of criminal justice, department of community services, Virginia Commonwealth University, Richmond, Va. Mr. Hormachea recently presented a paper at the annual congress of National Recreation and Park Association which I commend to the Members of the Senate.

Mr. President, I ask unanimous consent that the paper be printed in the RECORD.

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

THE ROLE OF RECREATION IN THE CORRECTIONAL PROCESS

(Presented by C. R. Hormachea, October 21, 1971)

Until last month, the problems of the correctional institutes of the nation seemed detached from the rest of the society, and most people tended to show little concern for these problems. Then it happened. The correctional system of the nation blew wide open in a small upstate New York community that most people had never heard of before . . . Attica.

Attica where 41 men, guards and prisoners alike lost their lives.

Attica, and the prisoner insurrection that occurred there, sparked advocates of prison reforms throughout the country. Now, because of Attica, people are concerned about the correctional system and prison officials have become most sensitive to the possibilities of any more such incidents.

To explain what happened during that horrible week at Attica . . . or to try to play the Monday Morning Quarterback—is not the purpose of this gathering. Attica has served as a "grabber". The resultant attention focused on that institution and others in the nation has caused people to begin to question the system and to demand prison reforms.

In the past, people have exhibited some concern for the correctional system and the inmates, but most of this has been "lip service". In reality, most people tend to forget the system and accept the "late show" version of what goes on in prisons. They fail to realize the pressures which are exerted on those who, must live regimented lives as a punishment for the transgressions of which they were adjudicated. This is not to imply that crime should go unpunished nor that the punishment should be less, but rather that a certain responsibility is incurred by the state for anyone who lives as a charge of the state, if he is to be rehabilitated and returned to society as a productive citizen.

The President's Commission on Law Enforcement and the Administration of Justice, popularly known as the Crime Commission, studied the nation's prison system and their research indicated that the daily average population in the correctional facilities of the nation is 1.3 million persons. Cost of maintaining such facilities are staggering!

Throughout history, man has sought to make transgressors pay for their crimes in a number of ways. Criminals have suffered physical as well as psychological torment as punishment. Punitive measures have consisted of death, by any number of means (some more imaginative than others); mutilation; branding; quasi-religious ordeals designed to impose divine justice; as well as various other means of corporal punishment. Exile and transportation also have served as means of society's retribution for crime. All of these punishments, however, were expected to serve as deterrents; rather than to rehabilitate the offender and return him to the society.

American penology began with the prison reforms of the Quakers at the Walnut Street jail in Philadelphia. About the same time, the Auburn System developed in New York. Both systems were based on silence of the inmates. In other words, the inmates lived and worked in complete silence. In the Pennsylvania system, the inmate lived and worked in his solitary cell. The Auburn System, which was to become the model for American

penology, provided for the prisoners to work together but to maintain silence. It provided no means of communications. It was felt that by maintaining silence the men would be able to contemplate their wrongdoings and become resolute to err no more.

In some of the old prisons, and until fairly recent times, the only recreation that the prisoners enjoyed was a forced walk through the prison yard. At one time, the inmates were forced to were masks as they marched in the lock step through the yard, in order that they might not communicate with the other prisoners.

Prison reform has been slow in its development. The Quakers intended that criminals contemplate their sins in order that they might reform. Later, this philosophy was furthered with the concept that prison was a place for rehabilitation. But this philosophy, though first introduced in the 19th century, did not really catch on until the advent of World War II.

The concept of rehabilitation provides that the inmate repents his crimes and, upon completion of his sentence, is returned to society as a potential productive member. This philosophy is a sound foundation for a more productive prison system; a system where a man is salvaged, rather than lost deeper in crime.

Recreation in the prison setting is essential to the well-being of the inmates. "All work and no play" is an adage we all remember from our youth, and it well applies to the correctional situation. Recreation provides that vital link with reality in an otherwise artificial world.

Historically, inmates have been accorded some limited opportunities for physical exercise. Mark Richmond, in his *Prison Profiles*, points out that prior to World War II one prison offered three basic forms of recreation; the yard, the library, and the auditorium. Today that institution offers a broader range of programming for recreation.[1]

The pre-World War II concept of recreation mentioned was not an isolated case, but rather the norm. Prison administrators found it difficult to justify recreation programs in an institution intended for punishment.

In order to understand the value of recreation in a correctional setting, it is necessary to recognize the effect on the individual in the system. Prison is a regimented and artificial existence. To say the least, the inmate entering prison undergoes a demoralizing experience. Here he is stripped of his dignity and his outside identity. Many farsighted prison administrators have recognized this initial prison shock, and have instituted extensive recreation programs during the classification and quarantine period which the inmate undergoes upon entering the institution.

Recreation provides a vital link with the "outside" world for the inmate. Instead of spending his time brooding over his situation, he can channel his energies into various forms of recreation and leisure pastimes and, hopefully, improve his own attitude. Through recreation, the inmate is provided with a means of maintaining his identity and participating in pastime activities which are familiar to him since recreation activities are the same in or out of prison. Recreation also can assist in lessening the pressures felt by the prisoners and to work off his aggressions.

Recreation and its therapeutic value has been proven many times over in all types of institutional settings. Prison is really not too different. Recreation can be both a therapeutic and a preventive force by helping inmates work off some of the frustrations which they experience. One prison warden commented that a good recreation provides for better inmate morale and a lessening of custody problems.[2]

Recreation programming as it exists in prisons usually is not as diversified as the interests of the inmates. Many such programs are sports-oriented and usually the men will then split into groups of players or spectators. Program diversification is a "must" and it should offer opportunities for outdoor activities as well as such indoor activities as cards, television, special interest groups, hobbies and crafts. Physical fitness of the inmate should not be neglected, and the program should include a daily program of fitness exercises.

Recently at the Virginia State Penitentiary a group of inmates wrote and produced a live television drama, using an all inmate cast and crew. This program has been shown throughout the state on both commercial and educational television. The response to the drama program has been such that Virginia Commonwealth University drama instructors presently are offering courses at the institution.

Examples of unusual programming are numerous and innovative. However, most programs have not developed beyond the local institution. This is partially due to inadequate facilities as well as a lack of professional recreation leadership.

Through innovative programming, the prisoner can be transformed into a useful citizen. Not only does he develop a talent which otherwise might have remained dormant, but such activity serves to develop the concept of the whole man once again. According to Clemmer, a noted penologist, 44% of the inmates' time in the prison can be classed as leisure time. Therefore, the importance of the recreation cannot be overemphasized.

As a rehabilitative tool, recreation offers the inmate an opportunity to utilize his leisure time in a constructive and pleasureful way. By channeling this energy, the inmate is less likely to become involved in infractions of the rules of the institution or in plotting to escape. Recreation teaches him to get along with his fellow inmates and others connected with the institution as well as helping him to acquire a more positive attitude toward life in general. Further, he can develop a sense of self-control that will assist in his rehabilitation.

In conclusion, it is imperative that correctional administrators recognize the value of recreation in accomplishing the goal of rehabilitation. This can be done by employing professional recreators to plan and carry out these programs.

In recent prisons disorders in a number of locations, prisoners have listed among their demands more recreation facilities. Whether this is in the form of more television time, more recreation equipment or more diversified programs, it must be remembered that, for the inmate, recreation is an important and vital link with the outside world.

[1] Richmond, Mark. "Recreation" in *Prison Profiles*, Oceanea Publications, Inc., Dobbs Ferry, New York, 1965.

[2] Report of the National Correctional Recreation Association Conference, 1968.

THE BUSINESSMEN'S EDUCATIONAL FUND FIGHTS DEFENSE WASTE

Mr. PROXMIRE. Mr. President, the Senate Appropriations Committee heard testimony on February 3 from Mr. Harold Willens, national chairman of the Businessmen's Educational Fund. The subject of Mr. Willens' hard-hitting statement was the misplaced priorities reflected once again in the administration's fiscal 1973 budget.

Mr. Willens called specific attention to the $6.3 billion increase in the Defense Department's budget authority. He suggests:

This increase ignores the plain lessons of two decades. It is like dealing with Ford Motor Company's greatest mistake by stepping up production of the Edsel.

I share the belief of the Businessmen's Educational Fund that we can sharply reduce this new Pentagon budget without endangering our national security. I also believe that Mr. Willens' remarks, while directed primarily to members of the Appropriations Committee, deserve careful scrutiny by all Members of Congress.

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

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

STATEMENT BY HAROLD WILLENS

The Businessmen's Educational Fund appreciates your invitation and commends you for imaginative innovation. By broadening the base of its deliberations: by opening its doors and its minds to public testimony, this influential Committee has broken new ground which can lead to consequences of historic magnitude.

For too long the Congress has behaved like a wholly-owned subsidiary of presidents from both parties. For too long the Congress has defaulted its role in the balanced system of checks and balances our country's founders established to limit presidential power. For too long the Congress has obediently approved Administration requests for staggering sums which have not been used in the nation's best interest.

Fundamental reassessment of resource allocation is urgently needed. These hearings are the right place for such reassessment. Verbal commitment to better policies and priorities are as meaningless for a country as for a corporation. *Financial* commitment is the name of the game: putting our money where our mouth is.

The Businessmen's Educational Fund, a national non-partisan organization, believes our national resources have not been wisely invested. We look to you in the hope that a better distribution of our federal tax dollars can be initiated. And because many of us wrestle with complex corporate budget problems, we understand that rational allocation is easier to talk about than to achieve, especially for a country faced by the multiple demands which go along with a leadership role in world affairs.

But that, we feel, is exactly where we have gone astray—and where you can uniquely serve our people by carrying through to its logical conclusion the concern about fundamental priorities which is evidenced by the unprecedented format of these very hearings. The Congressional Record of last December 15 included a statement by this Committee's distinguished Chairman. Referring to public witnesses concerned with national issues, Senator Ellender said: ". . . We would invite them to testify on general goals and priorities, rather than on specific appropriation line items . . . too often we are exposed to only the Administration thinking on overall priorities and national goals. . . . It is time we expand our scope to take an overall look at spending practices." It is in the spirit of these remarks that we come before you, convinced of the urgent need to reassess the fundamental values which should underlie American public policy and resource allocation.

The crux of the problem is defining the kind of world leader the United States ought to be. We have the military capability to destroy any country on earth. We possess a substantial share of the world's wealth and consume a substantial share of the world's resources. Because we are so richly endowed

our national actions have international impact. Yet we shall always need commercial and cultural interaction with others. There is no way so rich and powerful a nation can ignore or be ignored by other nations. Those who speak of isolation or neo-isolation speak empty words.

It is not a question of leadership but leadership for what ends: What kind of international role should the United States play during the 1970's?

We suggest for your consideration two interrelated guiding principles in response to this question. The first is that America can best lead by setting an example. There is no better way of gaining respect from other nations and stimulating them to good acts than by establishing a truly free, just, and prosperous society for all American citizens. Only by demonstrating the ability to solve the problems of poverty and discrimination and to create a vital society can we earn the basis for giving advice which other nations are likely to find persuasive.

The second principle is to employ our influence and power through partnership rather than force: to be a world partner rather than a world policeman. Military power should not be used as an aggressive instrument for mandating our vision of how other societies ought to be shaped and governed. Businessmen should no longer expect the American Government to make their foreign investments safe and profitable at the cost of American lives.

As we approach our 200th Anniversary we need to reflect upon the most basic precepts embodied in our Constitution and Declaration of Independence. Our ideal is a world community in which every society has an opportunity to determine for itself the kind of existence and political organization it chooses. We submit that leadership through example and partnership—rather than force—is the national role most consistent with our basic principles, and therefore the proper course for the United States.

Measured against such standards, our performance during the past two decades has been inadequate. If a balance sheet were to be drawn comparing America's assets—international goodwill among them—20 years ago and now, we would not be proud of the bottom line.

In some ways we have made substantial progress: an increased gross national product, a rise in educational attainment, a decline in illiteracy, virtual elimination of polio and smallpox, landmark court decisions which have riddled the fabric of discrimination.

But much remains undone. Vietnam veterans return to widespread unemployment and racial tension. They find cities being devoured by poverty, crimes, pollution, heroin and rats. These veterans bear personal witness, along with the 55,000 who died, to the ultimate obscenity of perverted priorities. By pouring lives, brains, technology and money into profitless ventures based on imaginary dangers, the country served by these veterans has jeopardized the best system ever devised by man: free enterprise democracy. While trying to force our will upon others we have neglected and damaged our own precious way of life.

By far the major reason for our failure to stem domestic disrepair—and despair—has been the disproportionate share of our public wealth allocated to military purposes. Excessive military spending has preempted our opportunity to build on exemplary model society at home and has lured us into actions bringing loss of respect abroad. Apart from the long-range inflationary damage caused by Vietnam, the military billions spent there alone could have made a visible difference in controlling urban blight, environmental crisis and social disintegration. The Indochina blunder is not an aberration. It is an inevitable outgrowth of policies reflecting excessive military influence—and spending.

You and your elected fellow officials, along with my greed-governed peers in the business community, have created a military-industrial machine which now dominates our foreign policy and domestic economy. President Eisenhower's prophetic warning has been ignored because presidents, isolated from reality, demanded monumental military sums which have been rubber-stamped rather than realistically evaluated. At one point Congress, at least symbolically, was ready to surround our cities with missiles while allowing them to rot from within.

No one denies that we have needed and continue to need convincing deterrent forces to prevent an attack on the United States or close allies for whom we provide a nuclear shield. National security remains a paramount goal. But we have all acted irresponsibly—as lawmakers and citizens—by allowing one department of the government to call all the shots. Simplistic foreign policy preachments and a massive military bureaucracy have hoodwinked us into a one-dimensional definition of national security. It is against our self-interest to equate national security with multiple military overkill while ignoring economic vitality, confidence in government and faith in the system.

In three critical areas we have made massive errors which have caused massively wasteful military spending. First, the fundamental assumptions underlying our military posture have been full of holes. Time and again we have mistaken legitimate nationalistic aspirations akin to our own American Revolution and misread world events because of a faulty perception of a monolithic aggressive communist movement. We have been blinded by an archaic view of Soviet and Chinese intentions. By refusing to reassess erroneous assumptions we have missed opportunities to make significant advances toward lasting world stability and peace. It is time to accept the fact that China and Russia (who certainly have their share of military hardliners, as we do) are led by people, not monsters: that survival is their mission, not trying to destoy us—an attempt they know would result in their own destruction. Only then can we achieve more open, flexible policies and mutual step-by-step arms reduction reflecting current realities rather than the angel/devil world view underlying our foreign policy. I have seen businessmen march lemminglike toward corporate oblivion blaming the evil of others every step of the way, never thinking to look inward for possible partial fault. Let us avoid even the remote risk of having that happen to our country.

Secondly, specific actions taken to implement those foreign policy assumptions have been ill-advised. Intervention in the civil affairs of other countries where the military result could have no impact on American security has cost us dearly in lives lost, dollars spent, and world opinion soured. In Saigon last year a woman described to me how prison guards, paid with our money, had forced bottles and live eels into her sexual organ: a form of torture from which equally innocent women died before her eyes. At Con Son Prison, where this had happened, an American construction firm was meanwhile building 288 additional "isolation wards" (Vietnamese call them "tiger cages") under a $400,000 U.S. Navy contract. For such use our tax money has been appropriated by your committee in the holy name of "National Defense."

Finally, the arming and operating of military forces to implement our mistaken foreign policy have been carried out in flagrantly wasteful fashion. The staggering cost overruns in procurement of major weapons systems have been amply documented. Even more wasteful have been decisions leading to retention of weapons systems which have long since outlived their military usefulness. Most costly of all has been a general attitude of unquestioning acquiescence to military requests for new and more weapons. The blame cannot be levied on the military professionals who are after all only doing their job. To say that a military man wants expensive—and perhaps unneeded—weapons systems is simply to recognize what he is paid to do. So it rests upon our elected representatives to give military spending requests the same tough-minded scrutiny other programs receive. The following few words from a Fortune Magazine editorial indicate the Businessmen's Educational Fund is not alone in these views: "U.S. ground troops have been deployed around the world for a generation like the Twentieth Century equivalent of the Roman legions. The United States is in the grip of a costly escalating pattern of military expenditure (which) has come to live a life of its own."

And to remind you that our military planners share the responsibility for an endless arms race which grows increasingly dangerous and costly, here are a few words from a Wall Street Journal editorial at the time multiple independently-targeted re-entry vehicles (MIRV) were in the news. "The Pentagon is deploying this weapon at least four years in advance of the Soviet deployment it reportedly is a reaction to. If that sounds as fishy to Soviet diplomats as it does to us . . . their generals would inevitably want to press harder with their own multiple warhead testing" the Wall Street Journal said. Those words proved prophetic as well as descriptive of how unbusinesslike it is to let military men determine military spending levels.

Several years ago we distributed an article written by former Marine Corps Commandant General David M. Shoup, entitled "The New American Militarism." With 20,000 copies we included a survey asking business leaders if they disagreed or agreed with General Shoup's statement that "America has become a militaristic and aggressive nation." Because these are strong words and businessmen are not known for courageous public positions, we were astonished to receive 2000 replies agreeing with General Shoup's accusation. There may be surprising support—even in the business community—for discarding imperialistic military policies which have caused Congress to shortchange many of our people and misdirect resources required to create the inspirational model which would prompt others to want American partnership.

In that context consider again the cogent words of Senator Ellender: "It is time we expand our scope to take an overall look at spending priorities." Right now this Committee can perform a unique national service by rising above political pressures and special interests: by applying an objective Overview which can prevent repeating past mistakes.

You represent the best current hope for actualizing the "new priorities" for which most Americans are calling. No government body is better positioned to step out of—and above—the roaring stream of events in whose context hasty, irresponsible budget decisions have been made.

It would be irresponsible, for example, to appropriate extra military money just to provide jobs. Nothing would more clearly illustrate the power of the one-two military punch which has bullied Congress into abdicating the role intended by the Republic's founders; men who wanted to prevent presidents from becoming de facto kings, and who knew the dangers of an overly-powerful military establishment.

The first punch consists of exaggerated threats which cow Congress into underwriting annual military wish lists. After absurd spending levels create a military grip on the

economy, the second punch is delivered, as indicated by Secretary Laird's recent response to former Deputy Defense Secretary David Packard's remark that the Pentagon could save $1,000,000,000 a year spent on unneeded military bases. Said Mr. Laird: "I'd hate to be called the secretary who has caused more unemployment than any other."

Military spending is not the way to solve unemployment problems. In this context it should be stated that the Marshall Plan—not NATO—made possible the economic rebirth and democratic survival of our European friends. So also equitable economic assistance—partnership—can keep desperate people from embracing the economic lure of socialist systems. Of all the myths which die hard, one of the most tenacious is the belief that American economic prosperity requires heavy military spending. We agree with the opinions expressed at one of our meetings by Louis B. Lundborg, who was then Bank of America's board chairman, about the great need and for benefits which would come from economic conversion to quality of life expenditures. Advancing that kind of economic conversion is the best way to solve unemployment problems.

To meet the challenge and the opportunity before you will require something vastly different from the Congressional subservience which has emasculated the potency of checks and balances. To meet that historic challenge this Committee must now assume again the constitutional responsibilities which Congress has abandoned.

For you are now being asked to authorize an increase of 6.3 billion military dollars for fiscal 1973. That request is a gross insult to your intelligence because it ignores the plain lessons of two decades: it ignores the reduced costs of the Indochina conflict; it ignores the fact that heavy military spending fueled the inflation which has gutted our economy; it ignores the trillion dollar misunderstanding that arms escalation increases national security; it ignores the so-called 2½ war strategy-fantasy responsible for the quantum leap from a sensible military spending level of $12,000,000,000 in 1948, when the cold war was really frigid.

Asking you to increase military spending at this point in time is like dealing with Ford Motor Company's greatest mistake by stepping up production of the Edsel. If an imperious Ford executive had urged such action; if a weak staff and Board had gone along, a costly mistake might have been compounded into the demise of a great corporation. We respectfully submit that elements in this analogy are worthy of your consideration as you review a military budget which asks you to continue—and expand—counter-productive spending policies.

In its crisis Ford Motor Company showed true leadership quality by recognizing and correcting its mistake, thus serving well the long-term interests of its shareholders. Our executive leadership is not doing as well for the shareholders of the American enterprise.

But the constitutional power of the purse still resides in Congress. We appeal to you to use better budgetary discretion than is revealed in the request before you. It is time for Congress to express its own views on basic policy directions and spending rather than obediently accepting Administration assumptions and dictates.

Administration advisors are not blessed with ultimate wisdom, as we have learned from the costly advice of Walt Rostow, Dean Rusk and others. As businessmen we can of course appreciate your need for expanded analytical staff capabilities. We would regard as a prudent national investment money spent for that, as well as for a Congressional think-tank institute to provide a more equal analytical balance between Congress and the Administration in place of the grossly imbalanced present relationship.

But that is for the future. The immediate need is for meaningful response to an historic challenge.

While calling for strong fiscal discipline and asking Congress to forestall "raids on the Treasury" the President placed before you a Budget which raids the Treasury by failing to reduce military spending levels based on the faulty perceptions and assumptions of the 1950's and 1960's.

The question before you is this: Since the President has failed to lead us into new directions, will this Committee exercise the leadership we so desperately need? Will this Committee inspire the Congress to an independent action which forsakes old ways proven wrong?

By exercising the courage of true leadership you can start a process which will gainfully affect our own people and reestablish the international respect we have lost.

Imagine the worldwide reaction if Congress, inspired by this Committee, reallocates to quality of life program $20,000,000,000 now budgeted for military spending! Would China and Russia be able to resist international pressure to follow such leadership? Beset by their own domestic needs, might they not welcome that first military de-escalatory step which requires the courage of true leadership?

In business we seek but rarely find low-risk, high-yield ventures. This is such a venture. With our overkill capacity, with the President's forthcoming visits to China and Russia, with evidence that inefficiency and duplication keep us from getting maximum military return for minimum costs—the calculated risk of a $20,000,000,000 reduction is well worth the probable gains. As to where the cuts should be made, copious documentation exists to provide intelligent guidelines.

In closing, we express the fervent hope that by facing past mistakes with clarity and dignity; by defining national security more broadly and opting for a world leadership partnership role; by shifting fiscal policies to give to "new priorities" real meaning—and by reasserting the constitutional role of Congress through a specific budgetary action—this Committee will exercise the leadership for which our people yearn; leadership which will benefit our nation as well as all the world.

UNITED STATES-CHINA RELATIONS

Mr. CHURCH. Mr. President, as President Nixon begins his journey to Peking, Hangchow, and Shanghai, I think that comments on United States-China relations over the course of a quarter century would be useful for background purposes. I ask unanimous consent that a concise historical run-down by Jack Anderson and articles by John S. Service, who recently revisited China where he was born and served in our foreign service, be printed in the RECORD.

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

[From the Parade Magazine, Feb. 6, 1972]

WHAT EVERYONE SHOULD KNOW ABOUT UNITED STATES-CHINA RELATIONS

(By Jack Anderson)

WASHINGTON, D.C.—It could have been a moment that changed the course of history.

It happened in 1954. John Foster Dulles, architect of America's cold war policy, faced Chou En-lai, the Chinese Foreign Minister. They were in the conference room in Geneva, where the major powers were carving Indochina into spheres of influence to bring temporary peace to the area.

Chou walked toward Dulles, and held out his hand. Dulles hesitated, then clasped his hands behind his back. The Secretary of State muttered, "I cannot," and stalked out of the room.

The incident still burns inside Chou as the most humiliating of the scores of rebuffs the United States has handed Communist China in the past 25 years.

Still-secret files, stored in guarded government warehouses in Washington, tell how the U.S. has fumbled a number of opportunities to achieve the very détente with Red China that President Nixon is traveling to Peking to seek.

The China papers are heavy with the names of America's recent great—Truman and Eisenhower, Kennedy and Nixon. They tell how Chiang Kai-shek's lavishly financed "China Lobby" pressured the U.S. into decisions that have cost us billions of dollars, two bitter wars, and immeasurable prestige.

We have made an exhaustive investigation of a number of the China papers. We have conducted extensive interviews with men who were close to the events to learn what the remaining documents contain.

Here are the highlights of the story U.S. officials have tried to hide:

On several occasions during the 1940's, the Chinese Communists hinted at their independence from Moscow and sought U.S. friendship. They were rudely rejected.

The U.S. made a firm decision to back Chiang and "contain" Mao before Red China intervened to hold North Korea. Yet the Communists continued to attempt to establish friendly ties.

Secretary of State Dean Rusk proved an inflexible block to the reappraisal of our China policy during the Kennedy years.

The Vietnam war, like the one in Korea, probably could have been avoided if we had opened relations with Red China.

Richard Nixon, who built his political career as a staunch anti-Communist and friend of old Chiang, came into office with the goal of normalizing relations with the Chinese mainland. He angled for his Peking invitation despite the opposition of close advisers.

WHO "LOST" CHINA?

The details of American China policy from the 1940's to the 1970's is told in a collection of diplomatic papers, relatively few of which have been made public. These documents have been the heart of the controversy over who "lost" China. Some were the basis of the 1949 Truman Administration "White Paper" which showed that China was lost by Chiang's corruption, mismanagement and ineptitude.

The China Lobby—a collection of China traders, public figures and hirelings—charged that the "White Paper" was a "whitewash." When the Republican Party took control of the government in 1953, the pro-China bloc in Congress ordered the State Department to publish the entire record of Sino-U.S. relations from 1942 to 1949.

Two volumes were published. They showed, beyond dispute, that the burden of responsibility for China's "loss" weighed directly upon Chiang. Further, the documents revealed U.S. diplomats in China had warned repeatedly that Chiang was uncooperative in the war against Japan, that his regime was thoroughly corrupt, and that he would not be able to defeat the Communists in a civil war. These warnings were consistently ignored by U.S. policy makers.

CHIANG POWERFUL

During the past three decades, Chiang Kai-shek has exerted an inordinate influence over the foreign policy of the United States. When the China papers proved an embarrassment to him, he urged publication be stopped.

Two more volumes were released in 1967 and 1969, but these still don't cover Chiang's downfall. The record of events beyond 1945 remains secret.

The papers show that until 1944, America's

China policy was ambiguous. The U.S. was far more interested in defeating the Japanese, who then controlled China, than in the power struggle between Chiang's Kuomintang and Mao's Communists.

It was felt that the best way to overthrow the Japanese was to continue support for Chiang, while trying to convince him that peace with Mao and his million-man army would expedite victory. To the continued frustration of American officials, Chiang was more interested in defeating Mao.

Gen. Joseph "Vinegar Joe" Stilwell, a caustic, capable officer, was assigned as Chiang's chief of staff in 1942 to "improve the combat efficiency of the Chinese Army." Stilwell was unable to reform either the army or Chiang. Exasperated, Stilwell wrote in his diary that Chiang was "a peanut dictator."

To smooth the conflict between Chiang and Stilwell, President Roosevelt sent Patrick J. Hurley to China as his "personal representative." Hurley was a prominent Republican with a reputation as a negotiator.

In China, Hurley set his own policy. His mission, he repeated in his cables to the State Department, was to "sustain" Chiang's government. He was never officially corrected.

The China papers show that one of the first Communist bids for U.S. recognition came in July, 1944. U.S. military officials toyed with the idea of giving Mao's troops arms and ammunition to use against the Japanese. To get an accurate appraisal of the Communist potential, the Army flew an observation group, known as the "Dixie Mission," to Mao's redoubt at Yenan. With the mission was John Stewart Service, second secretary of the U.S. Embassy.

"Chairman Mao expressed the hope," Service wrote on July 28, 1944, "that a representative of the State Department might be regularly stationed at Yenan. He stated that the reason for his hope is that the time of greatest danger of a Kuomintang attack on the Communists will be soon after the cessation of hostilities against Japan." Mao's request was ignored.

Meanwhile, other U.S. diplomats were warning that the U.S. should not take sides in the civil war. "The situation is rapidly becoming critical," Service wrote. "China faces economic collapse . . . morale is low . . . the authority of the central government is weakening . . ." John Paton Davies, who replaced Service with the Dixie Mission, told Washington: "The Communists are in China to stay . . . China's destiny is not Chiang's but theirs."

MAO QUOTED

From Yenan in 1945, John Service reported that "the Chinese Communists consistently deny that they have any 'relations' with the Soviet government." After a talk with Mao, Service quoted the Chairman as saying: "Between the people of China and the people of the United States, there are strong ties of sympathy, understanding and mutual interest . . . America is not only the most suitable country to assist [in the] economic development of China; she is also the only country fully able to participate . . ."

The field reports nevertheless conflicted with Hurley's self-appointed mission to save Chiang, and he stormed home in a rage, resigned, and went before the Senate Foreign Relations Committee to accuse the embassy staff of "defeating" American policy. The China experts were abruptly transferred to other posts.

Later, during Sen. Joseph McCarthy's witch-hunts, Service, Davies and others were accused of being Communist sympathizers and were cashiered out of the Foreign Service.

Now with the Center for Chinese Studies at the University of California, Service told us that had the U.S. heeded his warnings, "the Korean War would not have come about. Or if it had, there would have been no Chinese intervention." Service and Davies agree that the Vietnam war could also have been avoided.

TRY FOR PEACE

But America was on another course. Gen. George C. Marshall replaced Hurley in China, tried to bring peace between Chiang and Mao, and wrote bitterly of the Chiang government's "incompetence, inefficiency and stubbornness." After two years, Marshall came home to be Secretary of State.

Chiang's troubles with our diplomats did not carry over at the Treasury Department. He received some $2 billion in grants and credits between the end of World War II and 1949, plus another $1 billion in arms and ammunition.

Still, his hold on China steadily deteriorated as our diplomats had predicted. It was April, 1949, when Mao's angry army swarmed across the Yangtze River and sent Chiang scurrying to the safety of Taiwan. Disenchanted at last with the U.S., the Chinese Communists evicted all American diplomats and turned to Russia for aid.

A few voices were heard in Washington calling for recognition of Red China. They were quickly smothered.

There were more Chinese overtures in the 1950's, all rejected. Truman declared a "hands off" policy on Taiwan, but threw his weight—and the U.S. Seventh Fleet—behind Chaing. When the North Koreans invaded South Korea, our intelligence reports of the time show they were encouraged almost entirely by Russia, not China. But Truman saw it as a Communist conspiracy.

With the national passion for guilt by association fostered by Joe McCarthy, no one in the State Department of the 1950's dared suggest moves to open communication with China. But the Communists, our diplomats of the day now admit, proved remarkably patient.

At an "Asian and Pacific Peace Conference" in Peking in 1952, the Chinese called for the U.S. to bring peace in Vietnam and Malaya "through negotiations."

At the Geneva Conference on Indochina in 1954, the Chinese again campaigned for peace in Indochina, and Chou offered Dulles his hand. Despite the rebuff, the U.S. and China, working through third parties, initiated a series of talks which were later moved to Warsaw at China's request.

At a meeting of Third World leaders in Indonesia in 1955, Chou publicly offered to negotiate with the U.S. on "relaxing tension in the Taiwan area." The suggestion was killed by the State Department, which demanded that Chiang's government be treated as an equal at any talks.

In 1960, American writer Edgar Snow managed to travel through China for five months, and spent nine hours with Mao. It was obvious that Mao's overtures were really directed to the White House. When Snow returned home, he was summoned to the State Department for an interview. It lasted only ten minutes.

John Kennedy named W. Averell Harriman Assistant State Secretary for Far Eastern Affairs, and the old statesman quickly filled the China desk with men with new ideas. The China papers of the Kennedy years will show that long, hard attempts were made to revamp our China policy. Insiders say few suggestions ever got past Dean Rusk's desk.

In the Johnson Administration, the possibility of a new approach to China was mired, along with the rest of the nation's foreign policy, in the quicksand of Vietnam.

Real progress in Sino-U.S. affairs had to wait for Richard Nixon. Fifteen days after he took office, Nixon forwarded a memo to his chief foreign affairs adviser, Henry Kissinger. "I think we should give every encouragement to the ideas that this Administration is seeking rapprochement with the Chinese," he wrote. He then ordered a major review of China policy.

Three times a week, Nixon and Kissinger met to plot their approach. Most of the ideas for secret communication with the Chinese, says Kissinger, came from the President himself. The Chinese were first contacted early in 1969 through French President Charles de Gaulle. Other European intermediaries were subsequently called upon to transmit messages to Peking.

TRAVEL EASED

Meanwhile, Nixon set the stage by easing restrictions on Americans traveling to China, moderating the trade embargo, and ending the regular patrols of the Seventh Fleet in the Taiwan Straits. Here and there he dropped a hint to the Communists. In his February, 1971, "State of the World" speech, for example, he made history by referring to the Red Chinese Government by its official name, the "People's Republic of China." Peking responded with an invitation to the U.S. table tennis team.

Then came the most stunning development of all. In early July, 1971, Nixon announced that Henry Kissinger had just returned from Peking with a personal invitation from Premier Chou En-lai for the President to visit China. Nixon promptly accepted.

The eyes of the world will be on Richard Nixon as he makes that historic trip this month. It has been a long 25 years.

INSIDE CHINA TODAY

In the flowery language of Oriental oratory, China's Mao Tse-tung has always referred to the struggle between the Western and Eastern worlds as "the war of the east wind against the west wind."

The phrase has become as significant as it is colorful. For the west wind that blows into China comes from Russia. The secret intelligence reports out of China today show clearly that an epic struggle is developing between the titans of communism.

Declares a classified cable: "Bitter contention over the Indo-Pak crisis—including references to Soviet threats and blackmail of China—clashes over other issues in the United Nations and recently increased Moscow propaganda exploitation of the Chinese party split have raised Sino-Soviet polemics to the highest point since 1969.

"In addition, the Soviets appear to be taking other steps, such as unilaterally recessing the border talks, to signal a deterioration in relations. . . ."

There are also ominous rumblings out of Russia about a pre-emptive strike into remote Sinkiang Province, where the Chinese are testing their nuclear missiles.

The most direct threat was made during the recent India-Pakistan war. Russia's ambassador to India, Nikolai Pegov, was quoted in a secret CIA cable as threatening: "If China should intervene (against India), said Pegov, the Soviet Union would open a diversionary action in Sinkiang."

[From the New York Times, Jan. 24, 1972]

THE RETURN OF A NATIVE: "THAT OLD CHINA WAS A TROUBLED PLACE"

(By John S. Service)

BERKELEY, CALIF.—An American returning to China after 26 years comes with different eyes. Absent since before the Communists won the country, he cannot but remember China as it used to be.

That old China was a troubled place—for most Chinese. Warlords, national disunity, civil war, imperialism, unequal treaties, Japanese aggression, ruinous inflation, grinding poverty, natural disasters, callously rapacious rulers.

Since I am the returnee, the reader should be aware of additional frames of reference. I was born in China and, including my youth, spent 28 years there. My personal career as an officer of the American Foreign Service became embroiled in differences of judgment and policies of the United States. My present trip was as a guest of the Chinese Government and based, at least in part, on my friendly acquaintance with many of the Communist leaders during the war years

(1941–45) in Chungking and Yenan. So much for background.

For six and a half weeks, from late September to early November, my wife and I traveled some 6,500 miles inside China—north, west, east, and south. One important area we saw—Szechwan Province in the west (and my birthplace)—had long been "off limits" to foreign travelers. I was, in fact, permitted to visit every place I asked to see.

Much of our journey was by air. But the jet age has fortunately not yet reached China. Planes fly low, by day, and preferably only in good weather. The shape of the land, and the mark of man's hand upon it, are plainly to be seen. Even better was a thousand miles by car in the countryside (where I upset protocol by pre-empting the seat beside the driver). In every city we got into the streets, shops, parks, theaters, and restaurants. And, in town or country, I walked—often without guide or escort. My Chinese, though rusty, gave me ears and at least half a mouth; and I could still read.

It is easiest to deal first with the physical changes. In the countryside, the face of the land has been changed by incalculable human toil. Land is saved and gained by elaborate terracing, erosion control, drainage, reclamation. The communes have brought a new layout of the land into larger, more efficient fields. From the air, one sees the neat pattern of the commune members' tiny individual plots clustered close to the villages.

In most areas, graves that once usurped precious tillable land have been removed. This prepared me for finding—when I eventually reached Chungking—that the little foreign cemetery with the grave of my father and elder sister had disappeared. Ancestor worship has disappeared; and so, also, the favored, special status for foreigners.

Everywhere there are irrigation projects: dams, reservoirs, aqueducts, and canals—large and small, completed or still in construction. There have been extensive efforts at reforestation—not all successful. But there are carefully nurtured trees—often in multiple rows—along every road, canal, and railway. In the bleak and treeless landscape of the north, there is a new greenness.

Wherever I went there were telephone and electric power lines. Many communes have their own generating plants. Electricity has brought thousands of pumps for irrigation.

In the cities, there are many new, broad, tree-lined avenues (kept scrupulously swept by multitudes of busy women); some impressive Government buildings (in styles ranging from Soviet to Chinese-palace to eclectic); and a drabness that comes from the absence of colorful old shop signs and advertising (except for political slogans).

In the extensive new suburbs are miles of large, well laid-out factories (often, alas, with smoke-belching chimneys), power plants and refineries, and row upon row of workers' housing.

It is true—though surprising—that there are no derelicts and beggars, no people in rags and tatters, no signs of starvation nor malnutrition. Instead, at street-corner markets in cities such as Peking, cabbages and other vegetables are heaped in great mounds on the ground—and if unsold, are left undisturbed overnight. Fruit is everywhere in overflowing abundance.

When I was a boy in Chengtu, the rice harvest came once a year at the beginning of September. Revisiting there in mid-October, I was puzzled to find the harvest not yet begun. The answer: the great rice bowl of the rich Chengtu plain has been converted to two-crop rice, each more plentiful than the single crop of the past. Gone are the days when meat was a rarity reserved for New Year and great occasions.

One may miss the brightly gowned upper-class women and entertainers (of various now vanished types) of old Shanghai days; but the people are reasonably well and neatly clothed. Notwithstanding those who have written about the land of "blue ants," there is more color in Chinese clothing now than there used to be. Silk is popular for quilt coverings but a silk brocade factory near Chengtu conceded that some elaborate traditional patterns had not been made since the Cultural Revolution. In Peking (and *not* at one of the special "Friendship Shops" for foreigners), my wife bought an off-the-rack pair of pants of acrylic fiber, handsomely cut, and well made. Her great regret now is that she bought only one pair.

In a commune co-op store (in the countryside near Sian), there was a display of "sanitary paper" (toilet tissue)—coarse by Western standards, but (like bicycles) not an item that farmers had money to buy in the old days.

[From the New York Times, Jan. 25, 1972]

THE RETURN OF A NATIVE: II—A CONSCIOUS PRIDE IN CHINA'S DEVELOPMENT

(By John S. Service)

BERKELEY, CALIF.—To a Westerner, life in new China may appear earnest, sober and rather serious. We heard no firecrackers and saw no fireworks. We saw no Buddhist monks or Taoist priests. Nor did we see a single bridal procession or funeral cortege. The pigeons in Peking no longer have whistles that hum as they fly, but the sparrows are coming back. There are no dogs in the cities, but they are still in the villages—and they look now as though someone fed them. Small boys are still able to sleep happily on the backs of the water buffaloes they tend.

The click-clack of mah-jongg tiles, once the background noise in Chinese hotels, is nowhere heard. At a store in Chengtu, I saw a box in a showcase and asked the girl clerk to show it to me. My interpreter read my thought and smiled. It looked like a box for a mah-jongg set, but it was not.

In Shanghai, we drove by the old Lido—where Don José and his big Filipino dance band used to be almost as good as Guy Lombardo—and some of the hostesses spoke beautiful Pekingese Mandarin to aid a young American consular officer in after-hours language study. It was dark and apparently used as a warehouse. Dark also, or converted to utilitarian uses, were the other night spots of the "Paris of the Orient." One could sympathize with the sad comment of a lonely Danish seaman: Shanghai was the deadest place he had ever found.

For the Chinese and especially for those with simpler tastes, life is not all grim. Chinese food is the best in the world, still very much enjoyed, and available because they can better afford it—to far more people than ever before. For the same reason, there is more consumption of Chinese rice wine and spirits. Beer no longer seems to be enjoyed mostly by foreigners; and China has started making quite passable grape wines. Surprising to Westerns, alcoholic drinks are not heavily taxed and hence are relatively cheap. But I did not see any drunkenness. In fact, I noted with relief that hosts no longer regard it a great thing to put the guest of honor under the table. No one gains compliments by having an "ocean capacity." And I never heard a single shouted "finger game"—in which the loser drinks, and at which most Chinese in the old days could make a monkey out of foreigners (particularly me).

The Chinese have always liked their theater, with its stylized acting, singing and dance. Today every school, factory, and Government organization seems to have its own often very polished troupe. Children start in kindergarten. Of course, it all has a political or patriotic message. But it need not be unpleasant or obtrusive. On the plane between Sian and Yenan, a Russian copy of the old two-engined DC–3, the little stewardess (19 years old and wearing two braids) passed hot tea and fruit and then made up for the lack of piped music by demurely offering to sing some North Shensi folk songs of the Sino-Japanese War. Loudspeakers blaring music can be an annoyance; but one can quickly find out where the switch in your railway compartment is located.

The Chinese have always been proud of their past. And they are fond of nature—usually in famous beauty spots.

When I was a boy, I had been taken to the supposed site of the thatched hut outside Chengtu of the famous Tang Dynasty poet, Tu Fu. I remembered it as a deserted, quiet place. Now it is the center of a large shady park visited by throngs of people. They also see a new museum with laudatory inscriptions honoring Tu Fu by Mao Tse-tung and many others.

On Purple Mountain near Nanking, classes of school children were visiting the mausoleum of Sun Yat-sen—still honored as a revolutionary leader of his country. In Peking, the whole palace of the Forbidden City is a great park-museum. Crowds peer with interest into the luxurious living quarters of the Empress Dowager as the loudspeakers pour out a historical lecture that spares no details, such as the invasion of the palace by the foreign armies after the Boxer Uprising in 1900. Stone and bronze animals bear signs: "Please do not climb on the statues."

A foreigner is interested in the way in which he is received. In the old days, humbler classes seemed to regard you as something strange and fearsome. Traders and suppliers of services saw you as possessed of wealth but often not much sense. The police and military knew you were a protected individual. The governing and intellectual groups showed their resentment by reverse condecension and an air of cultural superiority. Now you are treated by everyone in a direct, person-to-person way of absolute equality.

Part of this is, of course, a carryover of the way in which Chinese now treat each other. But there is also a conscious pride in what China has accomplished—by her own efforts.

The foreigner is no longer someone to be emulated. In the old days, and especially in the treaty port cities like Shanghai, men wore Western suits as an indication of status. Nowhere—not even in Shanghai—did we see a single Chinese man in Western garb.

An ability to speak foreign languages used to be a prestige symbol. Chou En-lai, in his talk with me on the day after the admission of the People's Republic into the United Nations, spoke scornfully of Kuomintang diplomats who "could not even speak Chinese." Old friends, quite able in the past to speak English, preferred to talk to me in their own language (and why not?).

In Kuomintang days, I had become quite used to officials who seemed suspicious of Americans who could speak, and especially read, Chinese—presumably because we were less likely to believe what we were told. Now I found that my sadly eroded language was uniformly greeted with unmerited praise, pleasure—and sometimes even astonishment. Pidgin English, mercifully, is now completely dead. We never heard a single "me no wantchee."

One aspect of this Chinese attitude toward foreigners is worth mentioning. You are received, and treated, as an individual. A sharp differentiation is always made between you, as a person, and the policies of the American Government. It is normal in China today for people to be frank and direct, to get to the point, to criticize and to eschew the old face-saving habits of circumlocution.

This emphasis on people-to-people relations is exemplified by a big new poster in Canton: "Our friends are all over the world."

The extent of knowledge and understanding of America varies between different groups and strata.

At the top, the men in responsible positions in the Ministry of Foreign Affairs—and of course Premier Chou En-lai—are extremely

well informed about the world and the United States. They look at the world with knowledge and great realism. It is not surprising, with a united, confident and relatively prosperous country behind them, that they have opened their doors—at least a crack—to American visitors; and that they are moving out to play a role in the world which they believe that China's status deserves and her interests require.

[From the New York Times, Jan. 26, 1972]

THE RETURN OF A NATIVE: III—LIFE IN CHINA IS "OBVIOUSLY BETTER"

(By John S. Service)

BERKELEY, CALIF.—Were we shown a succession of Potemkin villages? Certainly the Chinese want to make a good impression; we would do the same. But in Szechwan Province and elsewhere, we saw many places never before visited by foreigners (it becomes quite easy to recognize where you are a novelty). And we did not wear blindfolds. One does not need to enter and inspect a commune to be able to see, from the road as one drives past, the number of new dwellings (built and owned by the commune members). In the old days, a new farmhouse was a rarity.

Life is obviously much better for the great majority. There is no longer starvation, and bitter poverty. But by American standards, life is still simple, frugal, and austere.

Countries other than China have improved the livelihood of their people. Even Mussolini was able to make the trains run on time. What about the atmosphere and quality of life in China? The answers demand a long and intimate immersion in present-day Chinese society—a chance, for instance, to live in a commune for an extended time. These opportunities I did not have. But one becomes aware of a prevailing attitude. Call it, if you prefer, a spirit, mood or temper.

Perhaps the single word that best describes it is egalitarian. It is exemplified, of course, by everyone being a "comrade."

A few other examples: Stopping for tea at a roadside refreshment stand, you invite your driver to join the party. He does so, takes an unselfconscious part in the conversation, and slips away to buy a few persimmons (the first of the new season and not yet sold in the city) to share with all.

My interpreter (a cadre of considerable seniority) engages a gardener at the Ming tombs in a conversation about how the hidden entrance to a recently excavated burial chamber was discovered. The gardener took part in the dig. He talks informatively and with animation. But most interesting to me is the direct, statusless manner in which they speak.

Seeing a harvest crew in the field, we stop the car and walk over. They are operating a new treadle-operated threshing machine. They answer our questions about the machine and the crop. In turn they ask where we are from. But no one is so awed that he stops threshing rice.

In Canton we go to a large garden restaurant. Spurning the special, elaborately decorated section for foreign visitors we join "the people" on the main floor. Our waitress (who has probably seldom waited on foreigners) talks knowingly about the specialties of the house, makes recommendations, answers questions about local matters and takes attentive care of us and her other tables (the restaurant was crowded to capacity). She asks if we would like a tour of the establishment and conducts this with aplomb, and knowledgeable pride in the (state-operated) enterprise. (The dinner for five came to $2.20.)

What has produced this new temper? Obviously a great many factors.

China has changed from being a country where the great majority was illiterate to one where the great majority is literate. A half or more of the population has been born in the 22 years since the Communists took power. All children now go to school—most of them to the junior high school level.

Once the ability to read has been acquired, the process of political education can be continued. Our room attendants read "The People's Daily"; and they joined in regular group meetings to read and study the thought of Mao. Most important, with everybody able to read, the historic gulf between the uneducated and the educated, between the peasants and the old literati, has been narrowed—and self-confidence increased.

Another basic change: The status of women. All occupations and professions have been opened to them—with equal pay and such benefits as maternity leave, infant care, and nursery schools. One factory—a shopfront "street industry" turning out small parts for trucks (which are now produced even in Chungking)—was staffed entirely by women.

Gone are the days when women were subordinate, disadvantaged members of society. Shortly before Emperor Haile Selassie of Ethiopia was to arrive in Peking, I left our hotel for a shopping expedition. When I thought to return, it was too late. Traffic control in the areas around the parade route had been taken over by groups of women, mobilized by the street committees and wearing badges to confirm their duties. These sturdy housewives cordoning every avenue were friendly, pleasant, and even sympathetic: but the street was closed and I could not pass.

Another difference is the People's Liberation Army. It has become the paragon of civic virtue and the model of political reliability. Mao himself has summoned the country to "learn from the P.L.A." Its motto, "To Serve the People," has become a national slogan: adopted by every state enterprise—down to the little old lady (with clean white cap and apron, a trim, white-painted push-cart, and a string bag for discarded wrappers) selling popsicles on the Peking streets.

[From the New York Times, Jan. 27, 1972]

THE RETURN OF A NATIVE: IV—CHINA'S VERY UNSTARCHY ARMY

(By John S. Service)

BERKELEY, CALIF.—The old saying was that "good iron is not forged into nails: good men do not become soldiers." Now the army in China is a calling of pre-eminent prestige. A senior cadre tells of his daughter's (and his own) disappointment at her failure to qualify for enlistment—not as an officer, but in the ranks.

Interviewing high school seniors, one finds that "to serve with the People's Liberation Army" is the most popular career goal (one serious girl, though, hopes to "benefit mankind" by making a great, scientific discovery).

It is, however, an oddly unmilitary army. No one, for instance, wears any insignia of rank. The middle-aged man sitting across from me in the airplane must be an officer of some seniority, or else he would not be flying. But there is no sign in his dress or manner, nor is he accompanied by orderly, aide or armed bodyguard. Everyone, in fact, wears the same shapeless, unstarched and unpressed cotton uniform. No hint of spit and polish, of swagger and strut. There are guards at some Government buildings (and at our hotel, because some diplomats had been assaulted—"by ultraleftist trouble-makers"—during the frenzied days of the Cultural Revolution). Off-duty, unarmed P.L.A. men are in great numbers on the streets, in parks and theaters, and in the stores (where they clearly have money and expect to pay for their purchases). But one never sees units of marching men, or hears a military band or even the fumbling army bugle practice that used to make dawn hours hideous in inland Chinese cities.

Also new, of course, is Mao's persistent drive against elitism and bureaucracy; his efforts to eliminate the old chasm between mental and physical work, between city and country, and between intellectuals and the workers and peasants. This, in large part, is what the Cultural Revolution was all about—but one can trace it back at least to Yenan days. It is not all negative—against élitist intellectuals, bureaucratic cadres, and bourgeois technicians; it also rests on a populist faith in the innate abilities and creativeness of the common people.

This insistence on the dignity of manual labor and the benefits of physical fitness has brought a new revolution in the schools. Every student spends some time in shop work—schools in Chungking seemed to be producing simple parts for motor trucks; some time in military training, usually field marches by school or class—including the girls—lasting for one or several days; and some time in farm work, generally going to the communes at harvest or sowing—unless the school has its own fields. The same is true of universities.

In 1943, I traveled by bus from Chungking to Kansu with a party of Chinese Government officials, engineers, college professors and newspaper correspondents. They were "modern" intellectuals. None, of course, had the long fingernails proudly worn by the earlier Confucian scholars. Most wore Western clothes; indeed, a good many had studied in foreign universities. It was midsummer and oppressively hot on the Chengtu plain. After several days, we came to the Chialing River, flowing smooth, cool and clear as it emerged from the mountains. Our bus had to be ferried across the river. There was a line of trucks ahead. We settled down to a hot wait. The river was inviting. I suggested a swim. When I showed signs of being serious, excuses began to be made. I ended by swimming alone. We traveled together for two more months, and my companions' inaptitude for physical exercise was fully confirmed.

In October, 1971, I revisited some warm springs about twenty miles from Chungking. In World War II days it had been a favorite site for country homes of high Kuomintang officials. Now the whole area has become a public park—including a large, outdoor, warm-water pool. We were a group of eleven or twelve: three drivers, the rest middle-level or senior cadres. The leader asked whether I liked to swim. I said I had not been in the water for several years. "Come on," was the reply. "None of us is expert." So I swam and, presumably because of the long absence of foreigners from Szechwan, before an undeservedly large and enthusiastic audience. But every member of the party was in the water with me. There was only one man, the eldest, not actually able to swim.

Perhaps swimming is a special case: Mao has set the example by his fondness for swimming the Yangtze. By it was obvious, in bathing trunks, that the bodies of these men were used to physical work and activity.

Egalitarian confidence and self-assurance might be accompanied, one supposes, by some self-importance and arrogance. Actually, what one finds everywhere are courtesy, cheerful good humor and cooperative helpfulness.

The atmosphere is comfortable, relaxed and free of tensions. Everyone works hard. If any people have a work ethic, it must be the Chinese. But the pace is not frenetic. It was new, for instance, to find that a long lunch-break, from noon to 2 P.M. or 2:30, seems now to be a general habit.

The police, unlike the past, are now unarmed—without even a stick. And, except for the men and women on traffic duty, they are few and inconspicuous. One does not hear the night watchman of old times, striking his clapper as he makes his rounds. Crime and robbery do not seem a problem. No longer are the walls around a new home or

factory topped by jagged broken glass set in cement.

In all our traveling, we never saw an adult strike a child; and only very seldom did we hear a child cry.

In fact, after we had been a month in China, I realized that I had not heard any swearing and cursing. Our interpreters said there had not been any campaign against cursing, but it no longer seemed "appropriate."

This new civility may owe something to the example of a state and party that seem to prefer governing by persuasion and propaganda rather than by command and force. One wonders, though, if it does not also have some foundation in the much more comfortable, stable life enjoyed by most people, the broader sense of community that has been created, and the ending of the old, bitterly competitive scramble for a bare existence.

CLOSING THE FISCAL AND BUDGETARY INFORMATION GAP

Mr. METCALF. Mr. President, Congress has seen few products of executive branch efforts over the last decade to improve the acquisition, reporting, and analysis of fiscal, budgetary, and program-related data.

Our Federal budget is enormous and—as evidenced by the President's presentation for fiscal 1973—enormously confusing.

That confusion will be compounded in the months ahead, as the various congressional committees seek the detailed information basic to intelligent program review and policy determination. In some instances data will be withheld, delayed, or manipulated for political reasons. In others it simply will not be available in usable form.

On March 1, the Joint Committee on Congressional Operations will begin hearings on this problem. Our primary concern will be development by the Office of Management and Budget and the Treasury Department of the Federal fiscal and budgetary data system envisioned in title II of the 1970 Legislative Reorganization Act. The intent of title II is clear: To give Congress—along with other users—ready access to meaningful fiscal, budgetary, and program-related data in the executive departments and agencies.

Title II requires congressional participation, through the Office of the Comptroller General, in the development of such systems.

Our purpose in reviewing implementation efforts over the past year is to get—

First, a clear and concise description of what the OMB-Treasury approach is;

Second, a statement of the improvements in acquisition and reporting of fiscal, budgetary, and related program data that are expected to result from it;

And third, assurance that whatever benefits do result—for executive managers—are not only consistent with congressional interests but applicable to congressional needs as well.

Executive branch response to congressional inquiries has become increasingly sluggish and incomplete in the last decade. A sustained—and cooperative—effort involving the entire Federal Government will be required to close this increasingly costly information gap.

We trust that this important work can be moved forward in a spirit of reason and realism, as urged in the President's state of the Union address, and in a "continuing partnership between the President and the Congress."

Mr. President, the chairman of the Joint Committee on Congressional Operations, the Honorable JACK BROOKS of Texas, shares these views and plans to make a similar statement today in the other body.

INTERNATIONAL CULTURAL AND TRADE CENTER

Mr. SCOTT. Mr. President, on November 19, 1970, I placed in the RECORD a proposal for an International Cultural and Trade Center as conceived by Mr. Simon Kriger. Today, Mr. Kriger and his associates are happy to bring to the attention of the Nation that the International Cultural and Trade Center Foundation, Inc. was incorporated on October 4, 1971, as a nonprofit corporation to accomplish the goals set out in the aforementioned RECORD.

I ask unanimous consent to have printed in the RECORD material on ICTC, which was given to me by Mr. Kriger.

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

INTERNATIONAL CULTURAL AND TRADE CENTER

Many conferences have been held with various government officials, including Mr. Leonard Garment of the White House staff; many from the District of Columbia Government, including Mr. James Banks, Mr. Sterling Tucker, Mr. Harley Daniels and Mr. Kirk White; from the District of Columbia Redevelopment Land Agency, Messrs. Melvin Mister, M. Brimmer, J. Clark and others; and, from the National Capital Planning Commission, Messrs. Benjamin Reifel and Charles Conrad. Also consulted were officials of Pittsburgh Plate Glass Corporation, General Mills, Chamber of Commerce across the Nation, representatives of various foreign countries, educational organizations as well as literally hundreds of private citizens. Without exception, the concept of ICTC has been seriously and enthusiastically received.

The stated purpose of the ICTC are to create a symbol of and center for international cooperation and a forum for association between citizens of all countries leading to better understanding between peoples and nations of the world.

This Center will enhance the images of the Capital of the United States, revitalize the downtown area of Washington, D.C., and help the financial situation of the city.

The immediate goals leading to the achievement of these objectives and purposes are:

(a) To create a dynamic new center of internationally oriented activity, entertainment and attraction;

(b) to create a center for the educational enrichment of residents and visitors to the Nation's Capital;

(c) to rejuvenate the retail core of downtown Washington, not only the plots on which the Center will be built but also the surrounding area;

(d) to cooperate with the planning activities and programs of the various agencies engaged in community planning and development in the District of Columbia and specifically to coordinate the ICTC Foundation, Inc. planning and activities with the National Visitors Center in Union Station, with the proposed Sports Arena and Convention Center planned for construction in the Mount Vernon Square area and with the Bicentennial celebration which is being organized to be held in 1976;

(e) to facilitate such work of cooperation through the assignment of various committees for investigation, study and recommendations of various underlying problems affecting community planning and development in the downtown area of the District of Columbia;

(f) to promote participation of all legitimate merchants and entrepreneurs of all races in the Washington business community and to preserve a maximum number of small businesses threatened with financial ruin by urban renewal;

(g) to increase trade among nations;

(h) to increase the tax base and tax revenues of the District of Columbia;

(i) to increase the amount and diversity of employment in the area;

(j) to create a new goal for students by involving them in building a bridge of better understanding between the peoples and nations of the world through meaningful roles in the creation of an international cultural and trade center in downtown Washington, D.C.

(k) to solicit, collect and expend funds to carry out the foregoing purposes.

According to Mr. Kriger, these are realistic goals and objectives. They can be achieved by sponsoring the erection and maintenance of multi-purpose buildings in or near the central area of the District of Columbia, designed to house arts and crafts shops, boutique and couturiers shops, exhibit areas for the display of products typical of the exhibiting countries or states, restaurants and other food-dispensing areas reflecting the cuisine of the major countries of the five continents, and other areas as deemed advisable to afford space for displaying or presenting the culture and trade possibilities of the various peoples, states and nations of the world. Under the proposed construction plans, office space will be available for lease particularly to internationally-oriented businesses and enterprises and public or quasi-public organizations concerned with international matters.

As planned, the Center will embody the following characteristics:

1. A permanent structure or structures providing a home for:

(a) Consulates, trade centers and other internationally oriented organizations of foreign countries.

(b) Offices and outlets for representatives of industries and trade from various countries.

(c) Trade representatives from each of the 50 states.

(d) Outlets for representative businesses from each of the 50 states.

(e) Retail stores featuring international products.

(f) Restaurants with international cuisine.

(g) International entertainment.

2. A center for use by international, national and local groups for lectures, concerts, exhibits and meetings of all kinds, including: (a) meeting rooms, (b) display areas, and (c) accommodations (not necessarily an integral part of the center itself).

3. A free port or duty free zone for international travelers.

4. An unusual and impressive architectural design, with provision for interior arcades and pedestrian malls with immediate access to entertainment, retail, commercial and eating establishments and integrated areas for public facilities and private offices. International design competition is planned.

More and more the problems of the nation's capital are the result of a deteriorating downtown area . . . and it is a challenge to the nation and to the city's many

citizens to find a solution. ICTC's leaders stated that the downtown area of Washington, D.C. must function better if the city is to prosper and our people live well. Mr. Kriger noted that the private forces that built up our cities are commonly incapable alone of remolding them for our current needs thus necessitating some broader government intervention and massive public spending. The nations of the world will be invited to participate in ICTC's new plan. A steadily growing number of people from various fields and nations must become actively involved, directly or indirectly, in setting new goals in cultural understanding and through this find means to achieve economic betterment.

It is hoped that the ICTC project becomes a people's project . . . with all citizens getting involved. In so doing, we will achieve that greater understanding one gains from partication in constructive involvement. Cities are not autonomous creatures which can shape their destinies alone. Rather, they are often buffeted by forces they do not fully comprehend, but to which they must nonetheless respond. The people supporting the ICTC Foundation's efforts are sensitive to human needs and have imaginations. Only time and public support will tell whether their efforts will succeed.

Urgently needed are the endorsement and financial backing of all who are concerned about peace and good will among peoples and nations. ICTC believes that the local, national and international climates needed to do the job are available. Nations will be whatever their cities become. Cities are still the seats of commerce, Mr. Kriger noted, and the paths that lead to them are paved on bedrock of cultural understanding of peoples. The Nation's Capital can well lead the rest of this Nation. This requires that the most inventive brains and talents in and out of government at all levels work at this task. The ICTC plan is imaginative to the point that it is drawing international attention.

The ICTC plan deserves the united support of all Americans and friends from around the world as one avenue which can solve a vexing problem of our decaying cities and bring our nation and the five continents closer together. It is Mr. Kriger's considered opinion that this project may result in a chain of similar ICTCs throughout other capitals of the world and thus form a formidable basis for peaceful coexistence based on commercial, industrial and trade interchange and competition, welded by better knowledge and understanding of the cultures exhibited. The possibility is being explored of organizing annual or biannual changing exhibits of the arts of individual countries from the national museums of each country.

The purpose of placing this statement in the Congressional Record is to acquaint every member of Congress with the project of the International Cultural and Trade Center Foundation, Inc., and, hopefully, with their help and the help of their constituents to develop a concept which will become the project of the entire country and, eventually, that of the world.

Many foreign countries have accumulated substantial reserves in American currency and it is the general desire for some of them to improve the climate existing between their country and the United States. This can be done very appropriately by such countries utilizing part of such reserves in investment in the proposed International Cultural and Trade Center. This will not only facilitate funding ICTC's creation but will again contribute to improvement in the relations between all countries through a joint venture of this type and constitute a real foundation for promoting peace among all peoples. This is a good and logical path to such a goal. Negotiations have begun along these lines.

In foreseeing the great event of the nation's 200th birthday now being planned by the American Revolution Bicentennial Commission, all of the above goals when reached, particularly if it is done before 1976, will be a major factor in the success of the Bicentennial celebration.

COMMEMORATION OF LITHUANIAN INDEPENDENCE DAY

Mr. BAYH. Mr. President, today marks the 54th anniversary of Lithuanian independence. Such an occasion provides us with an opportunity to recount the trials and triumphs of a great people. The struggle for liberty has occupied a central place in the story of Lithuania, a nation which has been in the midst of incessant political conflict. But in spite of changing political boundaries in Eastern Europe from the 12th century onward, Lithuania's cultural integrity and desire for freedom was never extinguished. And the initiative of her people was demonstrated when hundreds of thousands of Lithuanians emigrated to this country during the great migration of 1867–68. Their resourcefulness and energies contributed greatly to our efforts toward full industrialization. And with their help, we forged a stronger union.

Despite that triumphant moment in February of 1918 when Lithuanian patriots declared the independence of their people, Lithuania of today awaits another deliverance to self-determination. Unfortunately, its initial period of liberty and freedom was short lived; it ended with the absorption of the Lithuanian state into the U.S.S.R. in August of 1940. Now, like the other captive nationalities in the U.S.SR, Lithuanians are not free as they once were to be Lithuanians. Their customs and other national characteristics are held valueless on the Marxist road to the socialist man.

Many would asume that the Soviets have succeeded in subduing the most innate of all human qualities—the longing for freedom. But that is not the case. Indeed the Lithuanian sailor, Simas Kudirka demonstrated just last year that the spirit of personal liberty is not dead. It is well that we recall his name on the anniversary of the birth of Lithuanian independence. Nor can we forget—or should we—that his bid for freedom was denied as much by our unresponsive bureaucracy as by his Communist pursuers. Yet his struggle for freedom was living proof that the ideal of liberty in the minds of men will endure oppressive governments and will challenge the most ponderous of all bureaucracies. Neither apathy nor repression can dim the light of Simas Kudirka's lesson for all of us.

Once again we have expressed our faith in the Lithuanian people and have wished them well. Albert Erich Senn, a noted historian on the history of the Baltic States, has observed that Lithuania's struggle of nationalism was "a reflection of the 20th century world spirit of democracy and national self-determinism." Let us once again renew our pledge to support the Baltic countries until all can again live in freedom.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The PRESIDING OFFICER (Mr. TUNNEY). Under the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 2515) to further promote equal employment opportunities for American workers.

The Senate resumed the consideration of the bill.

AMENDMENT NO. 834

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 834) proposed by the Senator from Nebraska (Mr. HRUSKA).

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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. 3122) to extend sections 5(n) and 7(a) of the Federal Water Pollution Control Act, as amended, until the end of fiscal year 1972.

The message also announced that the House had agreed to a concurrent resolution (H. Con. Res. 524) relating to a National Day of Prayer for the cause of world peace, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills:

S. 7. An act to provide for the establishment of the Buffalo National River in the State of Arkansas, and for other purposes; and

S. 1857. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

Mr. BYRD of West Virginia. 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. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HRUSKA. Mr. President, I rise in support of the amendment to the pending measure which seeks to delete section 5 from the bill. Section 5, as written, adds three new subsections to section 707 of the Civil Rights Act of 1964, thereby affecting the transfer of the functions and the jurisdiction and the authority of the Attorney General to prosecute "pattern and practice" cases over to the jurisdiction and the authority of the EEO Commission.

Let me say at the outset that, unless there is some occasion developed for a more protracted extension of this issue than this Senator can envision now, I believe it is very likely that we will get to a vote by the middle of the afternoon. I have had a brief discussion of this question with the manager of the bill and he appears to be in agreement with my statement concerning a prompt vote, although he is perfectly competent to express himself on that subject and he is present in the Chamber.

Mr. President, section 707 of the Civil Rights Act deals with pattern and practice cases, cases in which a group or groups might engage in any practice or activity which would result in the denial of, or the resistance to the full exercise of the rights and the privileges that are contained in title VII of the Civil Rights Act of 1964 and those rights that have to do with assuring persons who are employees or who are applicants for employment of no discrimination, on account of the several grounds upon which discrimination might be exercised.

If a situation of that kind appears to exist, the Attorney General is authorized to investigate the case and then to prosecute a civil case. And the suit would be brought in the Federal district court. However, if the Attorney General certifies that it is of general public interests and requests a three-judge court, a three-judge court will be convened by the chief judge of the circuit and will hear the case on an expedited basis. Appeal would lie to the Supreme Court directly from that three-judge court. If there is no certificate of general public interest, the case is tried by a regular district court and goes through the regular routes of appeal that such cases normally take.

The suits that are involved in this pattern or practice category are a special kind of suits that partake in large measure of a class action bill that can involve a company with all of its branches, all of its divisions, and all of its affiliates, or they can take a labor union having a membership of tens of thousands of members. They can take employers and companies and unions in the same proceedings, or, as a matter of fact, they may take the form of affecting an entire industry, so that it would be a class action.

Two examples immediately come to mind in that regard. One had to do with an action involving the California-based movie industry, and there, suit was filed and prosecuted as against several companies and some labor unions.

Another instance of that type of industry action arose in Las Vegas with the gambling casinos and hotels there. There were 17 hotels and casinos, together with five unions embracing approximately 20,000 positions involved in a single suit. The practice and the discrimination that was practiced there was made the subject of the suit. A decree was entered which had cease and desist and other provisions aimed at eliminating those discriminatory practices.

Section 5 of the bill would take all of those functions that have heretofore been exercised by the Attorney General and assigned to him and transfer them over to the Equal Employment Opportunity Commission. The Commission would be directed to try those cases under procedures set out in section 706 of the Civil Rights Act.

Mr. President, it is the opinion of this Senator that this bill has been greatly improved by the adoption of the Dominick amendment. There are additional views as to how the matter might have been handled, but by assigning and adjudicating disputes and controversies in the proper place, namely, the courts, where trial of the case is had, where a decree is entered into, and where orders of compliance and postcompliance judgments may be taken, seems to me, in my judgment, a great improvement.

I do believe that the bill would be further improved by the adoption of the pending amendment, because there would be the concurrent judgment or at least a concurrent jurisdiction residing in the Department of Justice in the cases involving employment discrimination. I previously made a detailed and technical statement sitting forth the reasons for the introduction of this amendment. I would refer interested colleagues to page 3391 of the RECORD of February 9, 1972.

There are a number of reasons why this amendment is an improvement over the committee provision.

I might assign as the first reason the basic proposition that the Attorney General and the Department of Justice already have general jurisdiction and general enforcement authority over other types of civil rights acts and statutes, so that the Attorney General has jurisdiction and has authority and litigates in the field of discrimination in housing, education, voting, employment, and many others.

It would be a very singular development indeed if the Attorney General were to be deprived of his jurisdiction to prosecute civil rights cases, cases arising from the conferring of civil rights to people in the interests of employment. There is no justification for it that this Senator can see under the present conditions and the status of the bill S. 2515 together with the Dominick amendment.

So first of all we have the Attorney General having the general power of enforcing civil rights laws. Second, the Department of Justice is well equipped to handle such cases. They have the FBI to make investigation. They have the U.S. marshals to assist with the enforcement of the proceedings. and they have the appeals unit in Civil Rights Division of the Department of Justice which assures nationwide standards and uniformity. In addition they are a part of a great department with all of its resources. The employment section has a well trained corps of lawyers, some 35 in number, with great expertise in this special field.

They have gained a good deal of expertise in this particular kind of case, in addition to the experience that the Department of Justice has gained in the prosecution of other types of civil rights cases. And the Department has the 93 U.S. Attorneys' offices with their numerous staffs throughout the Nation to assist with these cases. The EEOC cannot duplicate these resources. To transfer 707 authority will be to guess that in 2 years the EEOC will be able to handle these cases in a professional and effective manner. We have no need to guess when we know Justice is doing the job very capably at present.

Section 5 provides that under this section there shall be transferred to the Commission "the function of the Attorney General," together with such personnel, property, records, and unexpended balances of appropriations, allocations and other funds available, held, or used in connection with the functions of section 707.

It cannot be done.

Notwithstanding that provision for transfer, it is not possible to transfer the FBI to the Commission. It would not go. It is impossible to transfer the investigators they have available. It is impossible to transfer the personnel, as much of the personnel, and especially the lawyers, are attached to the Department of Justice and have other duties and commitments. The section is an integral part of the Department and cannot be moved about like a chess piece together with supporting resources.

There is no way of forcing any of the attorneys or the personnel to go to another agency. Many of the attorneys there are willing to work for the Department of Justice but would not be willing to devote their efforts and their time to the work of the Commission.

That is not derogatory to the Commission. It is a matter of personal and professional discretion and judgment. It is true that the Commission may in due time develop a system of investigators; it is true that in time the Commission may develop and have an organization built up; but it will take time and moreover it would be a duplication of what is now taken care of in very good shape under the present system.

Another point which would argue in favor of the Department of Justice retaining this jurisdiction is that in the field of enforcement and compliance they have gained a good deal of valuable experience in other types of civil rights cases than those which involve only em-

ployment. There would be a continuity of litigation in this field if the Attorney General and the Department of Justice retain jurisdiction instead of abandoning and negating the past education and expertise. There would be a continuity of a very fine record to which I shall refer in a little while.

Not only has the Department done a very effective job of enforcing section 707, and I would point out that it has been successful in every single case brought to final judgment, but it has acted expeditiously as well. Of the past dozen or so cases filed by the Department pursuant to its "pattern and practice" authority, every one has been reduced to judgment within 11 months. That is a most excellent and enviable record which will be very difficult, if not impossible, for the EEOC to duplicate.

It may be 3 years before there would develop within the EEOC a pipeline of cases which would insure effective enforcement of section 707 because of the necessity of developing a new staff, personnel, and procedures for this particular kind of special case.

Furthermore, with the Department of Justice it is possible to develop in an orderly way and in a logical way case law which will serve as a valuable precedent. They can do that because they see the picture as a whole; they see civil rights, not consisting of separate segments, but consisting of many aspects, including voting, education, housing, and so on, which require a rounding out of precedents that can be logically developed in the litigation of pattern and practice cases.

It would take a long time to develop that machinery and it should not be engaged in when it would be a duplication and in some ways a useless procedure.

The record of the Department of Justice has been a good one. It is sometimes said, "Well, they have tried only about 70 or 75 cases." That is true, but there has been a great deal of progress in those 70 cases. Let us say for purposes of convenience that the number of cases is 70. Those lawsuits have affected over 275,000 positions directly and many more indirectly because of the precedent set.

The case record of individual complaints before the EEOC is in the range of 30,000 a year. They can process only a very small percentage of them, they investigate some and are able to discard them or find them to be without merit, and so on. That volume of 30,000 cases is estimated to grow to 40,000 this year, according to Chairman William Brown of the Commission. When we consider that the Department has 70 lawsuits in the hard form of a court decree, with compliance and enforcement procedure, at the hands of the judge who issues the decree, then we know it is a very potent and a very effective piece of machinery toward achieving the goals of title VII of the Civil Rights Act.

Mr. President, the fact is that the Equal Opportunity Employment Commission does not want this new power, this new authority, to prosecute pattern and practice cases. Chairman Brown of the Commission testified on that subject and he pointed out that because of the heavy caseload which is now in the range of 30,000, and which probably will be 45,000 this coming year, they have more than enough to do.

The situation since he gave that testimony has become even greater and more burdensome by way of volume and proceedings because under this bill the Commission will have additional power to bring suits in court and to prosecute them. Heretofore that was not the case.

Chairman Brown testified along that line in the committee even when the caseload was not so burdensome. He said at one point:

> Mr. BROWN. Mr. Chairman, I certainly feel that the commission has the competency to handle these matters.
>
> I would question at this time whether it has the ability in terms of resources—that is, financial resources—or in terms of people.
>
> I would be very much against the transfer, as I have indicated in my prepared text, of the Office of Federal Contract Compliance responsibility at this time.
>
> I would be against the transfer of Attorney General's right in Title VII at this time and also the responsibility of the Civil Service Commission to the EEOC.

Chairman Brown went on to state:

> One of the problems, as I have mentioned, is the overwhelming backlog of cases.

He goes into the figures and then he states:

> As a matter of fact, in the budget which was submitted for fiscal year 1973 we anticipated some 45,000 new incoming charges of discrimination in fiscal year 1973.

He concludes his testimony on this aspect by stating:

> So, taking those figures into consideration—plus the fact that in some cases I question the advisability of putting some of the provisions in this Commission—as it relates to the Office of Federal Contract Compliance—my position would be that I am not in favor of those transfers.

When he says "those transfers" he includes that of title VII.

So we have a situation here, Mr. President, where the agency itself does not want the powers, and certainly, together with all the other reasons, that would be good ground for leaving the power and authority exactly where it is. It would subserve the right of the employees and the public in a more expeditious, more thoughtful, and more stable enforcement of the provisions of the bill and title VII.

These remarks, together with those made on February 9, state the reasons why I feel this amendment should be approved.

At the present time, unless there is objection, I yield to the Senator from Florida who has some remarks to make. He has an engagement later this afternoon and it would serve his convenience to permit him to speak at this time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GURNEY. Mr. President, I intend to support the amendment of the distinguished senior Senator from Nebraska (Mr. HRUSKA) which would leave in the Department of Justice authority to bring "pattern and practice" lawsuits rather than make an ostensible transfer of the authority to the Equal Employment Opportunity Commission. I use the word "ostensible" deliberately because I do not believe an actual transfer would result if the committee bill is adopted; rather "pattern and practice" authority would cease in many important regards.

S. 2515 would not only withdraw the prosecution of pattern and practice cases from the Department of Justice, but would aggravate the mistake by eventually removing the adjudicating function from the courts and instead utilizing a proposed administrative tribunal. This action could only hurt potential plaintiffs under title VII by replacing an effective tribunal with an unproven administrative entity, vulnerable to political pressures, and required to rely upon the courts of appeals for enforcement of its decisions. While a district court's decision is admittedly subject to appeal, only about 7 percent of all such decisions are, in fact, appealed. Furthermore, even where appeals are taken, the district court's decision is implemented promptly on remand to the district court. In the case of an administrative board, however, the final appellate determination on the merits may only begin a new round of litigation to resolve disputed compliance matters. As a result, as one commentator noted in discussing NLRB cases which follow this procedure:

> . . . the hard cases can run on for years. It was 13 years before the employees found to have been unlawfully discharged in the *Mastro Plastics* case collected their back pay. Moreover, the Darlington plant closure case was begun in 1956 and was not finally closed until this year.
>
> See address to the ABA Labor Law Section Convention of Mr. Howard J. Anderson, Senior Editor of Labor Services of the Bureau of National Affairs Inc., 71 LRR at 632 (1967).

The Mastro Plastics case is by no means an exception. In General Steel against NLRB, almost 7 years have elapsed as that case has moved from the Board to a court of appeals and back again to recommence the cycle twice. Currently the case is before the Board for the third time and will undoubtedly require a petition to the court of appeals for enforcement. Finally, in Rutter-Rex Mfg. Co. against NLRB, the Board issued a decision in 1956 finding the employer guilty of unfair labor practices. Now over 15 years later the case is still being litigated—see 194 NLRB No. 6. These long delays have become the trademark of a procedural system in which the adjudicative body lacks the power to enforce its orders.

The Department of Justice, on the other hand, in conjunction with the courts, has proven their effectiveness in enforcing pattern and practice cases.

David Norman, the Assistant Attorney General, Civil Rights Division, testified concerning this proposal. In part he said:

> The cease and desist authority is geared toward individual complaints and complainants. We find it difficult to understand how pervasive practices of hiring, transfer and promotion which have discriminatory impact can be successfully met in the complaint-oriented administrative procedures, even apart from the question as to whether housing problems such as those at Cannon Mills

could be addressed in an administrative proceeding under Title VII.

A suit which illustrates my point is the *Seattle Building Trades* case, styled *United States* v. *Ironworkers, Local 86, et. al.*, 315 F. Supp. 1202 (W.D. Wash., 1970). That suit was filed on October 21, 1969. After discovery, trial on the merits was held in February and March of 1970, and on June 16, 1970, effective relief was granted by the district court. The relief took effect on June 30, so that although the defendants' appeal is still pending in the court of appeals, the victims of discrimination are now employed and are obtaining the benefits of the lawsuit. That suit involved the referral and membership practices of the five largest building trades in the Seattle area, and the apprenticeship selection standards and practices of three affiliated joint apprenticeship training committees.

The Court's decree not only grants specific relief for 135 individual victims of discrimination but also provides for the reformation of procedures with respect to referral, membership and selection of apprentices. Again, we question whether this kind of area-wide suit against eight separate defendants could be handled in an administrative proceeding. Based on the history of the National Labor Relations Board, we feel quite certain that effective relief could not have been obtained administratively in the short period of time in which the court was able to address itself to this problem, hold a full-scale hearing and grant effective and enforceable relief.

I submit that Federal district court judges with their broad experience in deciding complex legal issues are better equipped than are administrative hearing examiners to deal with large-scale employment discrimination effectively. Because "pattern and practice" discrimination engaged in by an employer or union adversely affects substantial numbers of individuals, it is critical that such aggrieved individuals be afforded the most expeditious and readily enforceable relief available. As noted earlier, such expedition can be more readily achieved in court because of the built-in delays inherent in the structure provided in S. 2515. Of particular significance when dealing with massive industry-wide discrimination is the power of district courts to retain jurisdiction in order to grant additional relief. In the Seattle Ironworkers case referred to above, the court provided that the parties could return to the court if the facts required modifying the decree to effectuate its purpose.

In contrast, an administrative tribunal could not modify its order once it had been enforced in court without the court's approval or instituting a new action and petitioning again for enforcement in the court of appeals. The present court system clearly offers the greatest flexibility in obtaining effective relief quickly in pattern and practice cases.

In sum, it seems apparent that the vesting of pattern and practice jurisdiction in a commission with a cease and desist authority would constitute, in the words of Deputy Assistant Attorney General Norman, "a severe curtailment of Federal enforcement efforts in the field of equal employment opportunity." The courts have been clearly responsive to the legislative mandate in section 707. In fact, courts have uniformly recognized the urgency which the Act requires, and have expedited these cases in every way. See, *United States* v. *Gustin-Bacon Division, Certain-Teed Prod. Corp., et al.*, 425 F.2d 539 (C.A. 10, 1970) *cert den'd*, —— U.S. ——, (3 (CCH) E.P.D. Para. 8005); and *United States* v. *Local 1, Ironworkers*, —— F.2d —— (C.A. 7, 1970) (3 (CCH) E.P.D. Para. 8098).

The consequence of adopting S. 2515 would be that on the date the amendments become effective, with the exception of those "pattern and practice" suits already before the courts, all judicial enforcement of title VII would cease. The victims of discrimination would thus lose the protection of the expansive equity powers of the Federal district courts. No longer would the decision of the trier of fact be able to retain jurisdiction in order to insure that the aprporiate effect is obtained without initiating a new proceeding. Thereafter, the only protections afforded individuals subject to employment discrimination would be through the cease and desist authority of the Commission.

I submit, Mr. President, that the transfer of pattern and practice prosecution functions from the Department of Justice to the EEOC and the removal of the Federal courts' jurisdictions to hear such cases would not strengthen the law—it would cripple it.

As a matter of fact, it is hard for me to understand how the authors and supporters of this piece of legislation suggest the removal of this power and function from the Department of Justice and from the jurisdiction of the Federal courts. The very discrimination they are aiming against is better hit and tackled and dealt with in the practices we have now in the Justice Department than they would be in this new and untried procedure.

I certainly hope the Senate, when we vote on the very fine amendment of the distinguished senior Senator from Nebraska, will see the folly of the way the bill is drafted and put back into it the present effective practices of letting the Department of Justice and the courts handle these discrimination cases.

I yield back the remainder of my time.

Mr. BROCK. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. We are not under limited time.

Mr. BROCK. Mr. President, I rise in support of the amendment of the Senator from Nebraska. Yesterday the Senate took an action, in the passage of the Dominick amendment requiring court process to protect the rights of all the people in this country, which I think was an enormous step forward in implementing this bill. Today we have, I think, an equivalent opportunity.

The bill now before the Senate, S. 2515, provides in section 5 that authority to bring "pattern and practice" lawsuits against employers will be transferred from the Department of Justice to the Equal Employment Opportunity Commission. I do not believe that this should be done.

Our distinguished colleague from Nebraska (Mr. HRUSKA) has introduced a simple amendment which would strike section 5 from the bill. I intend to support this amendment and urge my colleagues to do likewise.

Present law permits the Department of Justice to bring suits in Federal courts which will adjudicate all the employment practices of a corporation, union or group of unions, with the relief directed to the underlying policies which are discriminatory or which perpetuate the effects of past discrimination. Pursuant to this authority, the Department has brought some 70 suits and been successful in all that have been finally determined. These 70 suits have involved directly more than 275,000 employees and indirectly—by way of precedent—multitudes more.

Those who criticize the Department for the careful use of its powers under this section should consider the larger ramifications of the 70 suits which have been brought.

The effectiveness of the pattern and practice program should not be gaged merely by reference to the number of cases filed. Rather, it should be judged in terms of wide-scale relief obtained by the Attorney General which has benefited hundreds and thousands of minority workers.

For example, in one case the Department of Justice prosecuted three steel companies as class defendants representing the interests of approximately 1,500 contractor employers. A favorable decision in this one case would affect the workers in a whole sector of the economy. In addition, as recognized by Chairman Brown of the EEOC,

The importance of these suits has largely been the decisions which resulted and which have set the precedents for subsequent lesser Title VII actions. To nullify this powerful and effective means whereby the courts can interpret and clarify the provisions of Title VII, while at the same time establishing new judicial precedents applicable to other courts and administrative agencies alike, would not, in my judgment, serve to promote the most effective administration of equal employment.

For obvious reasons, in order to obtain these dual objectives, the litigated cases are chosen selectively. For instance, in the first 6 months of 1971 the Department has disposed of 77 matters of which only 11 were litigated; the 70 "pattern and practice" cases are, I understand, the result of sifting through nearly 1,700 matters. The cases prosecuted are the cream that offer the greatest impact upon vast segments of the economy.

This has been pointedly illustrated by the testimony of Mr. David L. Norman, the Deputy Assistant Attorney General for Civil Rights, who pointed out that:

The kinds of lawsuits . . .filed . . . reflect problems which can be met successfully in a "pattern or practice" case, but which would be very difficult if they were dealt with in an administrative process. For purposes of illustration, let me make reference to . . . *Cannon Mills*, filed April 8, 1971.

The *Cannon Mills* suit alleged a "pattern and practice" in hiring, transferring and promotions with respect to employment practices, and discriminatory rental and assignment of company-owned housing. The suit pertains to all of Cannon's plants which employ approximately 24,000 persons.

The consent decree which was entered on

February 24, 1971 changed the standards for transfer and promotion for the affected class of black employees, a class including approximately 90 per cent of the black employees, and provides that they may transfer without loss of seniority to the better-paying, traditionally white jobs. It also provides the objective criteria for hiring and promotion which are set forth in a detailed job description catalog.

The system of rental of housing was totally reformed.

In short, the decree calls for reformation of the entire system of hiring, transfer and promotion; and at the same time deals with the problem of housing segregation.

(Statement of David L. Norman, Deputy Assistant Attorney General Civil Rights Division, Department of Justice, before General Subcommittee on Labor, Committee on Education and Labor, House of Representatives, March 3, 1971.)

The Cannon Mills case is just one example of how the waves caused by a single suit and the decision therein spread out to cover an entire industry and, indeed, an entire system of employment practices. This is the type of work done by the Department which is overlooked by its critics. When it is considered that only 20 of these 70 cases have been based on referrals from the EEOC, it can be seen that the record of the agency to which this power would be shifted is no model of effectiveness when contrasted with the very effective work of the Justice Department.

This is just one of the reasons, Mr. President, why I feel that section 707 authority should remain with the Department and the Attorney General. It is one of the reasons why I support the pending amendment.

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

Mr. DOLE. Mr. President, I rise to indicate my support for the amendment offered by the distinguished Senator from Nebraska (Mr. HRUSKA) to the pending bill (S. 2515). As the distinguished Senator from Nebraska has pointed out, the amendment would delete section 5 from the EEOC bill which would have the effect of leaving in the Department of Justice the authority to bring pattern-and-practice lawsuits.

S. 2515 provides that the authority to bring this important class of lawsuits presently invested in the Attorney General under section 707 of the Civil Rights Act would be transferred to the Equal Employment Opportunity Commission. The pattern-and-practice remedy permits an adjudication of all the employment policies of a corporation, union, or group of unions promptly, with the relief addressed to the underlying policies which are discriminatory or which perpetuate the effects of past discrimination.

Contrary to the opinion of the committee which reported this bill, the desired goal of equal employment opportunity can best be served by retention of this authority in the Department of Justice. This opinion is supported by EEOC Chairman Brown, who, in his testimony before the Senate subcommittee on October 4, 1971, stated:

I feel that such a transfer would not, at this time, be in the best interests of the Commission and would not promote the most effective administration of Title VII.

The Attorney General has developed, and is continuing to develop an expertise in the area of pattern-and-practice lawsuits. The success of the Attorney General's efforts in pattern-and-practice actions was ably documented by witnesses before the subcommittee. For example, in opposing the proposed transfer, Congressman ERLENBORN noted that—

Between July, 1965, when Title VII took effect, and September 1, 1971, the Civil Rights Division of the Department of Justice filed some 69 or 70 suits on the basis of Section 707. The Division has had a high degree of success in litigating these cases, and principles established in them at the trial or appellate level have been useful to complaining private litigants and to other federal agencies. Undoubtedly, one of the reasons for its success is the fact that it has access to the investigative resources of the Federal Bureau of Investigation. All in all, it would seem to me, that an expertise in discriminatory employment practice cases has been developed in the Division that is too valuable an asset to lay to waste. (Statement of John N. Erlenborn Before the Labor Subcommittee of the Senate Labor and Public Welfare Committee on H.R. 1746, S. 2215 and S. 2617, Proposals to Further Promote Equal Employment Opportunity for American Workers).

This expertise is derived not only from experience in the area of employment discrimination but also from the broad experience obtained as a result of the exercise of the Attorney General's authority in prosecuting "pattern and practice" discrimination in the areas of housing, voting, and the related authority vested in the Department of Justice to prosecute discrimination in education. Further, in prosecuting "pattern and practice" discrimination in employment, the Attorney General has available the human resources of a skilled and trained group of attorneys who, over the past years, have obtained a highly successful litigation record as evidenced by the fact that the Department of Justice has never lost a concluded employment discrimination action.

Moreover, in order to administer its responsibilities under section 707 more effectively:

In October of 1969, the Civil Rights Division reorganized and created an employment section . . . so that the attorneys and the supervisory attorneys . . . assigned to that section, which now number about 29, would work exclusively on pattern and practice cases, seeking to achieve equal employment opportunities for everyone. (Statement of David L. Norman, Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, before General Subcommittee on Labor, Committee on Education and Labor, House of Representatives, March 3, 1971.)

These 29 attorneys—now increased to 35, I understand—are for the most part young men, who chose to begin their legal careers in the Department of Justice where they have been trained and supervised. This is the tradition in most Government agencies; these men would, in the normal course of events, train those who would follow them before leaving Government service. S. 2515 would attempt to transfer a working unit as if it was composed of machinery—not men. Undoubtedly many of these 29 will choose to stay with their present mentors in the Department and others may leave the Government, but in any event, the traditional process will be disturbed, and a unique expertise lost. The experience and skill of these attorneys working in an employment section devoted exclusively to "pattern and practice" lawsuits, coupled with the extensive and unequalled investigative resources and experience of the Federal Bureau of Investigation, is not a transferrable commodity.

Some critics have erroneously claimed that the Justice Department has been lax in fulfilling its responsibility. Pointing to the 70 cases filed by the Justice Department, the critics have asserted that more are required. Such criticism is superficial and overlooks the inherent nature and the scope of pattern and practice litigation. Typically, the Justice Department is concerned with repeated or systematic discrimination by an employer, union, or employment agency. Frequently, a single case will involve numerous facilities or an entire areawide industry, and will affect several thousand employees. Thus, an analysis of statistics from the Justice Department's files shows that in the 70 pattern and practice cases filed, 275,500 employees and well over 242 facilities were involved. As an example, one such case concerned the employment practices of a trucking company with 8,466 employees working at 22 different sites scattered over the east coast and the Midwest. Another pattern suit attacked the hiring and employment practices in the Las Vegas resort industry affecting a large number of employees. A total of about 20,000 employees was involved, plus 17 hotels and casinos, and five unions.

In another instance, an employment agency having 10 offices in a large midwestern metropolis was the target of a Justice Department pattern and practice suit.

Also, there have been a number of suits which have challenged the practices of many or all of the major building and construction trade unions in an entire metropolitan area. Of necessity, such suits are often complex and extensive, requiring the expenditure of vast resources. Clearly it would be a mistake to measure the Department's dedication by the number of suits filed without a clear understanding of what is involved. Indeed, the foregoing analysis of the scope and impact of the Justice Department's litigation record in the area of equal employment demonstrates that it has been active and vigorous in its enforcement responsibilities.

Despite this record, the Justice Department's critics would transfer responsibility for pattern and practice suits to the Equal Employment Opportunity Commission without analyzing the Commission's own performance in this area. Under the current structure of title VII, the Commission is supposedly the initiating force which refers cases to the Department of Justice. Since the Commission's sole duty is to handle title VII claims, it would be only reasonable to anticipate that the Commission would have discovered and referred a multitude

of cases. This is especially true in view of the Commission's policy to undertake an extensive investigation of each respondent's personnel records and policies each time a charge of individual discrimination is filed. Nevertheless, when the facts are examined, it becomes apparent that the Commission, not the Department of Justice, has been the laggard. Out of the thousands of cases processed by the Commission each year, it has, on average, only referred 70 pattern cases a year to the Department of Justice. The Department has, on the other hand, prosecuted 70 cases among the hundred considered for prosecution during the same period of time. In view of the low proportion of cases of any type that are traditionally tried, this is indeed a quality record. This record looks even better when it is discovered that of the 70 cases filed, only 20 resulted from EEOC referrals, according to data supplied by the Department of Justice.

Mr. President, the effective work of the Department of Justice in bringing and winning so many important "pattern and practice" suits argues very forcefully for the retention of this power in its present place. This would be accomplished by the adoption of the Hruska amendment. In order to maintain effective enforcement of section 707 of the 1964 Civil Rights Act, I urge the Senate to approve the pending amendment.

In conclusion, I would point out again, as the Senator from Nebraska has, that in the testimony of Chairman Brown of the EEOC before the Senate subcommittee on October 4, 1971, he stated:

> I feel that such a transfer would not, at this time, be in the best interests of the Commission and would not promote the most effective administration of title VII.

I would suggest that the Chairman of the Commission is in a pretty good position to know what might be best for the EEOC, and that when he suggests that a transfer at this time would not be in the best interests of the Commission, it emphasizes the need for the adoption of the so-called Hruska amendment.

I also share the opinion of the Senator from Nebraska that the Attorney General and some 35 outstanding attorneys in the Civil Rights Division have developed an expertise in the area of pattern and practice cases. I think this experience should not be lost. Therefore, I support the amendment of the Senator from Nebraska.

I yield back the remainder of my time.

Mr. WILLIAMS. Mr. President, the bill that is before the Senate was introduced on September 14 last year. The amendment now being debated, offered by the Senator from Nebraska, was introduced and printed on January 27 of this year. I mention this to point out that this amendment really contemplated the legislation in the form in which the bill was originally introduced back in September.

Since this measure has been before us, for the last 5 weeks—to some it might be longer—there have been some significant changes, and probably the most significant change was the amendment voted on yesterday, offered by the Senator from Colorado (Mr. DOMINICK), which dealt with the mechanism and the method of enforcement available to the Equal Employment Opportunities Commission.

Under the bill as introduced, as we all know, the method and mechanism was, as it is with other agencies, cease and desist with appropriate court review. We had three votes on that issue: two votes to retain cease and desist and one vote to delete it and establish court proceedings as the method of enforcement.

The significant thing is, of course, that out of the three votes, the last vote did change the jurisdiction or the method of enforcement from cease and desist orders through the Equal Employment Opportunity Commission and its general counsel to prosecuting the cases in court.

In view of yesterday's action, I had thought that in all logic the Senator from Nebraska might well not call up his amendment, because it seems to me that it was introduced under different circumstances. The present circumstances certainly would suggest to me that this amendment is unnecessary, because we now have an Equal Employment Opportunity Commission, assuming the enactment of the legislation, now must go to court. Therefore, this particular method of court enforcement presents certain great problems, including duplication of the possibility—to use a word that has been used here a great deal—of double jeopardy, in the sense that respondent can be approached from either side, from the Department of Justice or from the Equal Employment Opportunity Commission.

Whether it is double jeopardy or not—it is not in the criminal sense—harassment is certainly possible if this particular jurisdicton over patterns and practices is not transferred to the agency that I suggest in logic should control the subject matter with which we are dealing in this bill.

The matter is before us, and we will have to have a vote on it, although, without any order for the yeas and nays, there is still time to withdraw it even without unanimous consent, I suggest to the Senator.

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

Mr. WILLIAMS. I yield.

Mr. HRUSKA. Would it be just as relevant and just as pertinent, in view of the totally different picture we now have in the bill since the adoption of the Dominick amendment, that the manager of the bill would withdraw section 5, because there is no duplication, in that the pattern and practice cases are of a different nature than the complaint procedures that are contained in section 706? Section 5 says that all the functions will be transferred to the commission, and the commission, in prosecuting pattern and practice cases, must follow the procedures set out in section 706. Section 706, I submit, is a complaint-oriented procedure and is not geared to the handling and the management of pattern and practice cases which are in the nature of class actions.

It seems to me that the manager of this bill would be well advised to eliminate that section, because it is wrong to put into the Commission's authority the prosecution of what amounts to class actions. They are not equipped to do it, and particularly are not equipped when they are going to be circumscribed, when they are going to be hemmed in, by a complaint-oriented procedure which is contained in section 706.

Mr. WILLIAMS. I gather that the suggestion is not acceptable.

I was in error earlier. The yeas and nays have been ordered on this amendment.

Mr. HRUSKA. They have been ordered; yes.

Mr. WILLIAMS. I was in error in that regard.

I should like to back up and review just where we are and how we got here, with respect to patterns and practices in equal employment opportunity and this law that deals with discrimination in employment.

Mr. President, at the time title VII of the Civil Rights Act was enacted, it was felt that the enforcement of violations of that title could be accomplished through voluntary compliance and through conciliation. Many believed that compulsory enforcement powers would only be necessary in those rare instances where recalcitrant and persistent violations were encountered. Therefore, it was decided that enforcement powers in the Department of Justice, to be activated either by the Department on its own initiative or through the recommendations of the EEOC, would be enough to cope with these more severe problems. This anticipation felt in 1964 has proven to be wrong.

We did not anticipate the extent of discrimination which existed at the time we enacted the legislation, nor did we fully understand its nature. We permitted a fatal flaw to be passed into law. But that was in 1964. We have now seen the effects and the extent of the problem. Employment discrimination represents a major widespread practice in the Nation. At the same time, the only Federal machinery available for the enforcement of the provisions of title VII; the Justice Department has not been able to keep up with the need for extensive litigation in this field. The Department itself has placed employment discrimination low on its list of priorities and, of course, its priority list is long and broad.

During the past 7 years, it has only brought 69 cases under its authority granted in section 707 of the act. This has produced a tremendous gap between the needs and the realities as illustrated by the fact that in fiscal 1970 alone, the EEOC, under the provisions of its recommending powers, recommended that the Justice Department bring actions in no less than 78 separate cases. That is, in 1 year, the EEOC, with the recommendation authority it now has, recommended 78 separate cases. The total 7-year history of the Department of Justice has been a history of bringing only 69 cases—less than the EEOC had recommended in 1 year. It is obvious from this figure that vast numbers of persons are not receiving the full measure of justice that we attempted to provide them when we enacted that land-

mark legislation, even with the inadequacies of that legislation as they have appeared since its enactment.

In providing for this transfer, the committee was nonetheless, very much aware of the outstanding contribution to the development of title VII that has been made by the Civil Rights Division of the Justice Department. The complaint is not at all with the quality of the actions brought—it has been excellent—but, rather, with the number of cases. Sixty-nine in 7 years is just not sufficient, in terms of the activity that is needed in bringing enforcement through the demands of law that there not be discrimination in employment.

However, we recognized the important reservoir of talent and expertise in the Justice Department and provided for a 2-year phase-out of the Attorney General's responsibility—a phase-out of this responsibility and a full phase-in to the Equal Employment Opportunity Commission.

The EEOC now will have—under the bill as it is at this moment—jurisdiction to bring discrimination cases before a Federal district court. There will be no difference between the cases that the Attorney General can bring under section 707 as a "pattern and practice" charge and those which the Commission will be able to bring as a result of yesterday's decision to give EEOC court enforcement powers. Frankly, the pattern and practice section becomes a redundancy in the law. We anticipate that the Justice Department and EEOC will cooperate during this period so that the Commission will have an opportunity to build up its ability to handle these cases.

I think the Senator from Nebraska is wise and correct in his observation that it might take 2 to 3 years for the Commission to be fully equipped. We have provided this 2-year transitional period, which does fit the time estimate of the distinguished Senator from Nebraska.

The Justice Department will be able to maintain the momentum it has established until such time as the Commission assumes sole responsibility.

The consolidation of the "pattern or practice" jurisdiction of the Justice Department into EEOC will benefit the complainants, the employers, and the courts.

It will benefit the employer by consolidating all authority and guidance for employment discrimination. This will eliminate the possibility of harassment from multiple investigations and will make the employer answerable only to the one agency. It will eliminate such instances as illustrated by the case of Crown Zellerbach Corp. against United States in 1969. In this case, the union and the employer negotiated a conciliation agreement with the EEOC, after intensive and lengthy investigation and negotiation. However, subsequently the Office of Federal Contract Compliance entered the picture, and then the Justice Department filed suit in the Federal court. These subsequent steps reopened an area that had already been investigated, and subjected the company to new investigations and, of course, subsequent suit. This duplication of effort is wasteful—most unnecessarily wasteful. It is not our aim to unnecessarily harass employers or to subject them to inconsistent demands from a variety of Federal agencies.

The complainant will also be benefited by the consolidation of the functions for title VII enforcement in one agency. He will now be able to bring his complaint to the one agency with the full knowledge that his grievance can be remedied through the procedures of the EEOC, and that this agency will investigate the situation, allow the parties to settle their differences, or will institute its own enforcement provisions to resolve the dispute. In this manner, the complainant is assured of a fair and speedy resolution of his problem, and as a general rule will not have to look elsewhere for his remedies.

In closing, Mr. President, I would like to emphasize that the transfer of the pattern-or-practice jurisdiction to the EEOC is an integral part of the basic goal which we are trying to achieve here—the giving of additional meaning to the Civil Rights Act. We cannot allow ourselves to make the same kinds of mistakes today that we made 7 years ago when we passed the Civil Rights Act. Employment discrimination robs the Nation of its full potential and undermines the national goals of social equality and economic stability. To make the mistake in 1964 was understandable. To continue to make the same mistakes in 1972, in my judgment, is unforgivable. We must provide the Nation with strong and uniform enforcement of those goals of equal employment which we so clearly established by that significant step that was taken back in 1964.

Mr. President, all the reasons I have cited marshal themselves against this amendment offered by the Senator from Nebraska.

I urge rejection of the amendment.

Mr. JAVITS. Mr. President, once again we face the same problem, when an amendment comes up, no matter how important it is, we face an empty Chamber. I know that Senators are busy, but it gives the impression that nothing very important is happening on the floor of the Senate. I hope very much, in the interesting way we have it here, where our voices, in a sense, permeate the walls, because people are informed as to what is going on and what is being debated and whether it is important or not, individual Senators have word on that from the staffs, attachés, and other Senators, so that I hope the word may go out as to the really great importance of this particular amendment.

It ranks in importance with the amendment we adopted yesterday, as it were, settling the basic platform of the bill. It ranks with the refusal to transfer the Office of Federal Contract Compliance. It ranks in importance with the exclusivity of remedies amendment which we voted not to reconsider yesterday.

A pattern or practice suit is, after all, nothing but a broader version involving more parties in greater depth in terms of length of time and the prevalence of a given practice than an individual suit. It simply is a raising to another degree, another order of magnitude, of the individual suit and, hence, it affects many more people and requires a degree of attention which celebrated cases in any field should have.

The question is whether we should perpetuate, when the entire basis for it has been removed, what would be after this bill becomes law a bureaucratic anachronism by giving the power to institute suit to two entities, where they both concern private parties.

That is really the issue.

The Department of Justice retains the right to sue in respect of State and municipal agencies. We understand there is a very good reason for that because we are dealing with governmental entities within the federal system. But here we are dealing not with those Government entities but with, as I say, simply another order of magnitude, from the order of magnitude of the individual suit, which by decision we have taken yesterday, it seems to me, should have absolutely sealed the fate of this amendment. By our decision yesterday we gave the EEOC the power to bring suit in big as well as small cases.

The committee was cognizant of the argument of readiness, that is, is the Commission ready to deal with litigation on a major scale. We dealt with that by delaying the transfer by 2 years.

So we have taken the real precaution, the sensible precaution of deferring the operative date of the transfer so as not to load onto the Commission any more immediacy than is necessary. Therefore, as the Department of Justice is set up for these litigations on the pattern or practice basis, let them go ahead with it.

We took an even further precaution in giving the President—and I think this is a critically important point—the power even to stop the transfer after the 2 years if, when he looked at the situation, he found it was desirable to continue to permit both EEOC and the Justice Department to bring these cases.

We did that by utilizing the reorganization plan technique which is found on page 51, lines 6 to 10 in the bill in which we provide that the transfer is to be made in 2 years of this jurisdiction, "unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9, of title 5, United States Code, inconsistent with the provisions of this subsection."

To wit—inconsistent with the transfer.

So, it seems to me that we have very carefully and very intelligently made this change.

One other point which it seems to me is absolutely decisive is that the EEOC, under the Dominick amendment, has the authority to institute exactly the same actions that the Department of Justice does under pattern and practice. These are essentially class actions, and if they can sue for an individual claimant, then they can sue for a group of claimants.

It seems to me that this is provided for by the rules of civil procedure in the Federal courts, and also it is inherent in the amendment which we adopted. Under those circumstances it seems to me that this amendment is conclusively dealt with, and whatever may have been the argument which might have obtained in respect of cease and desist orders and the desire to retain this jurisdiction in

the Department of Justice when the Commission was going to proceed by cease and desist order rather than by suit, has now given way to the fact that the Commission can only proceed by suit. And if it proceeds by suit, then it can proceed by class suit. If it proceeds by class suit, it is in the position of doing exactly what the Department of Justice does in pattern and practice suits.

I have referred to the rules of civil procedure. I now refer specifically to rule 23 of those rules, which is entitled Class Actions and which give the opportunity to engage in the Federal Court in class actions by properly suing parties. We ourselves have given permission to the EEOC to be a properly suing party.

Therefore, to sum up this argument, we have first the Commission with the authority to act in exactly the same type of case in which the Department of Justice acts. Second, we have taken away the cease and desist authority and substituted the power to sue which fully qualifies the Commission to take precisely the action now taken by the Department of Justice.

Third, we have delayed the transfer to deal with the possibility of overwork and have even given the President the opportunity to delay it further if he wishes to file a reorganization plan at the end of the 2-year period which we have provided.

Mr. President, in the area in which the Department of Justice will deal with Government entity, we leave the right to sue with them. So, to inhibit the transfer of pattern and practice suits is simply to create two agencies to do the work of one.

If we inhibit that, we risk complete confusion as both the Commission and the Attorney General can proceed in exactly the same kind of case.

There is really no reason for it in view of the legal staff and the other reasons which the Commission itself would develop.

There is one further point on which I draw again from my experience with respect to the Civil Rights Act of 1964. I have said on a number of occasions in this debate that that was a compromise and that much was given up, especially in respect of the right of seeking a remedy against discrimination in employment. And one of the things that was given up was any enforcement authority or the right to sue by the EEOC that we are trying to repeal now. That is why we felt we had to give the Attorney General the power to sue in big cases, in class action cases, and in cases where there was a constant pattern of discrimination directed at individuals with limited resources whom we were relegating to the courts and who could hardly be expected to carry such a broad and deep case. We are now changing that and giving it back to the Commission.

It seems to me that the logical conclusion which follows from that is that the authority previously given to the Justice Department is no longer necessary.

For all of those reasons and with special emphasis upon the fact that we made the decision yesterday, which it seems to me is absolutely controlling on this amendment, I believe that the amendment should be rejected.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. ALLEN. Mr. President, I wonder if I might propound a question to the distinguished Senator from New Jersey and the distinguished Senator from New York jointly. Would the Senator yield for a question?

Mr. WILLIAMS. I do not have the floor.

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. ALLEN. I would like to ask the Senators a rhetorical question if they do not wish to get the floor. I would like to inquire, in view of the parliamentary situation in regard to the bill, since all of the amendments have been directed toward the committee substitute, whether it is the intention of the managers of the bill after all amendments have been offered to the substitute to ask for the adoption of the committee substitute rather than to move to lay that amendment on the table in order to go back to the bill as introduced. Would the Senator be kind enough to enlighten the junior Senator from Alabama in that regard?

Mr. WILLIAMS. Mr. President, I would say that the Senator from New York and I have not conferred specifically on that. And I would yield to the Senator from New York for an observation.

Mr. JAVITS. Mr. President, my observation on that would be simply that, as the Senator from New Jersey has said, we have not conferred on what we desire to be the best practice to follow with respect to that particular matter. So, we are unable to inform the Senator from Alabama to that effect.

I would say, as far as I am concerned, that I would hope that I should not do anything or be required to do anything which would change or compromise the decision of the Senate. In my judgment the Senate has decided upon the issue of the method of enforcement by the commission. And I believe that those who wish to have a bill would now be under a duty to proceed in any procedural way in accordance with the will of the Senate. I will not, in any way that I am conscious of, try to bring about a parliamentary situation in which we retread all of that ground. I believe the decision taken yesterday is the decision as to the matter of policy. I am perfectly willing until we conclude the bill to be guided by it.

Mr. ALLEN. Mr. President, is that translated then into saying that when the committee substitute has been perfected, it is the will of the Senate that the adoption of the committee amendment will be sought?

Mr. JAVITS. No, it cannot be translated into anything but a principle.

I cannot adopt the practice the Senator from Alabama would have me adopt. I do not know what it means. I am sure I speak for the Senator from New Jersey, also. Therefore, we cannot adopt it. But I believe as Senators and gentlemen the principle adopted yesterday will be carried out in whatever parliamentary way it is possible to do so.

To say "yes" means I am buying something I do not know anything about and I cannot do that.

Mr. ALLEN. I am inquiring whether we would throw away the work of the Senate for the last month and table the work of the Senate on the committee substitute. I am trying to determine if that is what is going to be sought or if agreement on the committee substitute as finally amended is to be sought.

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

Mr. ALLEN. I yield.

Mr. JAVITS. I think the Senator is inferring that we are not going to stand by what I have said. I say we will stand by it. But I cannot buy some abstract question of parliamentary procedure which I do not know anything about. We have stated the principle we will follow, and we will stick by it. That is the best we can do at this moment.

Mr. ALLEN. Very well.

Mr. WILLIAMS. I subscribe to everything the Senator from New York has said. The question is answered.

Mr. ALLEN. I am satisfied with the explanation given by the distinguished Senators.

Apparently, in time, they are going to agree on the committee substitute rather than table that and get back to the original bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. 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. HRUSKA. Mr. President, I have no requests for any further time on our side, and I have no further remarks in which to engage. We are ready for a vote on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nebraska. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the negative). Mr. President, on this vote I have a pair with the senior Senator from Georgia (Mr. TALMADGE). If he were present and voting, he would vote "yea." If I were permitted to vote I would vote "nay." Therefore I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Florida (Mr. CHILES), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the

Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Minnesota (Mr. MONDALE), the Senator from Utah (Mr. MOSS), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from Georgia (Mr. TALMADGE) and the Senator from Massachusetts (Mr. KENNEDY) are absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON), the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Iowa (Mr. HUGHES) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOPER), the Senator from Wyoming, (Mr. HANSEN), and the Senator from Alaska (Mr. STEVENS) are detained on official business.

If present and voting, the Senator from Ohio (Mr. TAFT) would vote "nay."

The result was announced—yeas 33, nays 43, as follows:

[No. 47 Leg.]

YEAS—33

Allen	Eastland	McClellan
Allott	Ellender	Miller
Baker	Ervin	Pearson
Bellmon	Gambrell	Roth
Bennett	Goldwater	Saxbe
Byrd, Va.	Gurney	Smith
Byrd, W. Va.	Hollings	Sparkman
Cotton	Hruska	Stennis
Curtis	Jordan, N.C.	Thurmond
Dole	Jordan, Idaho	Tower
Dominick	Long	Young

NAYS—43

Aiken	Harris	Percy
Bayh	Hart	Proxmire
Beall	Hatfield	Randolph
Bentsen	Inouye	Ribicoff
Bible	Javits	Schweiker
Boggs	Magnuson	Scott
Brooke	Mathias	Spong
Burdick	McGee	Stafford
Cannon	McIntyre	Stevenson
Case	Metcalf	Symington
Church	Montoya	Tunney
Cook	Nelson	Weicker
Cranston	Packwood	Williams
Eagleton	Pastore	
Griffin	Pell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—23

Anderson	Gravel	Mondale
Brock	Hansen	Moss
Buckley	Hartke	Mundt
Chiles	Hughes	Muskie
Cooper	Humphrey	Stevens
Fannin	Jackson	Taft
Fong	Kennedy	Talmadge
Fulbright	McGovern	

So Mr. HRUSKA's amendment (No. 834) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Mr. SCOTT. Mr. President, may I inquire as to whether we are under controlled time?

The PRESIDING OFFICER. We are not under controlled time.

Mr. SCOTT. Then I ask unanimous consent to proceed for 3 minutes on another matter.

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

BUSING OF SCHOOLCHILDREN

Mr. SCOTT. Mr. President, the distinguished Senator from Florida (Mr. GURNEY) is unfortunately, I think, under the impression that the distinguished majority leader and I may have indicated that, by reason of our personal views that statutory action on busing legislation might be more expeditious and more effective and might accomplish the desired result more quickly, we would block any constitutional amendment.

I wish to assure the Senator from Florida, who has made a statement on this issue, that I would under no circumstances make any effort to block any constitutional amendment, including any on this subject, which might come from the appropriate committee. Those are leadership functions, and they would be exercised in strict good faith on behalf of all Senators.

I have merely stated that while I might at some time be in favor of a constitutional amendment, at this time I am leaning to the view that perhaps we can deal with this matter more effectively and with much greater benefit to the general public if we proceed by the statutory route.

That does not exclude constitutional amendments. They should, of course, be considered in committee. Some of them have meritorious aspects. We are simply anxious to proceed with the legislation.

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

Mr. SCOTT. I am glad to yield to the majority leader.

Mr. MANSFIELD. Mr. President, just about 10 minutes ago, I saw this news release. To say that I was surprised is to put it mildly; to say that I was shocked is to put it honestly; because in response to questions raised by the press, the distinguished Republican leader and I, separately, without each other's knowledge, to the best of my knowledge, said that we would both prefer to consider the possibility of statutory legislation because we felt that it would be quicker, that the matter of "busing" could be attended to more expeditiously—perhaps more fairly. In response to a question addressed to me by the press concerning a constitutional amendment, I believe I answered that I would prefer to meet the issue through legislation because it was quicker and because the need for some action is now. Not only do I feel that an amendment to the Constitution is unnecessary, it should be remembered that a constitutional amendment would as well require a two-thirds vote of both Houses and ratification by three-quarters of the States; and thus might prolong the consideration of this problem for a substantial period of time. I thought that the matter should not be avoided or prolonged but should be faced up to as expeditiously as possible. The goal I think all of us share is that of achieving quality education for all of the children of this Nation and of doing so on the basis of an equal opportunity for everyone concerned.

Mr. SCOTT. Mr. President, it is my understanding that the majority leader feels as I do; namely, that if any constitutional amendment on this subject is reported by a committee and is put on the calendar, ways will be found to bring it before the full Senate.

Mr. MANSFIELD. Absolutely. It is not the intention of the joint leadership—never has been—to block legislation.

It is the last sentence of this news release which surprises me, in which it is said:

> I would hope Senators Scott and Mansfield would not block the Senate from taking up this busing amendment this year, regardless of how they personally view the issue.

It seems to me that what our distinguished colleague has done is to put words in our mouths and meanings into our minds which just were not there and are not there.

Again, I wish to emphasize, together with the distinguished Republican leader, that any legislation—constitutional amendment or not—reported by a committee will be given the utmost consideration by the Senate and as speedily as possible.

Mr. SCOTT. I thank the distinguished majority leader.

As a matter of fact, I am preparing and considering the submission of an amendment having to do with busing—on my own behalf and on behalf of other Senators who may wish to associate themselves with me at the proper time and on the proper bill.

I am glad that the majority leader has spoken as he has. I am sure that the distinguished Senator from Florida will be reassured and can be entirely comfortable in his own mind that we will not confuse our leadership functions with our roles as individual Senators.

Mr. MANSFIELD. I am very glad that the distinguished Republican leader has brought up this matter. I believe that the distinguished Senator from Florida must have been under a misapprehension, because what he alleges in this release to the press could not be further from the truth.

Mr. SCOTT. The distinguished Senator from Florida has a very great concern in this matter, and he is representing his constituency. I fully understand his concern and his desire for action. I, myself, would be glad to do anything which would expedite whatever action the Senate decides to take in this matter.

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

Mr. SCOTT. I yield.

Mr. PERCY. Lest there be any misapprehension that this could be a speedy way to handle this very complex prob-

lem—the fact that it will be put on the floor if reported by a committee—I should like to say that as of now my strong feeling is that this is not the right way to go about it; that a constitutional amendment would be the wrong way to approach this problem; that we can better approach the problem through legislation. I would not want to see such constitutional amendments supported by the Senate. I was pleased to note that Vice President AGNEW concurs with this position.

Mr. SCOTT. I thank the Senator.

Mr. BYRD of Virginia. Mr. President, will the Senator yield?

Mr. SCOTT. I yield.

Mr. BYRD of Virginia. Mr. President, the Senator from Virginia did not see the news article to which the Senator from Pennsylvania and the Senator from Montana have directed themselves.

But I was most encouraged to hear the Senator from Pennsylvania and the Senator from Montana—the minority leader and the majority leader—say that compulsory busing is an issue which the Senate should face up to at this session. I think that is encouraging.

I had not been aware that either the minority leader or the majority leader had in mind that the busing issue should be met with legislation at this session. I am pleased to hear that.

I am one of those who has felt that probably the effective remedy, and perhaps the only effective remedy, would be a constitutional amendment. But if the majority leader and the minority leader are willing to support effective legislation, then most certainly I would support such legislation. I want to see this matter handled as quickly as possible.

But a constitutional amendment approach could be used also, as was recommended by the distinguished Senator from Washington (Mr. JACKSON).

I am interested in the colloquy between the Republican leader and the Democratic leader. I am pleased to have heard what the Senator from Pennsylvania and the Senator from Montana have said.

I might add that those of us who strongly oppose compulsory busing for the purpose of achieving an artificial racial balance seem to be picking up support from unexpected sources.

Mr. SCOTT. I thank the distinguished Senator from Virginia.

I believe that we should arrive at some sense of what the Senate's opinions are That is why I had suggested the statutory method of procedure. I think we ought to do it in this session. I think we ought to do it without filibuster and without inordinate delays. Let us find a way to arrive at a decision in which we can work out the best way to treat the busing issue. We may differ as to ways to do it.

As I have said, I have an amendment. And I am not running under fire, by any means. My amendment will follow what I said in 1965, on the floor of the Senate, in response to the late Senator from Illinois, Mr. Dirksen, that I was opposed to busing solely to achieve racial balance. Others would go further; others would not go as far.

Any amendment I may offer will be in an effort to come to a meeting of the minds. I think that the issue has now come to fruition, to a point where all of us, in good will, ought to be anxious to dispose of it. What comes out may not please everybody, but I know that it will reflect the majority view of the Senate. I only urge that it be done without unnecessary delay, such as extended debate.

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

Mr. SCOTT. I yield.

Mr. STENNIS. Mr. President, I understood the Senator from Pennsylvania to say that he has an amendment.

Mr. SCOTT. That is right—which I prefer to offer to a later bill which will soon come up.

Mr. STENNIS. I understood the Senator from Montana to say that he would favor taking up any bill that came from a committee.

Mr. SCOTT. Any constitutional amendment.

Mr. STENNIS. Any constitutional amendment that came from a committee. I thought the Senator said any measure that came from a committee.

But I want to make the point now that neither of the leaders would intentionally limit the activities with respect to a bill that came from a committee, because of ideas that are born here on amendments, not only on this bill but also on military bills and others that are given full consideration.

Mr. MANSFIELD. We both pointed out that we certainly would not block any measure which came from any committee, because that is not our job; and a bill reported by a committee—an amendment or a bill—should be given the opportunity to be presented to the Senate for disposition.

Mr. STENNIS. That would include amendments from the floor, as the Senator from Pennsylvania has pointed out.

Mr. SCOTT. Yes.

Mr. President, I ask unanimous consent to speak for 5 additional minutes.

The PRESIDING OFFICER (Mr. BEALL). The Senator from Pennsylvania has the floor.

Mr. SCOTT. Mr. President, I note the presence in the Chamber now of the distinguished Senator from Florida (Mr. GURNEY). I apologize to him because when I started to speak I thought he was in the Chamber but he left immediately after the vote for a few minutes. I assume that he knows what I have been saying, which is chiefly that we want to assure him that neither the majority nor the minority leader up to now nor ever have had the slightest intention to block any constitutional amendment that comes from a committee. We would be willing to see that it gets to the calendar and is called up.

I had confined my statement to the belief that proceeding by statute is the more expeditious way to do it.

The distinguished majority leader said that we should face this issue and I agree with him on that. I mentioned that I, too, would have an amendment to the proper bill, when it comes up, and the colloquy which followed was along that general line.

I was responding to the Senator's statement to the press, which I am sure was made under a misapprehension, because my statement was exactly the statement made by the Vice President in which he favors the statute method rather than a constitutional amendment. That does not mean that any Senator's right to bring up a constitutional amendment would be in the slightest way impeded or interfered with.

I spoke of the Senator's great concern and interest in this matter and the strong fight he has led for it.

I make this further statement in order to give the Senator from Florida a chance to make any observations he wishes at this time.

Mr. GURNEY. Mr. President, I thank the distinguished Republican leader for yielding to me.

In the first place, I am sorry that I was not in the Chamber when he and the distinguished majority leader made their statements. Since I started all this ruckus I would have preferred hearing what they had to say.

Mr. President, I want to assure both the distinguished Republican leader and the distinguished majority leader that I did not intend any disrespect for them at all. My reading of the story in the Washington Post this morning certainly gave me all the indication I needed, that so far as the great prestige of the majority leader and the Republican leader is concerned, that they were not behind any antibusing amendment; and from what I read on the front page this morning, if there was ever going to be an antibusing amendment on the floor of the Senate for consideration at some further date, certainly the leaders were not going to be behind it. That is perfectly all right. They have that privilege as individual Senators just as much as the Senator from Florida has the same individual privilege as a Senator to back an antibusing amendment.

I know that in my State of Florida right now—where everyone is campaigning for President, both Democrat and Republican—the question of busing is the No. 1 big issue. It is also the No. 1 big issue in many other States in this land. Never, in my time in public office, has there been a bigger, a "guttier" issue which has grabed the American people as this issue of busing.

I did think, so far as my people in Florida are concerned, as they look to me for political leadership, that when our leaders in the Senate say they are going to oppose an antibusing amendment, then the Senator from Florida has the responsibility, in properly representing his people in Florida, to criticize what he thinks is a prejudgment, of the only way I think this issue will be settled.

We have tried in piece of legislation after piece of legislation, in bill after bill, all the 3 years since I came to the Senate, and before that when I served in the House of Representatives to stop forced busing, but whatever the legislation that came out of the committee or was passed in the Senate and House, it has been ignored by the Supreme Court or stricken down by the Supreme Court. Therefore, the only way that this Senator believes anything will be done to alleviate the

crisis caused by busing is an antibusing amendment.

I want every Senator to be able to get out on this floor and argue the busing issue and then to cast his vote yea or nay on the issue, this issue which the people of the United States want resolved more than any other issue I know of in this year 1972.

I reiterate that I had no intention of casting any disrespect on our distinguished leaders in the Senate but it is my responsibility, representing the people of the great State of Florida, to speak for them on this most important issue of forced busing.

I back up the statement that I said and I would make it again.

Mr. SCOTT. I am sure now that the distinguished Senator from Florida is under no misapprehension

The statement in yesterday's newspapers, as I recall it, gave no such indication that the majority leader and I would, under any circumstances, block any action of the committee on a constitutional amendment.

This morning's newspaper was more or less a rewrite of the previous article. I do not recall the exact words. But when I read what the Senator from Florida had said, which indicated that the majority leader and I wanted to block a constitutional amendment, I told the press, yesterday and this morning, that under certain circumstances I might find a constitutional amendment I could support but I thought that by statute was the more effective and expeditious way to do it. I also said that I agreed with the Vice President's initial reaction. This morning I mentioned to the press—they asked me about my amendment, they knew of it—that I had an amendment relating to busing which I was going to introduce when the higher education bill comes before us.

So the distinguished Senator from Florida may rest at ease that, as I say, and repeat, that neither the majority leader nor I, in the leadership position, are indicating that we are opposed to what the distinguished Senator from Florida is trying to achieve. We are trying to achieve that, too. We may differ as to the most expeditious way to do it. I made the statement when I did in order that it might appear in the same story, which certainly would otherwise have given the impression that the majority leader and I were blocking a constitutional amendment on busing.

I assure the Senator from Florida that we are not going to do that as long as I am in this post.

Mr. GURNEY. I thank the Senator from Pennsylvania very much. I appreciate his forthrightness and his candor.

Mr. SCOTT. Thank you, sir.

TRANSMITTAL TO CONGRESS OF INTERNATIONAL TREATIES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily and that the Senate proceed to the consideration of Calendar No. 564, S. 596.

The PRESIDING OFFICER (Mr. BEALL). The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 596) to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within 60 days after the execution thereof.

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

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, it is understood, of course, but to make certain, I ask unanimous consent that when the Senate has acted on this bill it return to the unfinished business.

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

Mr. MANSFIELD. Mr. President, with the approval of the author of the bill, the Senator from New Jersey (Mr. CASE), I ask unanimous consent that the vote occur on this bill, which I understand is noncontroversial, at 3:45 p.m. today.

The PRESIDING OFFICER. Does the Senator ask that rule XII be waived?

Mr. MANSFIELD. Yes, I make that request.

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

Mr. SCOTT. Mr. President, may I ask the distinguished majority leader, we are waiting for the Senator from New Jersey now; is that correct?

Mr. MANSFIELD. Yes.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I now yield to the distinguished Senator from Kansas (Mr. DOLE).

NATIONAL DAY OF PRAYER—SENATE CONCURRENT RESOLUTION 524

Mr. DOLE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 524.

The PRESIDING OFFICER (Mr. BEALL) laid before the Senate, House Concurrent Resolution 524, which was read by title as follows:

A concurrent resolution authorizing the President to designate Sunday, February 20, 1972, as a National Day of Prayer for the cause of world peace.

Mr. DOLE. Mr. President, I ask unanimous consent for the immediate consideration of this concurrent resolution.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DOLE. Mr. President, the pending measure is a significant legislative item. It is more than a statement of congressional sentiment. Of course, it does provide an opportunity—perhaps too rare in these days of differing viewpoints on many important issues—for the Congress to speak with one voice in support of the President's efforts. But this measure has broader dimensions, for it expresses the hopes of all mankind for an end to conflict between nations and the realization of a just and lasting peace in the world.

The hope for peace is a common bond of mankind, and the quest for peace is its own universal cause—without party, race, or nationality.

The response to this resolution has been heartening. It received broad and enthusiastic support in the House where it was passed earlier today by unanimous agreement. In the Senate the response has been similar, and in spite of the brief time since its introduction some 30 Senators have joined in sponsoring it. I know that others would have joined if time had permitted, but the names of those who have been added give ample illustration of the degree of support received.

I can think of no more fitting gesture on the part of our Nation as the President embarks on his journey to the People's Republic of China than to join in days of prayer and support for his efforts to seek peace.

I know that this action will be deeply appreciated by the President, and it will speak with a powerful voice of America's enduring and fervent desire to live in peace with all nations and all people.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 524) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

H. CON. RES. 524

Whereas the American people share with all the peoples in the world an earnest desire for peace and the relaxation of tensions among nations; and

Whereas it is the policy of the United States to engage in negotiations rather than confrontations with other nations; and

Whereas on February 21, 1972, the President of United States will begin a historic visit in the Peoples Republic of China to confer with that nation's leaders with the purpose of seeking more normal relations between the two countries and exchanging views on questions of mutual concern; and

Whereas the people of the United States hold the highest and most fervent hopes for the success of the President's mission: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress—

(1) That Monday, February 21, 1972, be commemorated as a day of united support for the President's efforts in pursuit of the relaxation of international tensions and an enduring and just peace;

(2) That the leaders of all nations and men of good will throughout the world be urged to devote all possible efforts to promote the cause of peace and international harmony as set forth in the preamble to the Charter of the United Nations;

(3) That the President designate Sunday, February 20, 1972, as a National Day of Prayer for the cause of world peace; and

(4) That copies of this resolution be sent to the Governors of the several States and be delivered by the appropriate representatives of the United States Government to the appropriate representatives of every nation of the world.

QUORUM CALL

Mr. JAVITS. 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. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EXTENSION OF FEDERAL WATER POLLUTION CONTROL ACT—CONFERENCE REPORT

Mr. BYRD of West Virginia. Mr. President, I have been requested by the distinguished senior Senator from West Virginia (Mr. RANDOLPH) to submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3122) to extend sections 5(n) and 7(a) of the Federal Water Pollution Control Act, as amended, until the end of fiscal year 1972.

I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. BEALL). Is there objection to the present consideration of the 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 February 9, 1972, at p. 3430.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

QUORUM CALL

Mr. BYRD of West Virginia. 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. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. HOLLINGS. Mr. President, I wish to address some remarks to the equal employment opportunities bill. Yesterday, by a vote of 45 to 39, the Senate accepted the Dominick amendment to the equal employment opportunities bill. As a sponsor of the original Dominick amendment, as well as the one that was adopted, I can attest to the fact that this acceptance has not been easy.

On January 24 and again on January 26, a similar amendment was defeated by a narrow 2-vote margin. However, by now accepting this amendment and denying cease-and-desist power to the Equal Employment Opportunity Commission, we have guaranteed that the Commission will not be a special interest group arrogating to itself the roles of indicator, prosecutor, judge and jury.

Rather, we have assured that the commission will be able to turn to the Federal court for review of its actions. By prevailing for a judicial procedure, we have assured to the employer that he will not be unconscionably harassed.

Most importantly, we have guaranteed to minorities an effective means of achieving equal job opportunities. And this equal opportunity is, after all, what must be accomplished.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Honorable Arthur M. Williams, Jr., president of the South Carolina Electric and Gas Co. and a company policy memorandum.

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

SOUTH CAROLINA ELECTRIC & GAS CO.,
Columbia, S.C., February 11, 1972.

HON. ERNEST F. HOLLINGS,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR FRITZ: I am taking the liberty of writing you about a matter with which I am deeply concerned. Concerned because it involves very deeply the effective operations of this Company, the people of our State and the acts of the Federal Government. Neither you nor I are responsible for what employment patterns may have existed over the past decades. Since I have assumed the Presidency of this Company—a little over five years ago—we have been in the forefront in attempting to employ qualified members of minorities and have, I believe, achieved this goal. In so doing, we have had classes to teach our own employees—whether they were from minority groups or not—basic educational qualifications to enable them to enter into apprenticeship programs.

In pursuance of this goal, we have promulgated an Affirmative Action Plan which has been submitted to the Atlanta Office of the General Services Administration; as you may know, GSA is a Federal agency appointed by the Executive Branch to monitor equal employment activities in all utility companies. This plan includes affirmative goals and time tables. GSA has done an on-site investigation of this plan. This has been buttressed by a Policy Memorandum, a copy of which is attached, which states that this Company has "a policy of equal employment opportunity without regard to race, color, religion, sex, or national origin" and that this policy "is not only morally and legally proper, but it is also good business."

During the past four years, more than 35 members of the major minority race in South Carolina have been promoted into formerly all-white positions. We have successfully recruited on black college campuses and have promoted many members of the major minority group in South Carolina into virtually every type of job available. Our minority employment has been increased by over 71 per cent in the last four years. Last year alone, over 29 per cent of our new employees were members of this major minority race. The personnel of this Company is actively engaged in, and the Company actively supports, black oriented organizations, such as the Urban League. One of our employees has served as a loaned executive for the National Alliance of Business.

Last November, EEOC Chairman William Brown invited a long list of utility presidents to testify before his Commission. It has been my experience with this type of hearing that those testifying are subjected to abuse and used as whipping boys—while this is no novel position for me, I did not see where it would serve any useful purpose for me to go into such a capacity. This Company did, however, have two representatives at the hearing.

This Company was then issued "A Commissioners Charge" from Chairman Brown, a copy of which is enclosed. In addition to this, we were served with a copy of a request for information which, and I feel you will agree, will not only be burdensome but will be costly to respond to. In these days when business is being adjured to hold down prices, it seems to me that it really behooves agencies of the Federal Government to not present businesses with forms to fill out which will involve so much cost—especially when this appears to be duplication of work already done by another Government agency, the GSA.

Chairman Brown commented in very uncomplimentary terms on the companies who declined (and there were 16) to testify before his hearings. I might add that Chairman Brown has made himself even more unavailable. We have attempted to get in touch with him to discuss this matter by phone and planned to send a representative to talk with him in person if he would talk wih us. So far, we have been unable, in spite of sincere and firm attempts, to contact him.

I note that there is presently before the Congress a bill which would give EEOC cease and desist powers and transform it into prosecutor, judge and jury. Not only is this contrary to the basic concept of American jurisprudence, but I think the actions of EEOC in our case have shown how they would mishandle any such authority. I hope you will continue to exert every effort to forestall such unwarranted power to this agency.

With best personal regards and all good wishes, I am,

Sincerely yours,

ARTHUR M. WILLIAMS, JR.

SOUTH CAROLINA ELECTRIC & GAS CO.,
POLICY MEMORANDUM, *May 3, 1971.*

Subject: Affirmative action plan.

COMPANY POLICY

South Carolina Electric and Gas Company believes that a policy of equal employment opportunity without regard to race, color, religion, sex, or national origin is not only morally and legally proper, but is also good business.

In the area served by the Company and from which it draws its employees, there are significant numbers of citizens who, for a variety of reasons, have not risen to their maximum productive level. If they can be made more productive, they will at the same time become greater consumers and better customers for the Company. Many of these citizens will be reached if all employers, this Company included, take affirmative action to insure equal employment opportunity.

The Company also recognizes that the employment problems of minority group members and women do not end when they have earned jobs. It believes that such employees will be more efficient and more productive if they are afforded equal opportunity on the job and are treated in all respects without regard to race, color, religion, sex, or national origin.

OFFICER RESPONSIBLE

The Vice President Employee Relations shall be responsible for implementation of this Affirmative Action Plan, compliance with all fair employment practice laws, and communication with outside groups affected by this Plan.

PROBLEM AREAS

The Company observes that the number of members of some minority groups or women employed in particular jobs is usually less, but is some case much greater, than would be projected from their percentages of the population in the area served by the Company. These jobs can be categorized as follows:

Category 1. Those jobs which a large proportion of minority group members and women can perform when hired or after minimum training and experience. Significant numbers of minority group members and

women now hold such jobs. A new problem will arise if any of these jobs are held by such large numbers of minority group members of women that they become considered minority group or female jobs.

Category 2. Those jobs which can be performed only after relatively long periods of training or education, and for which only small numbers of minority group members or women have attempted to qualify.

Category 3. Those jobs which because of their specialized nature, physical conditions, danger, or a combination of these factors, have heretofore attracted few minority group or female applicants.

Category 4. Those jobs in management which usually require years of experience in somewhat lower level management positions which until fairly recently have rarely been filled by minority group members or women.

OBJECTIVE

The Company's objective in Affirmative Action is to cause greater numbers of qualified minority group members and women to seek employment or advancement, so that the normal workings of a non-discriminatory selection procedure will result in increasing numbers of such persons being hired for, and advanced to, all positions in the Company.

ACHIEVEMENT OF OBJECTIVE

The Employee Relations Department will review all Category 1 jobs to determine if there exists a normal distribution of minority group and female employees. The Vice President Employee Relations will make recommendations to the department heads concerned as to how any necessary re-distribution can be accomplished with minimum adverse effect on efficiency and morale.

The Employee Relations Department will devise whatever special communications program is necessary to encourage greater numbers of minority group and female employees or potential employees to undertake the education or training essential to Category 2 jobs. Recruiting sources which are likely to refer qualified minority group or female applicants will be more greatly utilized. Only job related qualifications will be required for such positions. A program of continuing education coupled with financial incentives for participation therein will be maintained as long as it is needed.

The Employee Relations Department will attempt to discover the specific reasons for low minority group and female interest in Category 3 jobs. Any misunderstandings revealed will be removed by careful explanation.

To the extent that the Company fill Category 4 jobs from without its own organization, it will make greater use of recruiting sources which are likely to refer qualified minority group members or women. It is recognized that within the Company many minority group members and women may not appear to be motivated toward advancement because of the mistaken belief that they will be held back because of their minority status or sex. The Company will undertake to seek out those of such employees who may be qualified except for motivation, and consider them for Category 4 jobs and for those positions which are prerequisite to Category 4 jobs.

COMMUNICATION OF POLICY

The Company's policy of equal employment opportunity will be communicated to all employees by appropriate means. The Company will propose the addition of a non-discrimination clause to any collective bargaining agreements which do not contain such language. All notices and posters relating to the fair employment practice laws will be prominently displayed.

The public will be informed of the Company's policy on equal employment opportunity, with particular notice to those organizations which are most likely to refer for employment qualified minority group members or women. Other employers with whom the Company does business will be given particular notice of this policy, and sub-contractors will be made aware of any obligations which they may have under the Executive Order.

AFFIRMATIVE ACTION FILE

The Employee Relations Department will maintain a separate file which will contain copies of all reports, memoranda, and correspondence relating to action under this Plan, including copies of Form EEO–1, copies of communications of this policy to internal and external groups, reports of up-grading and distribution of minority group members and women, the details of recruiting efforts directed at increasing the number of qualified minority group and female applicants, and information relating to adjustment of selection standards to increase employment opportunity to all citizens.

INTERNAL REPORTING

As often as necessary, but not less than annually, the Vice President Employee Relations will report to the Executive Committee on progress in Affirmative Action. He will be prepared to explain and suggest remedies for any failure to achieve the objective of the Plan.

ARTHUR M. WILLIAMS, Jr.,
President.

ATLANTA DISTRICT OFFICE, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Atlanta, Ga., January 26, 1972.

Re TAT2–0748.

Mr. H. W. WALDON,
Vice President, Employee Relations, South Carolina Electric & Gas Co., Columbia, S.C.

DEAR MR. WALDON: As we agreed during our telephone conversation on Friday (1/21/72), I am taking this opportunity to serve you with a copy of the above captioned charge by mail. Kindly acknowledge receipt by completing the enclosed form entitled "Acknowledgment of Service" and return same to me at this office in the enclosed self-addressed return envolope.

In an attempt to move expeditiously in this proceeding, I am enclosing a complete outline of information and/or documentation that I will need to review initially. Please develop this material immediately and forward it to me in Atlanta. As I suggested to you during our conversation, it is hoped that review of the materials requested will allow us to determine a course of on-site investigation.

Please know that I am at your service and if you have further questions regarding this matter do not hesitate to call me in Atlanta at (404) 526–6068.

I remain,

Sincerely yours,

H. A. HUGGINS,
Equal Employment Officer.

OUTLINE OF INFORMATION AND DOCUMENTATION

GENERAL

1. List of all employees of the Company since January 1, 1969. This list should reflect specifically the following about each:
a. Name and address.
b. Race and sex.
c. Date of hire.
d. Initial job to which hired.
e. Initial salary or rate of pay.
f. Initial department to which assigned.
g. All subsequent personnel changes such as promotion, transfer, demotions, pay raises*, discharges, rehires and reprimands (in each change please indicate "from" and "to").

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* Bonuses.

2. Complete organizational chart of the Company showing staff, departments and sub-departmental work units and number if used.

RECRUITMENT

1. Written policy on recruitment.
2. Name, position title, race of each member constituting a recruitment team.
3. Sources of all recruitments.
4. Name and description of each position recruited for.
5. Name of all persons employed through the recruitment program since January 1, 1969 reflect the race and sex of each and the specific position for which recruited.

HIRING AND PLACEMENT

1. Written policy on hiring and placement.
2. Title and description of all jobs and position used by the Company since January 1, 1969.
3. Indicate the pass of promotability and/or seniority lines of progression for each job and position listed in response to item No. 2.
4. Name and title of all job vacancies within the Company since January 1, 1969.
5. Copy of the applications for employment for all persons hired since January 1, 1969.
6. Copy of the applications for employment for all applicants rejected and the reason for rejection since January 1, 1969.
7. Copy of each testing instrument used and accompanying validation studies.
8. Copies all test and results administered to the applicants listed in response to items 5 and 6.

PROMOTION AND TRANSFER

1. Copy of Company's written policy on promotion and transfer.
2. Copies of all seniority list used to determine promotability or other employee status changes.
3. Copies of all bids placed for employee status changes such as promotions, transfers, etc. This information should reflect the reason(s) for rejection in each case when the bidder was rejected.
4. Copy of the work history record for each employee promoted or rejected for promotion since January 1, 1969.

TRAINING

1. Name, race, sex, religion, job title of all persons assigned to and received the benefit of a Company administered training program since January 1, 1969. This information should include the following:
a. Job for which trained.
b. Criteria by which selected.
c. Evaluated results of training for each person participating.
d. Copy of the work history record for each.
2. Name and description of all training programs used by the company January 1, 1969. Please state the requirements for each.
3. The same information requested in item No. 1 for persons requesting training who were denied.

TERMS AND CONDITIONS

1. Copy of Company rules and regulations setting down the terms and conditions of employment.
2. Company policies on the following:
a. Overtime.
b. Sick Leave.
c. Annual Leave.
d. Leave of Absence.
e. Maternity Leave.
3. Description of Company's disciplinary system and how it is administered.

LAYOFF, RETENTION AND RECALL

1. Name, race, sex and seniority of all persons subjected to layoff since January 1, 1969 reflecting the following:
a. Date of layoff.
b. Date of Recall.
c. Reason for Layoff.
2. Complete description of the Company's policy on layoff and recall.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION VS. SOUTH CAROLINA ELECTRIC & GAS COMPANY

Re: Charge No(s) TAT2-0748

ACKNOWLEDGEMENT OF SERVICE

The undersigned hereby certifies that on ———, 1972, he was served by Certified Mail a copy of the foregoing Charge alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964.

This ——— day of ———, 1972.

———— ————,

———— ————.

———

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Washington, D.C.

COMMISSIONER'S CHARGE: TAT2-0748

Pursuant to Title VII of the Civil Rights Act of 1964, I charge the following employer and union with unlawful employment practices:

South Carolina Electric and Gas Company, 328 Main Street, Columbia, South Carolina, and IBEW Local 772, Columbia, South Carolina.

I have reasonable cause to believe that the above employer and union are within the jurisdiction of the Equal Employment Opportunity Commission and have violated and continue to violate Section 703 (a) (c) and (d) of the Civil Rights Act of 1964 by discriminating against Negroes and females on the basis of race and sex with respect to recruitment, hiring, job assignment, promotion, training, compensation, representation and other terms and conditions of employment:

1. Respondent employer discriminatorily refuses or fails to recruit and hire Negroes and females in the same manner it recruits and hires Caucasians and males.

a. The company employs a total of 2207 employees. Of these, 285 (12.9%) are Negroes. The population of Columbia is estimated to be 40% Negro.

b. The company employs 339 (15.4%) females.

2. Respondent employer discriminatorily places Negroes and females in lower paying and traditionally relegated jobs.

a. Of 1030 blue collar jobs, Negroes hold 248 (24.1%). Of 1,157 white collar jobs, Negroes hold 17 (1.5%). All three laborers and twenty service workers are black.

b. Of 537 clerical and office workers, 310 (57.7%) are females. There is only 1 female in the blue collar category.

3. Respondent employer discriminatorily excludes and/or restricts Negroes from higher-paying positions and/or jobs above the blue collar level.

4. Respondent employer discriminatorily excludes and/or restricts females from higher-paying positions and/or jobs above the office and clerical level.

5. Respondent employer discriminatorily limits and restricts Negroes and females in certain job categories.

6. Respondent employer discriminatorily maintains segregated departments according to race and sex.

7. Respondent employer discriminatorily fails to provide Negroes and females with equal training opportunities.

8. Respondent employer discriminatorily fails to provide Negroes and females with equal job opportunities and promotions afforded other employees.

9. Respondent union discriminatorily fails to represent Negroes and females on the same basis as Caucasian males.

10. Respondent employer and union have further discriminated against Negroes and females in all policies and practices, like, related to, or growing out of the specific practices enumerated above.

The class aggrieved includes, but is not limited to all persons who have been and continue to be or might be or might be adversely affected by the unlawful practices complained of herein.

———, ———,

Commissioner.

Mr. HOLLINGS. Mr. President, this letter and memorandum will indicate some of the harassment which has taken place and which, of course, I do not condone.

Since the second session of this Congress convened on January 18, the overwhelming majority of the Senate's time has been occupied with the consideration of the equal employment opportunity bill.

It is the type of harassment described by Mr. WILLIAMS which has alarmed me and caused me to oppose the Commission's having judicial powers. Accordingly, I have consistently supported amendments to the bill which would deny to the Commission a broad, blank check of judicial power. Allowed the free rein of the original bill, the Commission would have become a champertous and surreptitious volunteer. Approval of the Dominick amendment, in my view, has given the Commission a reasonable and effective means of carrying out their mission: presenting their findings to an impartial, judicial tribunal.

Mr. President, I must now act in good faith by voting for final passage. I cannot deny the fact that the Equal Employment Opportunity Commission to date has been ineffective in protecting equal opportunities. I cannot deny that the Commission's authority must be beefed up, and I cannot deny that equal job opportunities for our minorities must be guaranteed. The bill now carries this guarantee with it. Accordingly, it is now time for the Senate to approve the legislation.

QUORUM CALL

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

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

TRANSMITTAL TO CONGRESS OF INTERNATIONAL TREATIES

The Senate resumed the consideration of the bill (S. 596) to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within 60 days after the execution thereof.

Mr. CASE. Mr. President, I understand the pending business is my bill S. 596.

The PRESIDING OFFICER. The Senator is correct.

UNANIMOUS-CONSENT AGREEMENT

Mr. CASE. Mr. President, I ask unanimous consent that we may have a time limitation on this measure with a final vote to occur at 3:45 p.m. today, the time to be equally divided between the proposer of the measure and the majority leader or his designee.

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

Mr. CASE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 5 minutes.

Mr. CASE. Mr. President, I had forgotten we have this new loudspeaker gadget. My colleague, the Senator from West Virginia, was very kind to suggest that we put it into operation and I hereby do so.

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

Mr. CASE. Mr. President, under the terms of the bill which I have introduced, all international agreements entered into by this Government will henceforth be transmitted to the Congress within 60 days of their execution. Sensitive agreements will be transmitted to the Senate Foreign Relations and House Foreign Affairs Committees under an appropriate injunction of secrecy.

THE FOCUS OF THE BILL

No problem presently exists with the transmittal of unclassified international agreements to the Congress. Under existing statute—section 112a, title I, U.S. Code—the Secretary of State presently compiles and publishes all international agreements other than treaties concluded by the United States during each calendar year.

Although the provision of this statute on its face is all-inclusive, the position of the executive branch has been to withhold from regular dissemination to Congress—even on a classified basis—those documents which it deems sensitive in view of security considerations.

My bill is designed to end such an exception to the principle that Congress has the right to know the terms of all this country's commitments.

THE EXTENT OF THE PROBLEM

The Constitution contains no explicit provision authorizing the President to enter into executive agreements. They began under George Washington and during this century have increased at a rate which has paralleled our progressive involvement in world affairs. In numbers, executive agreements—which do not require the advice and consent of the Congress—have come to far exceed treaties, which do require congressional approval.

During the year 1930, 25 treaties and only nine executive agreements were entered into by the United States. By 1968, this ratio had been overwhelming reversed, with the record reflecting more than 200 executive agreements in comparison with only 16 treaties. As of January 1, 1969, according to the State Department, the United States was party to 909 treaties still in force; the number of publicly disclosed executive agreements in force totaled 3,973.

Although the equivalent number of secret agreements entered into by the executive is not a matter of public record, enough is known to establish the key role they have played at critical junctures in this Nation's history.

At the turn of the century, in an example cited by the distinguished historian, Prof. Ruhl J. Bartlett, President Theodore Roosevelt, through the Taft-Katsura agreement of 1905, agreed to Japanese hegemony over Korea in return for Japan's accession to U.S. control over the Philippine Islands. In 1917, according to Professor Bartlett, the Lansing-Ishii Agreement went so far as to include a secret protocol which nullified the very agreement to which is was attached.

In 1943, the understandings reached at the Cairo Conference were made public, but the provisions of the Yalta Agreement which altered the Cairo compact were not publicly disclosed for 3 years. And the Yalta Agreement in its entirety was not published until 1947.

More recently, the Symington Subcommittee on National Commitments uncovered contemporary examples of secret agreements entered into without reference to the Congress: with Ethiopia in 1960; Laos, 1963; Thailand, 1964; South Korea, 1966; Thailand, 1967; and the secret annexes to the Spanish Bases Agreement of 1953.

In the case of the Ethiopian agreement, the executive's pledge to equip the Ethiopian Army—at a cost of $147 million through 1970—and commit U.S. resources to the maintenance of Ethiopia's territorial integrity, had the clear potential of involving this country in the almost continuous civil war and border disputes of this section of Africa. This agreement, concluded in 1960, was transmitted to the Senate Foreign Relations Committee on May 18, 1970—and this occurred only after the Symington subcommittee had learned of the commitment.

Unlike the other agreements uncovered through the independent efforts of this subcommittee, notably those concerning Laos and Thailand, the Ethiopian commitment did not embroil the United States in yet another open-ended conflict.

But it could have.

These and other similar international agreements—those we know of and those whose existence are still unknown to the Congress—affect our survival and defense in the most fundamental sense. They go to the heart of our foreign policy.

In this age of instant communications and U.S. military deployment abroad in the eye of potential conflict, these agreements, which can in an instant commit or involve this country in possible hostilities, must be formally and systematically examined by the Congress before they are triggered by events.

Failing such prior examination, the U.S. Congress—as increasingly has been the case since World War II—is reduced to postmortem review of accomplished facts.

THE EXECUTIVE BRANCH'S PROPOSAL

Both the existence of this problem of congressional access to those agreements and the need for new procedures is admitted to by the executive branch itself.

During hearings on my bill on October 21, 1971, Mr. John R. Stevenson, legal adviser to the State Department, confirmed this point on several occasions:

> In certain instances in the past they (the Congress) have not been informed on a current basis but only ad hoc some years later.
>
> . . . we recognize there is a problem here. I think the problem that has been most pinpointed is the fact that the information hasn't been obtained until a number of years after the event.
>
> It seems to me that a systematic procedure is required for keeping Congress informed.
>
> There is a problem which you referred to of having the Congress informed on a more current basis.

Nonetheless, although conceding that Congress has not been fully informed, the State Department, in its official response, declared itself "firmly of the opinion that legislation on this subject would be undesirable."

Instead, the State Department recommended that the Department of State and the committees concerned "meet to work out mutually acceptable practical arrangements."

As further defined by the State Department during the course of hearings, however, these "practical arrangements" would preserve in every important aspect the executive's present ability to withhold or disclose at will the terms of these agreements. For Congress to accede even informally to these practices would be to acknowledge the subordination of Congress to the executive branch. In effect, it would legitimatize what, in fact, has been an unconstitutional assumption of power by that branch:

> The executive would reserve to itself the decision as to whether Congress should be even told of an agreement. Mr. Stevenson, State Department Legal Adviser: "I cannot tell you right now that there wouldn't be some reservation of Presidential discretion of the President's ultimate power to decide what he wanted to do in a particular case."
>
> The executive would determine how Congress would be informed, and in some instances even presumably dictate whether the full committee membership should have the information or whether it should go to certain selected members only. Mr. Stevenson: "In some cases there would be a briefing with respect to the subject matter of the agreement. In other cases the agreement could be shown to several interested members of the committee but not permanently retained by the committee."
>
> The executive would decide which sections of an agreement Congress could know about, and certain categories of information would be completely excluded. Mr. Stevenson: "If in briefing you got the substance of what was involved, that would not necessarily mean that you had to have detailed annexes which might have vital military significance but very little foreign affairs significance."

WHY LEGISLATION IS NECESSARY

In 1954, the Eisenhower administration, in a letter from then-Assistant Secretary of State Thruston B. Morton to the Senate Foreign Relations Committee, said:

> The Department would be glad to supply the Senate copies of all such (international) agreements.

There were no quibbles, no exceptions to the principle that the Senate should receive all international agreements in their full and original text. Indeed, the State Department cooperated in drawing up the language which is in my bill regarding the handling of classified agreements, and legislation similar to mine, except that it did not provide for the transmittal of agreements to the House of Representatives, subsequently passed the Senate in 1956.

In explaining why this legislation, once agreed to by the Eisenhower administration, is now being opposed by the present administration, the State Department response was:

> I think this administration, reviewing the problem in the context of the on-going discussions we have had with this committee, feels that the respective interests of the President and Congress could be better reconciled without having quite *the rigidity* that this bill proposes. (Emphasis added)

In my view, the lessons of the years since 1956, let alone the relations between the State Department and the Senate Foreign Relations Committee, have shown us that this "rigidity"—which I interpret to mean strict accountability by the executive branch—is essential to the task of restoring the people's confidence in their government.

If any reminder is necessary of these lessons we have learned so painfully in the intervening years since this legislation was last considered, it was provided in a recent editorial in a major eastern newspaper:

> If the dreary story of our involvement in the Vietnam war demonstrates anything, it is that the Executive Branch does not necessarily know best; it is that an uninformed Congress will make uninformed decisions or none at all; it is that secrecy breeds distrust and that neither Congress nor the public can be expected to support policies unless they have the basic data upon which to make their judgments.

We know the consequences of unchecked executive power.

How, then, can we accede to a continuation of this practice of selective disclosure to the Congress of this Nation's commitments?

For it is not enough that Congress be "told about" or "be made aware" that the executive has entered into a new agreement stationing U.S. forces abroad or extending U.S. assistance in return for some political concession. Rather, it must be possible that Congress can participate and offer an independent judgment on these policy decisions.

To fulfill this role, Congress must be able to inform itself with precision of the terms of all international agreements. And this is not possible unless, in the case of sensitive agreements, the designated committees of Congress have the opportunity to study and weigh the exact language of every document in its entirety.

Even apart from the question of exact language which commits this country to a course of action, there should be no "a prior" judgment as to which annex or which section may or may not be of concern to the Congress.

As previously noted, the State Department witness in testifying on my bill asserted that Congress did not "have to have detailed annexes which might have vital military significance but very little foreign affairs significance."

How an agreement can be of "vital military significance" and not affect foreign policy, I do not know.

But I am aware of a chilling example of how crucially significant to the future of this country such an "annex" can be.

In the transcript of the White House

meetings surrounding the India-Pakistan war released by Columnist Jack Anderson on January 4, Presidential Adviser Henry Kissinger was quoted as saying:

> When I visited Pakistan in January 1962, I was briefed on a secret document or oral understanding about contingencies arising in other than the SEATO context. Perhaps it was a Presidential letter. This was a special interpretation of the March 1959 bilateral agreement.

Whether in fact such a "special interpretation" existed which could have directly involved the United States in the India-Pakistan war, this is an example of how an annex of mere "military" significance, although perhaps concluded in a time of relative tranquillity when its application seemed remote, can have an overriding importance to this country's foreign policy.

Selecting disclosure in any of its forms is unacceptable.

This bill, in the terms used by the executive branch in opposing it, is "rigid." It offers no loopholes. Every international agreement entered into by the United States would be formally transmitted to the Congress in its full and original text. And, as made clear in the Senate Foreign Relations Committee report accompanying the bill, the intent is clear that the executive should make available to the Congress all such agreements now in force.

This bill does not represent an attack upon the executive branch. Instead, it is designed to restore the constitutional role of Congress in the making of this country's foreign policy.

In the words of former Justice Jackson of the Supreme Court, redressing this balance is the responsibility of Congress itself:

> With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

Mr. President, this bill is a matter that has been before the Senate before and it has been approved by the Senate before. In substance, it is the same as an amendment which our former leader, Senator Knowland, proposed. It was adjudged to be worthy at that time and I think it is even more worthy right now.

This measure would require that all international agreements entered into by our Government be transmitted to Congress within 60 days of their execution. Sensitive agreements would be transmitted to the Committee on Foreign Relations of the Senate and the Foreign Affairs Committee of the House under whatever injunction of secrecy the President deemed appropriate. Of course, there would be no problem with respect to unclassified agreements. Under existing law they are supposed to be published within each calendar year.

This statute has been observed more in the breach in recent years. I would suggest that the present practice whereby the Congress is not made aware of agreements is altogether improper and represents a most unfortunate situation.

Mr. President, I ask unanmous consent to have printed in the RECORD an excerpt from the committee report.

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

COMMITTEE ACTION

Public hearings on S. 596, which had been introduced in the Senate by Senator Case on February 4, 1971, provided the committee with testimony expressing the favorable views of a distinguished historian and a leading academician and the unfavorable views of the administration. On October 20, 1971, Prof. Ruhl J. Bartlett of the Fletcher School of Law and Diplomacy provided the committee with an analysis of the problem of secrecy to which this bill addresses itself in the broader context of the historical problem of executive agreements as means of contracting significant foreign commitments. On the basis of this historical perspective, Professor Bartlett expressed his view that—"this proposed measure is so limited in its scope, so inherently reasonable, so obviously needed, so mild and gentle in its demands, and so entirely unexceptionable that it should receive the unanimous approval of the Congress."

On the same day the committee heard testimony by Prof. Alexander M. Bickel of the Yale University Law School, who also expressed strong support for the measure. "In requiring, as S. 596 would do," said Professor Bickel, "that international agreements other than treaties to which the United States is a party be transmitted to it, Congress would be exercising a power that, in my opinion, clearly belongs to Congress under the Constitution."

Professor Bickel also expressed his belief that "Congress has too long tolerated, indeed cooperated in, a diminution of its role in the conduct of foreign affairs and in the decision of questions of war and peace—a diminution that approaches the vanishing point."

In this respect, Professor Bickel concluded, the balance of power between Congress and the President ought to be redressed, to which end S. 596 would constitute "an important step."

The views of the administration were presented to the Committee on October 21, 1971, by Mr. John R. Stevenson, Legal Advisor to the Department of State. Mr. Stevenson expressed the administration's view that the provision of a reliable flow of information to Congress could best be provided for by "practical arrangements" of a nonlegislative nature. Conceding that in the past they (the Congress) have not been informed on a current basis but only ad hoc some years later, Mr. Stevenson concluded nonetheless that "we are dealing with a question of practical arrangements, not with a question of right or authority which would in any way be altered by statute."

On December 7, 1971, the bill was considered by the committee in executive session and ordered reported without amendment and without dissent.

BACKGROUND OF THE BILL

The legislative history of S. 596 goes back to 1954 when a similar proposal was introduced in the Senate by Senators Homer Ferguson of Michigan and William Knowland of California. It was reported favorably to the Senate in August 1954 but no action was taken on the bill. The proposal was revived by Senator Knowland in 1955 and subsequently, in July 1956, favorably reported and then adopted unanimously by the Senate. No action was taken by the House of Representatives.

As adopted in 1956, and as introduced by Senator Case in February 1971, the bill was in a form which had made it acceptable to the Eisenhower administration. As originally conceived in 1954, the proposal called for the submission of all executive agreements to the Senate within 30 days. The Eisenhower administration, through its Assistant Secretary of State for Congressional Relations, Thruston B. Morton, objected that the 30-day time period was too short and objected further to the absence of a provision for the protection of highly classified agreements. In order to meet that objection, the bill was amended to provide for a 60-day transmittal period and also to permit the President, at his option, to submit sensitive agreements not to the Senate as a whole but to the Committee on Foreign Relations "under an appropriate injunction of secrecy." With these amendments the Eisenhower administration offered no objection to the bill.

As reintroduced by Senator Case in 1971, S. 596 was broadened to require the reporting of agreements to the House of Representatives and its Committee on Foreign Affairs as well as to the Senate and its Committee on Foreign Relations. In all other respects the bill as introduced by Senator Case and favorably reported by the Foreign Relations Committee in 1971 is the same as the proposal to which the Eisenhower administration offered no objection in 1954 and 1955.

COMMITTEE COMMENTS

In the view of the Foreign Relations Committee, S. 596 embodies a proposal which is highly significant in its constitutional implications. The bill does not undertake to resolve fundamental questions relating to the treaty power of the Senate and the frequently countervailing claim—or simple use—of executive authority to enter into binding agreements with foreign countries without the consent of Congress. S. 596 undertakes only to deal with the prior, simpler, but nonetheless crucial question of secrecy. The committee shares Professor Bickel's view that the adoption of this bill would be "an important step" in the direction of redressing the balance of power between Congress and the President in the conduct of foreign relations.

The committee does not accept the administration's view, as expressed by Mr. Stevenson, that the sole requirement for the flow of reliable information to Congress is the working out of "practical arrangements." As outlined by Mr. Stevension, these "practical arrangements" would still fail to establish the *obligation* of the executive to report all agreements with foreign powers to the Congress. In the absence of legislation, even the soundest of "practical arrangements" would leave the ultimate decision as to whether a matter was to be reported or withheld to the unregulated judgment of the executive.

It is well and good to speak, as Mr. Stevenson does, of the executive's recognition of the needs of Congress and of the desirability of "mutual cooperation and accommodation" between the two branches of government. These are highly desirable, but the principle of mandatory reporting of agreements with foreign countries to the Congress is more than desirable; it is, from a constitutional standpoint, crucial and indispensable. For the Congress to accept anything less would represent a resignation from responsibility and an alienation of an authority which is vested in the Congress by the Constitution. If Congress is to meet its responsibilities in the formulation of foreign policy, no information is more crucial than the fact and content of agreements with foreign nations.

As the committee has discovered there have been numerous agreements contracted with foreign governments in recent years, particularly agreements of a military nature, which remain wholly unknown to Congress and to the people. A number of these agreements have been uncovered by the Symington Subcommittee on Security Agreements and Commitments Abroad, including, for example, an agreement with Ethiopia in 1960, agreements with Laos in 1963, with Thailand

in 1964 and again in 1967, with Korea in 1966, and certain secret annexes to the Spanish bases agreement.

Section 112(a) of title I of the United States Code now requires the Secretary of State to compile and publish all international agreements other than treaties concluded by the United States during each calendar year. The executive, however, has long made it a practice to withhold those agreements which, in its judgment, are of a "sensitive" nature. Such agreements, often involving military arrangements with foreign countries, are frequently not only "sensitive" but exceedingly significant as broadened commitments for the United States. Although they are sometimes characterized as "contingency plans," they may in practice involve the United States in war. For this reason the committee attaches the greatest importance to the establishment of a legislative requirement that all such agreements be submitted to Congress.

The committee fully recognizes the sensitive nature of many of the agreements the executive enters with foreign governments. At some point the committee may wish to explore the question whether the executive is exceeding his constitutional authority in making some of these agreements. That, however, is not the issue to which S. 596 addresses itself. Its concern is with the prior, more elemental obligation of the executive to keep the Congress informed of all of its foreign transactions, including those of a "sensitive" nature. Whatever objection on security grounds the executive might have to the submission of such information to Congress is met by the provision of the bill which authorizes the President, at his option, to transmit certain agreements not to the Congress as a whole, but to the two foreign affairs committees "under an appropriate injunction of secrecy to be removed only upon due notice from the President."

As reported by the Foreign Relations Committee, S. 596 would not require the submission to Congress of international agreements entered into prior to the enactment of the bill. It is the strongly held view of the committee, however, that the absence of a retroactive provision in this bill is not to be interpreted as license or authority to withhold previously contracted agreements from the Congress. In keeping with the spirit and intent of the bill, the committee would expect the executive to make all such previously enacted agreements available to the Congress or its foreign affairs committees at their request and in accordance with the procedures defined in the bill.

In conclusion, the committee reiterates its view that the proposal contained in S. 596 is a significant step toward redressing the imbalance between Congress and the executive in making of foreign policy. Twenty years ago Congress undertook an examination of the broader issue of the treaty power through its consideration of the so-called Bricker amendment. One of the essential purposes of the Bricker amendment, in the various forms in which it was considered by Congress, was to place restrictions on the use of executive agreements as a means of contracting significant agreements with foreign powers in circumvention or violation of the treaty power of the Senate.

The present proposal, which was originally initiated as a modest alternative to the Bricker amendment, does not purport to resolve the underlying constitutional question of the Senate's treaty power. It may well be interpreted, however, as an invitation to further consideration of this critical constitutional issue. For the present, however, the committee strongly recommends the adoption of S. 596 as an effective means of dealing with the prior question of secrecy and of asserting the obligation of the executive to report its foreign commitments to Congress.

Mr. CASE. Mr. President, in the interest of saving time, because I know that Members of this body are already very much aware of the purpose and the purport of this bill, I shall be happy to yield any Senator who wishes to express his view.

Mr. ERVIN. Mr. President, I commend the distinguished Senator from New Jersey for bringing this measure to the Senate, and I commend the Committee on Foreign Relations for reporting it without amendment.

I think this is a bill which fills a need which has existed for a long time. There has been no remedy.

Under the Constitution the Senate most certainly has a voice on questions of foreign policy. It has been the custom of the President for a long time to make executive agreements which are never submitted for ratification, as treaties are submitted; these executive agreements have a very wide impact, and their consequences bear heavily on the doctrine of separation of powers.

For example, during the days of the Second World War a presidential agreement was made in the form of an executive agreement which resulted in taking property in New York State out from under the law of New York State, which had control over that property, and turning it over to Russia.

I think everyone who has studied this problem has been perplexed by the extent of executive agreements made by the President without knowledge of Congress and the fact that it is extremely difficult for Congress to obtain an analysis of those executive agreements or to know what is in them. Indeed, this fosters secrecy in Government.

Since the Supreme Court has held that, in some instances, executive agreements take precedence over State laws, this bill guarantees that Congress would be apprised of the existence of such executive agreement and their contents.

Mr. President, I think the Senator from New Jersey has made the Nation his debtor in proposing this particular legislative proposal.

The Subcommittee on Separation of Powers, which I am honored to chair, has long been interested in this area. If the executive branch of the Government is entirely free to determined what it will submit to the Senate in this area, then the constitutional provision requiring Senate participation in the treaty making field is no more than a price of dead parchment.

Mr. CASE. I thank the Senator from North Carolina sincerely for his contribution for his most generous reference to me. Mr. President, when you have on your side the strong right arm of the Senator from North Carolina, you have an ally—if I may mix two metaphors—of incalculable value.

Mr. President, I understand the yeas and nays have been ordered on the measure. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. CASE. I hope when the time comes to vote, which under the understanding already arrived at will be at 3:45 p.m., we may have a showing of unanimous interest and support by the Members of this body for this bill.

For a long time we have been understandably aware of the nature of the problems that have faced us and the world, but because of the enormous increase in the business of the Senate and each of its Members, we have let the important matter of dealing with foreign countries slip more and more from our hands exclusively to the hands of the executive.

I am not blaming the executive in any sense. If there is fault here I think it must rest squarely on our shoulders in the Senate.

When there is a vacuum the President—and not particularly this President but all Presidents—have tended increasingly to take unto themselves what now has almost seemed to be absolute authority in the field of international affairs. The President must be the prime mover in those areas, but the Senate's duty of advice and consent, and not only with respect to formal treaties, or just with respect to ambassadors and other officers, but also all other areas, must be maintained if we are to have sound relations.

I see the Senator from New York on his feet. He has been most helpful in this matter. I now yield to him.

Mr. JAVITS. I thank the Senator. I wish to inquire of the Senator as to the balance in numbers as between executive agreements and treaties so far as the United States is concerned. In other words, how large a problem are we dealing with here in quantity?

Mr. CASE. If the Senator will indulge me for just a moment, that information is here.

Mr. JAVITS. I think there is a ratio of something like 4 to 1.

Mr. CASE. It is over 3. Yes; I think the Senator is correct. It is 4 to 1. The interesting thing about it is that some of the most important things that have been done in recent years have been done by executive agreement, and some of the more routine and simple things have been sent to us as treaties.

Mr. JAVITS. The second point which bears on the answer the Senator just made is this. Is there any difference, as the Senator finds it, between a commitment which the United States makes by a treaty and the commitment the United States makes by executive agreement and as respects the other party? It may make a difference and often does make a difference as to our support, but what about the other party? Does not the other party in every case assume that if the President of the United States made an agreement, that is it, and the United States is bound?

Mr. CASE. I am sure the other party does, although sophisticated diplomats understand the technicalities of our constitutional system. That is not the real point. The point is, what do people in other countries think about agreements our President has made.

Mr. JAVITS. But more profound, the President is making an executive agreement, which is a certification by him, that he can bind the country and does not need Congress; and the people in

other countries rely on the fact that it is a valid agreement; our President has given his word, it is a valid agreement, and he needs no further authority.

Mr. CASE. The Senator makes a good point. Carrying it further, the importance of that point in a direct sense is this: The people of this country and the Senate recognize that other countries do rely on agreements the President purports to make on the part of the Nation. There is great reluctance, because we are responsible people, to disturb that reliance.

Mr. JAVITS. Is there any way we have of saying, "No, Mr. President, this is not properly an executive agreement. It should be a treaty, or we should approve it in the Congress in some way," unless we know it has been made and what it is?

Mr. CASE. Of course, there is no way for us to know it has been made and what it is, until and unless the time comes for us to put some money into it, and then, unless we further abdicate our authority in that basic parliamentary field, we would have at least a technical right to withhold the funds, but not an actual right, in fact.

Mr. JAVITS. That is right.

Is it not true that there are literally hundreds of places in the world where the United States has forces?

Mr. CASE. That is correct.

Mr. JAVITS. And each one of those forces is a tripwire which could, under any construction, even under the War Powers Act, which has been reported to the floor, engender a reaction which could put American forces into hostilities? That is an extremely important matter, and yet it could happen under any one of these multilateral agreements?

Mr. CASE. That could happen, and, as the Senator knows, it has happened.

If I may advert to the matter of the War Powers Act, the Senator's initiative here in connection with the War Powers Act is in the same direction, for the same broad purpose, and I have been so happy to be associated with him in that particular.

Mr. JAVITS. I thank my colleague.

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

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

Mr. CASE. Mr. President, will the Senator from West Virginia yield me a little time, unless he wants to use it here now?

Mr. BYRD of West Virginia. Mr. President, I yield the Senator 5 minutes.

Mr. CASE. I promised to yield to the chairman of the committee and to the Senator from Texas (Mr. BENTSEN).

Mr. JAVITS. Mr. President, will the Senator yield me 30 seconds just to complete the thought?

Mr. CASE. I yield.

Mr. JAVITS. I think this is the day of open covenants openly arrived at. It has at last come. What the Senator is doing is implementing what is the new diplomacy. I strongly support that and hope the Senate will pass this bill.

Mr. CASE. I appreciate that. I would perhaps only qualify what the Senator has suggested in saying this is at least the day of open covenants. Whether they should be openly or privately arrived at is a matter of discussion.

Mr. JAVITS. I will accept that.

Mr. CASE. Mr. President, I yield now to the Senator from Arkansas.

Mr. FULBRIGHT. Mr. President, I wish to say that I support the bill. I congratulate the Senator from New Jersey for bringing it before the Senate.

For the purpose of the legislative record, I wanted to have a short colloquy with the Senator. This measure is not in any way intended to abrogate our authority to have submitted to us important matters as treaties. Is it? Perhaps the Senator referred to it before in his colloquy.

Mr. CASE. Only by implication. I am glad to have it made explicit.

Mr. FULBRIGHT. We hear stories and reports. It was recently reported, for example, in the recent exchange with regard to Vietnam—and I have no idea of the validity of it—that the President was thinking of offering a large sum, in the neighborhood of $7 billion, for reconstruction of Vietnam. The Senator would agree that anything of that consequence, whether it be money or the stationing of troops, or anything like that, should not be handled by executive agreement, but should be submitted to the Senate as a treaty. Is that correct?

Mr. CASE. The Senator is correct.

Mr. FULBRIGHT. The Senator may recall recently a report in which there was a move for an agreement for the establishment of a base in the Persian Gulf. The Senator agrees that should be a treaty. Does he not?

Mr. CASE. The Senator is correct.

Mr. FULBRIGHT. I agree with the Senator completely. I wanted to make it clear that because we passed this bill, which I support, that in no way gives validity to such agreements, which I agree with the Senator from New Jersey should be treaties, if we are to have any respect for the true meaning of the Constitution. The Constitution did not anticipate that matters of this importance should be done secretly by executive agreement.

I know the Senator agrees with that. I wanted to emphasize that for fear that, upon the passage of this bill, there will be those who will say, "Well, the Senate has gone on record as endorsing any executive agreement as valid so long as it is reported to the Senate within 60 days."

That is not what the Constitution provided. It provided that the Senate should have the opportunity to express its views and to reject or approve such a treaty when it was submitted.

Mr. CASE. That is correct.

Mr. FULBRIGHT. I wanted to be careful on this point. I have had a little hesitancy about it. It is a step forward in the right direction. It is not unlike reservations I have, again not because I am against the bill, to the bill on war powers of the Senator from New York, in which certain specifications have seemed to me to be subject to the possible interpretation that it authorizes the President to take this action, or is an inducement to him, whereas I do not think that is its real purpose. We are really trying to restrict him; we are not trying to broaden the power. I know the Senator from New York did not intend that.

It may be that my interpretation is not the most logical one, although I felt it was. In this case I think the Senator from New Jersey is quite in order. I think he has done a very fine thing in bringing this measure to the Senate. I shall support it, but I did want to make that point clear.

Mr. CASE. I am glad the Senator did, because it is completely in accord with my own view of the matter. In fact, to have knowledge of and copies of all agreements would make it possible for us to decide whether or not particular agreements should come before us as treaties. We can deal with that question, and we do not estop ourselves by getting copies of the agreements.

Mr. FULBRIGHT. That is right. So often the problem is that once it has been made and accepted, we have not been able to undo it. The only way we can do anything about it is perhaps through a limitation on an appropriation bill, or to refuse to implement it. That is a very drastic remedy, and I doubt that we would be able to muster the votes to do it. We have tried to do it before. It is not an orderly way to do business. That is the great weakness if an executive chooses to ignore us.

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

Mr. FULBRIGHT. I thank the Senator very much.

Mr. CASE. Mr. President, if I may have 2 minutes more so that I may yield to the Senator from Texas, I would appreciate it.

Mr. BYRD of West Virginia. Mr. President, if the Senator will yield, I will allot my remaining time to the Senator from Texas, if the Senator from New Jersey does not object.

Mr. CASE. The Senator from New Jersey would not be able to object, but even if he were, he would not object.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I rise in support of and as a cosponsor of the piece of legislation submitted by the Senator from New Jersey, S. 596, a measure which I believe has far greater significance than its simply stated objective of requiring that the Executive communicate with Congress.

Mr. President, upon my return, to Congress approximately 1 year ago, I was amazed at the extent to which relations between the executive branch and the Congress had regressed during the 16 years of my absence. It is particularly within the realm of foreign policy that I have noticed a great and unhealthy gap in the communications system between the White House and Capitol Hill.

We are all familiar with the long list of foreign policy goals and decisions which Congress has found out about after the fact—and too frequently not from the executive but from other sources instead. This is a condition which must not be permitted to continue if we are to retain the confidence of the people in their Government and in the historic balances of their Constitution.

It is not my purpose here to criticize the Executive's conduct of foreign policy. In general I support the administration's efforts to end the Vietnam war, to open communication with China, and to reach arms agreements with Russia. My purpose here is to seek reaffirmation of congressional powers, for when Congress reaffirms its powers, it also confirms its responsiveness to the American people. The U.S. Congress has the constitutionally derived privilege, indeed obligation, to share in the foreign policymaking process. According to the law of the land, Congress is an equal partner with the executive branch. As an equal partner, and as the elected representative body of the people, it is entitled to a voice in governing this country and in this country's foreign commitments.

The Founding Fathers wrote into the Constitution a well-known balance between the executive, the legislative, and the judiciary. That balance is being increasingly usurped by an Executive which is constantly appropriating unto itself the foreign policy function it must, by law, share with the Congress.

The guidelines for checks and balances as set forth under the Constitution are not self-perpetuating, for they often run contrary to human emotions, such as the desire for power. Men who achieve the Presidency are usually self-confident, strong, and impatient individuals, reluctant to share power or decisionmaking with anyone else.

As a President, it is easy to rationalize and justify a course of action which leaves the decision process and reporting only to yourself and a self-appointed inner court of courtiers. Why risk or subject such a carefully nurtured and orchestrated agreement which has already been argued out with an adversary country to the possible further criticism and evaluation of a portion of one's government, not completely subject to one's own will? So it is also with those around a President, who certainly are not eager to have their counsel to the President questioned by a source to which they owe no allegiance. And so goes each variance and tilting of the balance of power. Each variance becomes the precedent for the next and further distorts the constitutional guidelines, until finally the current model of a balanced government looks as though one had badly tilted the original. But I blame not just the executive branch, for the Congress is equally to blame.

Too often in recent years Congress has taken a subordinate role to both the executive and the judiciary, a role contrary to the balance of powers envisioned by those who wrote the Constitution. It is not just that the executive has decided to reach out and take these powers, or that the judiciary branch has moved too much into the legislative realm. Part of the reason for the loss of these powers is congressional inaction. Congress itself must share the blame for its dwindling powers for in recent years it has permitted something of a vacuum to develop by its own inactivity and inattention, and the executive branch and the courts have moved to fill that void.

It is high time that the elected body given a share of foreign policymaking powers under the Constitution—the body consisting of elected representatives most directly responsible and responsive to the people and thus closest to control by the people—reasserts itself as an equal partner with the President.

And we must go further than just utilizing the power of the purse strings, the authority of appropriation. Because of the loss of full participation in the making of foreign policy, the Congress has become almost solely dependent on the appropriation process as a vehicle in making its voice heard. In fact, because of the reaction of Congress in some instances to learning of the secrecy and the usurpation of its own prerogatives by the President, Congress has reacted too strongly through powers of the purse. This, at times, has been less than contributory to sound policy. If the Congress rightly shares in the development of programs and policy direction, both domestically and foreign, there will be less of that purse string reaction.

Let me stress, Mr. President, that we in Congress have no constitutional authority in the conduct of foreign affairs; that is, the President's province, and we should not seek to weaken that constitutional power. We must, however, insist on the restoration of constitutional authority of the Congress to share in the formulation of that policy. I want to make that distinction and to insist that the theory apply as the Constitution intends.

I want to emphasize the fact that, in this bill, the Congress does not seek to weaken the President's foreign policymaking powers; rather we simply want to reassert the balance specified in the Constitution. Moreover, as was brought out during the hearings on this legislation, this bill does not destroy Presidential powers, it reaffirms them.

One of the important purposes of this legislation is to make the American people aware of the directions our foreign policy is taking so that we are not caught unaware of shifting trends, and so that we do not find ourselves in a situation, as the Senator from New Jersey has pointed out, in which a President believes he has to take unsupported action—unsupported because the Congress and the people had not been informed of earlier decisions and agreements. We do not want to tie the President's hands in his efforts to engage in foreign policymaking. We want the President to be free to negotiate the agreements he determines in the best interests of the United States. That, I reiterate, is his constitutional prerogative. We are merely asking that he inform the Congress, so we may intelligently perform our function as well.

How can a President hope for a restoration of bipartisan support for foreign policy if one partner to the policy is unaware of secret agreements upon which he justifies a policy which otherwise might appear to be not in the best interests of our country? Congress cannot be put in a position of accepting on blind trust and faith the admonition that a chief executive, or his aide, shielded by executive privilege, is somehow omniscient and omnipotent and always knows best. The judgments of Congress will only be as good as the information on which they are based and to withhold vital information essential to the decision process will result in bad legislation.

At issue, Mr. President, is the Constitution and the powers that the Constitution has allotted to the legislative branch. We must not continue to sit idly by and watch those powers being whittled away by the executive and the courts. The Congress has a responsibility to the people to legislate wisely. This cannot be done if the Congress is not informed. This measure in no way challenges the authority of the President. Rather it merely facilitates the flow of information to the Congress as a whole, or in certain cases, solely to the foreign affairs committees. It would not impede the President's ability to conclude executive agreements. It does not hamper the executive in the free negotiation of these agreements. Rather it reaffirms the constitutional powers of Congress, as the elected representatives of the people, in the policymaking process.

The first step in restoring this vital responsibility of Congress is to require, by law, better communication between the Executive and the Congress. The opening of information to the public, where it is not damaging to the national interest, and to those designated by Congress to fully scrutinize secret agreements where it is determined such is in the national interest, is the first small step toward restoration of congressional equality. There should be the fullest possible public scrutiny of foreign agreements, and the decisions which determine the direction the Nation is going in foreign policy. I submit, Mr. President, that those parties representing the United States in negotiations will be even more diligent in obtaining the best possible deal for our country if they know the agreement will be subjected to the crucible of public debate, or at least the scrutiny of the Congress. This is a nation and a Government responsible to the people, and the people must participate if we are to expect them to believe their Government and retain confidence in it.

The Executive has moved more and more under the cloak of secrecy, not only for the protection of national interest, but also too often secrecy for the sake of protection against criticism or examination of decisions by the constitutionally coequal Congress.

We hear the argument that those in Congress cannot be trusted with foreign policy secrets. I say "absurd."

It has been demonstrated again and again that even the most sensitive information frequently turns up in public print before Congress is aware of the facts, and I refer to some of the "papers" which have been much in the news over the past few months. I do not condone the revelation of secrets; in fact, those who leaked them from positions of responsibility in Government should be made to answer to the laws. The point is, the possibility of secrets becoming public knowledge as pretext for preventing conferring with Congress is just not valid. Secrecy is too often used s a lame ex-

cuse for failing to share information with Congress.

During the course of negotiations over an executive agreement, so many groups are involved in working out the language of the agreement that one wonders why the circle of those informed cannot be extended to include the Houses of Congress, or at least the select committees dealing with foreign relations. Is Congress to be less trusted than the Rand Corp., Dr. Ellsberg, the myriad of typists and clerks who document, type, and file such reports? Would the President prefer to trust the many staff members of the foreign government who participate in the drafting of such an agreement and owe no allegiance to this country? Does the administration feel that Senators and Congressmen are any less trustworthy than its own staff which, I might add, has been responsible for a number of leaks recently, including some from the most sacrosanct of secret groups, the National Security Council? Is it too much to ask that as the Xerox machine impersonally disgorges the copies, somewhere on that distribution list be found the words "Congress of the United States"? the price paid for possible loss of secrecy is more than compensated for by the realining of our system of checks and balances and restoration of confidence.

This whole question, certainly, has been too long neglected. I urge the Senate's support for this much-needed bill which is a small step toward rectifying our time-honored and proven system of governmental checks and balances.

It is imperative that we reaffirm the Congress role in the foreign policymaking process and thus strengthen the public's confidence in the ability of the Congress to legislate wisely and on a fully informed basis. We must restore to the people of this Nation the feeling that they know of the commitments their Government has made in their name.

Mr. President, I yield the remainder of my time to the distinguished Senator from New Jersey.

Mr. CASE. Mr. President, I thank the Senator from Texas for his generosity in yielding the remainder of his time, and also wish to express my deep appreciation of the remarks he has made. They are very sound, and I am sure will have the profound effect upon our colleagues that they should have, on their own merits.

I am happy to yield 1 minute to the Senator from Maryland.

Mr. MATHIAS. Mr. President, I appreciate the Senator giving me time to comment very briefly on this bill, which is the result of the distillation of his own experience and his own observation of events within our Nation and in the world over a long period of time.

I think clearly one of the loopholes that has developed over the course of time in the constitutional procedure by which the people of the United States are given an organic part in foreign policy through the provision that the Senate must ratify treaties is the fact that there are now all sorts of international agreements which are given other names than treaties; and while this may appear to be a semantic difference to the layman, it becomes a very important difference to those who are engaged in keeping track of foreign policy in the democratic process.

What the Senator from New Jersey has proposed here, and what is, I think, eminently practical and very necessary, is that the right of the people in our democratic representative system be preserved in the area of foreign policy. That is what this bill would do, and I am very happy to support it.

Mr. CASE. I thank my colleague for his very pertinent comment and his support, which I think reflects, as far as I can tell, the unanimous view of the Members of this body and those whose attention has been directed to the problem.

The PRESIDING OFFICER (Mr. BEALL). All remaining time having expired, the question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. Moss), the Senator from Maine (Mr. MUSKIE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), and the Senator from Minnesota (Mr. MONDALE) are necessarily absent.

I further announce that the Senator from Georgia (Mr. TALMADGE) and the Senator from Massachusetts (Mr. KENNEDY) are absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN) and the Senator from Iowa (Mr. HUGHES) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 81, nays 0, as follows:

[No. 48 Leg.]

YEAS—81

Aiken	Church	Hart
Allen	Cook	Hatfield
Allott	Cooper	Hollings
Baker	Cotton	Hruska
Bayh	Cranston	Inouye
Beall	Curtis	Javits
Bellmon	Dole	Jordan, N.C.
Bennett	Dominick	Jordan, Idaho
Bentsen	Eagleton	Long
Bible	Eastland	Magnuson
Boggs	Ellender	Mansfield
Brooke	Ervin	Mathias
Burdick	Fulbright	McClellan
Byrd, Va.	Gambrell	McGee
Byrd, W. Va.	Goldwater	McIntyre
Cannon	Griffin	Metcalf
Case	Gurney	Miller
Chiles	Hansen	Montoya
Nelson	Roth	Stevens
Packwood	Saxbe	Stevenson
Pastore	Schweiker	Symington
Pearson	Scott	Thurmond
Pell	Smith	Tower
Percy	Sparkman	Tunney
Proxmire	Spong	Weicker
Randolph	Stafford	Williams
Ribicoff	Stennis	Young

NAYS—0

NOT VOTING—19

Anderson	Hartke	Moss
Brock	Hughes	Mundt
Buckley	Humphrey	Muskie
Fannin	Jackson	Taft
Fong	Kennedy	Talmadge
Gravel	McGovern	
Harris	Mondale	

So the bill (S. 596) was passed, as follows:

S. 596

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 1, United States Code, is amended by inserting after section 112a the following new section:

"§ 112b. United States international agreements; transmission to Congress

"The Secretary of State shall transmit to the Congress the text of any international agreement, other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President."

SEC. 2. The analysis of chapter 2 of title 1, United States Code, is amended by inserting immediately between items 112a and 113 the following:

"112b. United States international agreements; transmission to Congress."

Mr. HRUSKA subsequently said:

Mr. President, it was with some reluctance that I voted in the affirmative in the unanimous vote on S. 596 which has just occurred. S. 596 is the bill to require that international agreements other than treaties hereafter entered into by the United States be transmitted to Congress within 60 days after the execution thereof.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of that bill from line 5 on page 1 to line 10 on page 2.

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

"§ 112b. United States international agreements; transmission to Congress

"The Secretary of State shall transmit to the Congress the text of any international agreement, other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate in-

junction of secrecy to be removed only upon due notice from the President."

Mr. HRUSKA. Mr. President, the executive branch, both in its letter to the Foreign Relations Committee commenting on S. 596 and also in the testimony of the legal adviser of the Department of State, has emphasized its full agreement with the general purpose of this bill—to insure that the Congress is informed promptly of the conclusion by the United States of all new international agreements about which the Congress needs to know, if it is to carry out properly its constitutional responsibilities. In its testimony before the committee the administration has emphasized its recognition of the needs of Congress to be informed of agreements with foreign powers and the desirability of mutual cooperation and accommodation in this respect.

At the same time, the administration emphasized its view that the provision of a reliable flow of information to the Congress can be made without this legislation. The administration's witness stated to the committee that the administration believed practical arrangements could be worked out to achieve the end sought by the legislation.

The administration view that such arrangements could be worked out was not accepted by the committee in its report. Certainly it would appear desirable before this legislation is passed to discuss with the administration the possibility of arrangements which would make this legislation unnecessary.

Mr. President, this matter was further discussed in the hearings before the Committee on Foreign Relations. I read from the testimony of John R. Stevenson of the State Department. The Senator from Alabama (Mr. SPARKMAN) was presiding.

Mr. STEVENSON. Mr. Chairman——

Senator SPARKMAN. May I say I realize you did, you discuss certain sensitive agreements, and you point out the fact that Senator CASE recognizes that in the bill that he has drafted. How would that be handled?

Mr. STEVENSON. Mr. Chairman, to review briefly some of the ground I have covered, at the present time the vast bulk of the agreements other than treaties are published and are transmitted to Congress through the regular procedures from the Government Printing Office.

Senator SPARKMAN. I realize that.

Mr. STEVENSON. So it is only the classified agreements that raise a problem.

With respect to those agreements, we would like to discuss procedures with the committee. Now, the bill, as I understand it, would contemplate that in all cases these agreements would come to the two committees as a whole, and would be retained by the committee. In the past we have had problems involving particularly sensitive agreements which we have worked out in a number of different ways. In some cases there would be a briefing with respect to the subject matter of the agreement. In other cases the agreement could be shown to several interested members of the committee but not permanently retained by the committee.

Senator SPARKMAN. That would be a matter to be worked out.

Mr. STEVENSON. We don't have any specific proposal at this time, but I think our feeling is there is a broader range of possibilities than those contemplated in this legislation.

Mr. President, it would be my hope that when the other body considers this matter, the broader possibilities for handling this problem will be explored.

I notice in the report, on page 2, the following:

Conceding that in the past they (the Congress) have not been informed on a current basis but only ad hoc some years later, Mr. Stevenson concluded nonetheless that "we are dealing with a question of practical arrangement, not with a question of right or authority which would in any way be altered by statute."

I presume that is a reference, perhaps a little delicate, and not explicit on the surface, to the doctrine of the separation of powers, and whether there is danger that we could invade the doctrine of the separation of powers which applies to some aspects of the executive department's functioning. That is one aspect that very likely should be explored further.

The second one, frankly, is that the efficacy of any steps taken to insure secrecy in the committee would be highly suspect. The bill calls for the filing with the committee of these agreements "under an appropriate injunction of secrecy to be removed only upon due notice from the President."

Anyone who has served in the Congress any small number of years—they do not have to be great in number—knows there is very little assurance that secrecy will prevail. In fact, the opposite is true. Here we would be dealing with the number of those serving on the committee in this body and also with the larger number who are in the relevant committee in the other body. There would be no assurance that the secrecy would be inviolably kept, and if it is a particularly sensitive executive agreement, that might spell trouble for this country.

If there are other ways—and Mr. STEVENSON seems to think there would be other ways—it might be well to take that into consideration.

I voted for the bill. I voted for it reluctantly, because it was called up somewhat unexpectedly, and by the time I had eaten my very modest lunch, following a 4 hour spell here on the floor, the process of voting was already going on. I do not complain about that, but I did feel that this would be a good place to insert a few references to some of the real issues involved. I am hopeful that these remarks may serve also as an indicator to the other body, when it does consider the measure just passed, that the items to which I have referred should be given due consideration.

I yield the floor.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER (Mr. (BEALL). Under the previous order, the Senate will now return to the consideration of the unfinished business, which the clerk will state.

The assistant legislative clerk read as follows: A bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. BYRD of West Virginia. Mr. President, I take the floor to announce that there will be no additional rollcall votes today.

I yield to the distinguished senior Senator from North Caronila (Mr. ERVIN), so that he may lay before the Senate an amendment and make it the pending question for consideration on tomorrow.

Mr. ERVIN. Mr. President, on behalf of the distinguished Senator from Alabama (Mr. ALLEN) and myself, I call up amendment No. 888 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 33, insert the following between line 10 and line 11:

"(5) In subsection (f), change the period at the end of the subsection to a colon, and add thereafter the following words:

"'*Provided, however,* That the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to advise him in respect to the exercise of the constitutional or legal powers of his office.'."

Renumber section (5) as (6).

Mr. BYRD of West Virginia. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

ORDER FOR ADJOURNMENT UNTIL TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR PERCY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that tomorrow, after the two leaders have been recognized under the standing order, the distinguished Senator from Illinois (Mr. PERCY) be recognized for not to exceed 15 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the Senator from Illinois (Mr. PERCY) tomorrow there be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes each, and that at the conclusion of routine morning business the

Chair lay before the Senate the unfinished business.

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent—and I have cleared this request with the distinguished manager of the bill (Mr. WILLIAMS), the distinguished author of the amendment (Mr. ERVIN), and the distinguished Senator from New York (Mr. JAVITS)—that time on the pending amendment, No. 888, offered by Mr. ERVIN, be limited to 2 hours; that the time on the amendment begin to run tomorrow at the time the Chair lays before the Senate the unfinished business; that the time on the amendment be equally divided between the mover of the amendment (Mr. ERVIN) and the manager of the bill (Mr. WILLIAMS); and that time on any amendment to the amendment, debatable motion, appeal, or point of order be limited to 20 minutes, to be equally divided between the mover of such proposal and the manager of the bill.

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

Mr. BYRD of West Virginia. Is it the intention of the distinguished Senator from North Carolina to ask for the yeas and nays tomorrow?

Mr. ERVIN. May I inquire what time the Senate will convene tomorrow?

Mr. BYRD of West Virginia. At 12 o'clock.

Mr. ERVIN. The reason I was asking, I had a hearing scheduled for 10 o'clock.

Mr. President, I do not care to debate this question this afternoon, except to make one or two observations.

This is an exceedingly important amendment. The bill defines a State and a political subdivision of a State as employers for the first time in the history of legislation of this kind. It defines an employee as one who is employed by an employer. The dictionary states that any person or concern which employs another, usually for wages or a salary, is an employer. Under these provisions, no one is excepted. In other words, the bill is broad enough in its present form to cover Governors of States, State supreme court justices, State legislators, and so forth.

The report states:

> A question was raised in committee concerning the application of title VII in the case of a Governor whose cabinet appointees or close personal aides are drawn from one political party. The committee's intention is that nothing in the bill shall be interpreted to prohibit such appointments on the basis of discrimination on account of race, color, religion, sex, or national origin. That intention is reflected in section 703(h) and 706(w) of the law.

In other words, this would give the Federal courts jurisdiction to inquire as to what motive a Governor had in selecting men for his cabinet who would give him advice on his constitutional and legal duties, on if a Governor was actuated in any extent in the selection of an adviser or if the people were actuated in any extent in the election of a public official, so that the Commission could come in and remove that public official from office or that adviser from office and dictate who should be employed in his place.

I respectfully submit that that is going too far, for Congress to empower an Executive agency at the Federal level to tell the Governor of his State, or the people for that matter, whom they can elect Governor, or Supreme Court Justice, or State legislator, or what officials shall be selected to advise the Governor as to his constitutional and legal duties.

Mr. President, it is absurd for a Federal agency to be able to say to a State who its Governor, State officials, or advisers shall be. I respectfully suggest that if Congress is not going to make itself ridiculous, this amendment should be agreed to.

We will argue the amendment more tomorrow.

Mr. METCALF. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I am happy to yield to my good friend from Montana.

Mr. METCALF. Once upon a time, we had a Postmaster General who was a great political adviser to the President. Jim Farley was such an example.

Today, we have in the Department of Justice an Attorney General who is leaving to run a political campaign for his President. He first becomes Attorney General and now he leaves it.

What happens in that sort of situation?

Mr. ERVIN. If that was done at the State level, and the attorney general was an appointee of the Governor, EEOC could come in and tell the Governor that he could not have that attorney general to advise him on the law, that he would have to take someone the EEOC picked out instead.

Mr. METCALF. How could we keep such an Attorney General who comes in and says, "Well, I am going to be Attorney General for awhile," but when the next election campaign comes up, he says, "I am going back into campaigning operations." How can we prevent that?

Mr. ERVIN. We cannot prevent anything at the State level. The EEOC——

Mr. METCALF. I am trying to prevent something at the Federal level.

Mr. ERVIN. In the old days, I thought that a Postmaster General was the appropriate person to advise the President, because he did not have anything else to do except to read the Postal Guide.

Mr. METCALF. We had a lot of appointments but——

Mr. ERVIN. This bill does not deal with it at the Federal level. It deals with it at the State level.

Mr. METCALF. I was wondering what happens when we have an Attorney General who comes in at the Federal level, after he has been working at a campaign level and gets appointed Attorney General, and then after 2½ or 3 years he moves it back into his campaign.

Mr. ERVIN. Mr. President, I am trying to get for the Governor of a State the same authority to pick out his attorney general as the President has to pick out his Attorney General or campaign manager.

Mr. WILLIAMS. Mr. President, I should like to ask the Senator one or two questions just to see if there is a way to describe the scope and the limits of the amendment. Certainly it is clear that an elected official at the State or municipal level should not be covered in any way by this bill as an employee.

Mr. ERVIN. The Senator is correct. However, I feel that he is covered now.

Mr. WILLIAMS. It says "as an employee." Frankly, I do not understand the terminology. It says that the term "employee" shall not include any person elected to a public office in a State or political subdivision of any State by the qualified voters thereof.

Mr. ERVIN. Mr. President, under the Civil Rights Act of 1964, an employee is defined in substance as one who is employed by an employer. This is just to put an exception to that provision and make it clear that the term employee is not to be construed as including an elected official or a person chosen by the elected official to advise him as to his constitutional and legal duties.

I think that the point the Senator is driving at is that this is narrowly drawn to make certain that the only persons covered by the bill at a State or local level are elected officials and the people who advise them as to their constitutional and legal powers. It would leave covered by the bill those people who merely carry out the directives.

It would only exclude elected officials and those who give them advice as to how they should carry out their legal and constitutional duties, and not those who actually carry them out as administrative officials.

Mr. WILLIAMS. It would certainly be the Governor's attorney general, for example.

Mr. ERVIN. The Senator is correct.

Mr. WILLIAMS. The Governor of the State of New Jersey has personal counsel. This would cover that particular officer or individual.

Mr. ERVIN. The Senator is correct. However, it would not exclude a person who merely carries out the advice which the elected official would receive from those who advise him.

Mr. WILLIAMS. Mr. President, in other words that would be the law clerks and the law assistants of the personal counsel. The Governor or mayor would not be included within this term.

Mr. ERVIN. We are getting into a rather gray area there.

Mr. WILLIAMS. I wanted to see if we could find where the clear area is and the ambiguous area.

Mr. ERVIN. They would be excluded from this exclusion or this exception, because the only person excluded besides the elected official is the person who advises him. I chose that word advisedly. It would be the person who would advise him in regard to his legal or constitutional duties. It would not just be a law

clerk. The Attorney General picks his own employees.

Mr. WILLIAMS. Mr. President, I have an instinctively favorable reaction to this particular exemption or exclusion under the law. However, I am glad that we are going until tomorrow, because some of the ambiguity can be worked out before I commit myself to it.

Mr. ERVIN. Mr. President, I really think that makes a bad bill a little less obnoxious, because I do not think the author of this bill ever intended to cover elected officials, those elected by the duly qualified voters. However, I fear that they have covered them by the breadth of the language.

In my own county we have a board of commissioners appointed by the people. They run the county affairs. They choose for themselves a legal adviser, a county attorney. I think they ought to be allowed to choose that attorney without any restrictions whatsoever, because a person ought to know who he relies on for advice as to the duties of his office. This would exclude the attorney, but not any other Government or county official, such as clerks or secretaries or people like that.

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

Mr. ERVIN. I yield.

Mr. JAVITS. Mr. President, I would like to point out for the RECORD that we have said at page 11 of the report:

> A question was raised in the Committee concerning the application of Title VII in the case of a Governor whose cabinet appointees and close personal aides are drawn from one political party. The Committee's intention is that nothing in this bill should be interpreted to prohibit such appointments unless they are based on discrimination because of race, color, religion, sex or national origin. That intention is reflected in sections 703(h) and 706(w) of the law.

Incidentally, that should be 706(g) and (w).

When we turn to that section, we find that the prohibition in the law has to do with one who was refused employment, suspended, or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin, or in violation of section 704.

We think it would not be unlawful to refuse employment or to discharge or suspend anyone on grounds other than discrimination. We had in mind that that was a protective provision.

However, if we look at the term "employee," which is found at the top of page 49 of the report, it says:

> The term "employee" means an individual employed by an employer.

So I think we have covered the person elected to office.

Mr. ERVIN. I cannot find it. I wish the Senator would point it out to me.

Mr. JAVITS. Well, we will examine it carefully. If we have not done so, we will. However, we have defined an employee as a person employed by an employer. I do not think that any elected public official is considered to be a person employed by an employer.

Mr. ERVIN. The first section strikes out the exclusion. All of that would make the State an employer. According to the definition just read, he would be employed by an employer, and the State is an employer and the Governor is employed by the State.

Mr. JAVITS. The operative word is "employee." And I do not believe that the courts construe an elected official as being employed by a State. However, we will check into it very carefully. I agree with the statement of the Senator from New Jersey. We will check this carefully overnight.

What disturbs me is the ambit of the words:

> Or any person chosen by such officer to advise him in respect to the exercise of the constitutional or legal powers of his office.

It seems to me that we have to look into the matter. When I was attorney general of New York, I had some 500 employees, some 200 of whom were lawyers and some 300 of whom were various functionaries, stenographers, subpena servers, researchers, and so forth.

I would like to have overnight to check into what would be the status of that rather large group of employees.

I realize that the Senator is seeking to confine it to the higher officials in a policymaking or policy advising capacity.

In all deference to the Senator and in the interest of everyone, whatever the decision is going to be, we should go carefully over this matter, as to whether the term "employee" really encompasses any elected official. I do not believe it does. We should go over the ambit of the exemption. I do not think there is any big argument about the first. If we want to put in words showing what we think it means, I would not have any quarrel about that.

I do think that the Senator will certainly expect to examine carefully how deep you go when you say "any person chosen by such officer to advise him in respect to the exercise of the constitutional or legal powers of his office."

I thank the Senator.

Mr. ERVIN. This is a question to which I am sure the Senator from New York and the Senator from New Jersey will give attention. I think this is a crucial question. I believe the bill in its present form is susceptible to an interpretation which would cover Governors. The Supreme Court has expressly held that a State is a group of free persons—not three but free people—occupying a certain territory and organized for the purpose of government under a written constitution. They could not elect a Governor under that wording.

I thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

REFERRAL OF S. 3183

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that a bill for the relief of Richard D. Hupman, introduced earlier today by the distinguished Senator from North Carolina (Mr. JORDAN), be referred to the Committee on Rules and Administration.

This has been cleared with the distinguished chairman of the Senate Committee on the Judiciary (Mr. EASTLAND) and with the distinguished ranking Republican member of that committee (Mr. HRUSKA).

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

UNANIMOUS-CONSENT AGREEMENT UNDER CLOTURE MOTION

Mr. BYRD of West Virginia. Mr. President, having been informed by the distinguished manager of the pending bill (Mr. WILLIAMS) that a motion to invoke cloture will be offered on Friday, the day after tomorrow, I am authorized by the majority leader to ask unanimous consent that time under the rule, on the motion to invoke cloture, begin running at 11:15 a.m. on Tuesday next.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the 1 hour of time under the rule, on the motion to invoke cloture on Tuesday next, be equally divided between and controlled by the distinguished Senator from North Carolina (Mr. ERVIN) and the distinguished manager of the bill (Mr. WILLIAMS).

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that all amendments to the bill which are at the desk at the time the mandatory quorum call under rule XXII begins on Tuesday next be considered qualified as having been read so as to meet the requirements of rule XXII.

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

Mr. GRIFFIN. Mr. President, will the distinguished majority whip yield?

Mr. BYRD of West Virginia. I yield.

Mr. GRIFFIN. With reference to all amendments at the desk at the time the quorum call being qualified, I always like to have it understood in the RECORD that that does not change the requirement that those amendments must be germane, if that is the understanding of the majority whip.

Mr. BYRD of West Virginia. May I say to the distinguished minority whip that that was my understanding and it was my intention. It was my intention that the request would go only to that requirement which deals with the reading of such amendments.

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. GRIFFIN. I thank the Senator.

HIGHER EDUCATION ACT—UNANIMOUS-CONSENT PROPOSAL

Mr. BYRD of West Virginia. Mr. President, I have been asked by the majority leader—in order to make certain technical changes which are necessary, but which will not alter in any sense what-

soever the basic understanding that was universal in the Chamber with respect to the agreement limiting time on the higher education bill of 1971—to make a unanimous-consent request. Again I say it does not alter the understanding which was expressed and made clear at the time the previous agreement was entered into last December.

The agreement on the higher education bill was with reference to S. 659. The majority leader wants the agreement to apply to the Senate committee substitute for the House amendment in the nature of a substitute for S. 659. It was the understanding that that was what it would apply to, inasmuch as S. 659 is not the measure which will be before the Senate. The majority leader also wants to make it clear that, in view of the fact that all amendments to the committee substitute will be amendments in the second degree, the 2-hour limitation should apply to such amendments, whereas the agreement at that time stated that with respect to amendments in the second degree, there would be only one-half hour on each such amendment. The 30-minute provision should be made to apply to perfecting amendments to the language of the committee substitute proposed to be stricken out by an amendment to the committee substitute.

Therefore, I ask unanimous consent, Mr. President, that the agreement which was entered into in December apply to the Senate committee substitute for the House amendment to S. 659 in the nature of a substitute; provided, however, that——

Mr. GRIFFIN. Mr. President, reserving the right to object, and I shall object at least temporarily, until I have an opportunity to study what the request involves, and so on, it comes to me without any advance information or consultation. Obviously it is a matter of importance to many Senators on both sides.

For the time being, I shall object.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BYRD of West Virginia. Mr. President, I shall not renew the request at this time, because I think the distinguished assistant Republican leader certainly is making a reasonable suggestion that he be given an opportunity to discuss this matter with the various Senators on his side of the aisle; and the request can be renewed at a later time, when there is a better understanding of the request.

Mr. GRIFFIN. I appreciate the statement by the majority whip and his understanding. I am sure that by tomorrow, if he wants to renew his request, he will be in a better position.

Mr. BYRD of West Virginia. I thank the distinguished Senator.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 12 o'clock meridian. After the two leaders have been recognized under the standing order, the distinguished Senator from Illinois (Mr. PERCY) will be recognized for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Chair will lay before the Senate the unfinished business.

The pending question will be on amendment No. 888, by the distinguished Senator from North Carolina (Mr. ERVIN). There is a time limitation of 2 hours on that amendment, with 20 minutes on any amendments thereto, debatable motions, points of order, or appeals. That may or may not be a rollcall vote. In any event, Senators may anticipate possible rollcall votes on that amendment and/or other amendments, motions, and so forth, during the afternoon of tomorrow.

As I have already indicated, the manager of the bill, the Senator from New Jersey (Mr. WILLIAMS), intends to offer on Friday a motion to invoke cloture; and the vote on the motion to invoke cloture will occur on Tuesday next, at about 12:25 or 12:30 p.m.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until 12 o'clock meridian tomorrow.

The motion was agreed to; and (at 4:54 p.m.) the Senate adjourned until tomorrow, Thursday, February 17, 1972, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate February 16, 1972:

U.S. DISTRICT COURTS

James L. Foreman, of Illinois, to be a U.S. district judge for the eastern district of Illinois vice William G. Juergens, retiring.

Howard David Hermansdorfer, of Kentucky, to be a U.S. district judge for the eastern district of Kentucky vice a new position created by Public Law 91–272, approved June 2, 1970.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Philip Birnbaum, of Maryland, to be an Assistant Administrator of the Agency for International Development, vice Ernest Stern, resigned.

IN THE ARMY

I nominate the following-named officer for reappointment in the active list of the Regular Army of the United States with grades as indicated, from the temporary disability retired list, under the provisions of title 10, United States Code, sections 1211 and 3447:

To be colonel, Regular Army, and brigadier general, Army of the United States

Brig. Gen. William David Tigertt, [redacted] Army of the United States (colonel, U.S. Army). He is presently serving under a recess appointment.

RICHARD NIXON.

IN THE NAVY

Vice Adm. Benedict J. Semmes, Jr., U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

IN THE MARINE CORPS

Gen. Raymond G. Davis, U.S. Marine Corps, when retired, to be placed on the retired list in the grade of general.

Lt. Gen. Earl E. Anderson, U.S. Marine Corps, for appointment to the grade of general while serving as Assistant Commandant of the Marine Corps in accordance with the provisions of title 10, U.S. Code, section 5202.

IN THE AIR FORCE

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.

LINE

Lieutenant colonel to colonel

Abston, Lester D., [redacted]
Barden, John H., [redacted]
Bartholomew, Rudolph D., [redacted]
Berry, Frank A., Jr., [redacted]
Campbell, Charles R., Jr., [redacted]
Chambers, Robert C., [redacted]
Combs, Andrew C., [redacted]
Cooper, Dewitt T., Jr., [redacted]
Cox, Richard, [redacted]
Duncan, Lyman C., Jr., [redacted]
Evans, Herman L., [redacted]
Even, Raymond J., [redacted]
Foster, William H., [redacted]
Graham, James C., [redacted]
Haggarty, Edward L., [redacted]
Hannon, Wesley, [redacted]
Heermans, William H., [redacted]
Hoade, Thomas F., [redacted]
Hoberg, Jerome N., [redacted]
Hollinger, Melvin W., [redacted]
Johnson, Robert A., Sr., [redacted]
Kilpatrick, James A., [redacted]
Kleinheinz, James E., [redacted]
Konopisos, James A., [redacted]
Larson, Wendell C., [redacted]
Lay, Richard I., Jr., [redacted]
Llenza, Orlando, [redacted]
Mason, George H., [redacted]
McHugo, John W., [redacted]
McMorries, George D., [redacted]
Montecalvo, Giuseppe, [redacted]
Nantz, Kenneth E., [redacted]
Paulson, Noel A., [redacted]
Penland, Roy S., [redacted]
Petit, James W., Jr., [redacted]
Purtill, Thomas J., [redacted]
Reid, Donald K., [redacted]
Renn, Robert E., [redacted]
Richards, Donald E., [redacted]
Rogers, Paul N., [redacted]
Rudolph, Harold W., [redacted]
Schroeder, Darrol G., [redacted]
Schutte, Warren G., [redacted]
Semonin, William J., Jr., [redacted]
Simpson, Richard J., [redacted]
Stewart, Howard A., [redacted]
Taft, Harold E., Jr., [redacted]
Taylor, John E., Jr., [redacted]
Thompson, Robert L., [redacted]
Thrailkill, Franklin E., [redacted]
Utermahlen, Donald C., [redacted]
Walls, Bobby E., [redacted]

MEDICAL CORPS

Hoye, Stephen, J., [redacted]
Rodwig Francis R., [redacted]
Sandrolini, James A., [redacted]
Skowron, Ralph A., [redacted]

NURSE CORPS

Wollert, Wanda M., [redacted]

LINE

Major to lieutenant colonel

Albin, Clyde E., xxx-xx-xxxx
Allison, Edgar L., Jr., xxx-xx-xxxx
Anderson, Francis B., xxx-xx-xxxx
Atchley, Jimmie O., xxx-xx-xxxx
Atkins, James H., xxx-xx-xxxx
Bailey, James T., xxx-xx-xxxx
Binsfield, Harvey D., xxx-xx-xxxx
Birk, William L., xxx-xx-xxxx
Blackwell, Kenneth G., xxx-xx-xxxx
Borsik, Philip D., xxx-xx-xxxx
Boyd, John H., xxx-xx-xxxx
Brown, John O., Jr., xxx-xx-xxxx
Buchholz, William F., xxx-xx-xxxx
Buck, Robert W., Jr., xxx-xx-xxxx
Cameron, Wheelock H., xxx-xx-xxxx
Carmack, Donald L., xxx-xx-xxxx
Castorena, Ramon B., xxx-xx-xxxx
Clifford, George E., Jr., xxx-xx-xxxx
Cole, Robert E., xxx-xx-xxxx
Cole, Richard L., xxx-xx-xxxx
Danielson, Andrew D., xxx-xx-xxxx
Dattolico, Christino, xxx-xx-xxxx
Davies, Charles P., Jr., xxx-xx-xxxx
Depperman, Robert E., xxx-xx-xxxx
Dooley, James H., Jr., xxx-xx-xxxx
Douglas, Dallas R., xxx-xx-xxxx
Dugas, Arthur L., xxx-xx-xxxx
Earl Kenneth R., xxx-xx-xxxx
Eastman, William D., Jr., xxx-xx-xxxx
Eckert, Charles L., Jr., xxx-xx-xxxx
Edwards, Kenneth D., xxx-xx-xxxx
Everling, Thomas J., Jr., xxx-xx-xxxx
Fascher, Valmah L., xxx-xx-xxxx
Field, James E., xxx-xx-xxxx
Gaines, Charles D., xxx-xx-xxxx
Garbe, John P., xxx-xx-xxxx
Geraci, Vincent C., xxx-xx-xxxx
Gilmer, Walter G., xxx-xx-xxxx
Goettsche, Lee R., Jr., xxx-xx-xxxx
Golding, John T., xxx-xx-xxxx
Good, Alan N., xxx-xx-xxxx
Goodwin, Arthur R., Jr., xxx-xx-xxxx
Grant, Thomas A., xxx-xx-xxxx
Hager, Ivan L., xxx-xx-xxxx
Hall, Richard E., xxx-xx-xxxx
Hamilton, John L., xxx-xx-xxxx
Hamilton, Richard H., xxx-xx-xxxx
Hanson, Rodney M., xxx-xx-xxxx
Harris, Herman J., xxx-xx-xxxx
Headley, Leo M., Jr., xxx-xx-xxxx
Heaps, Leon H., xxx-xx-xxxx
Heithman, Richard E., xxx-xx-xxxx
Henley, George R., xxx-xx-xxxx
Higgins, William H., xxx-xx-xxxx
Hohenberger, Raymond H., xxx-xx-xxxx
Hopkins, Raymond D., xxx-xx-xxxx
Horstman, Charles R., xxx-xx-xxxx
Howard, Charles F., Jr., xxx-xx-xxxx
Itsines, Nick, xxx-xx-xxxx
Janicki, Bernard A., xxx-xx-xxxx
Jordan, Herbert E., xxx-xx-xxxx
Kaminski, Paul P., xxx-xx-xxxx
Kedroske, Marvin C., xxx-xx-xxxx
Kenney, Felton D., xxx-xx-xxxx
Kessler, Richard L., xxx-xx-xxxx
Kirchner, John P., xxx-xx-xxxx
Korzan, Darold J., xxx-xx-xxxx
Krebs, Roland C., xxx-xx-xxxx
Kunz, Delbert T., xxx-xx-xxxx
Lamoreaux, James E., xxx-xx-xxxx
Leaptrot, Brinson N., xxx-xx-xxxx
Lefebvre, Donald C., xxx-xx-xxxx
Leonard, William H., Jr., xxx-xx-xxxx
Linebaugh, Jimmy C., xxx-xx-xxxx
Livers, Francis D., Jr., xxx-xx-xxxx
Looney, Donald R., xxx-xx-xxxx
Lucas, Neil E., xxx-xx-xxxx
Marler, Charles R., xxx-xx-xxxx
Marquez, Jose P., xxx-xx-xxxx
Marshall, James E., xxx-xx-xxxx
Mathews, Henry M., xxx-xx-xxxx
Mau, John H., xxx-xx-xxxx
Mauer, Henry A., xxx-xx-xxxx
McDonald, Jack L., xxx-xx-xxxx
McGuire, Frances L., xxx-xx-xxxx
McLaughlin, Marcellus R., xxx-xx-xxxx
McNamara, Thomas D., xxx-xx-xxxx
Mercier, Fernand M., xxx-xx-xxxx
Murch, Thomas J., xxx-xx-xxxx
Muselmann, Clifford R., xxx-xx-xxxx
Nelson, Stanley F., xxx-xx-xxxx
Neufang, Richard K., xxx-xx-xxxx
Nisle, Arthur L., xxx-xx-xxxx
Norton, Fred I., Jr., xxx-xx-xxxx
Northup, Clayton H., xxx-xx-xxxx
O'Brien, Stephen B., xxx-xx-xxxx
Ott, Dennis H., xxx-xx-xxxx
Parker, Daniel R., xxx-xx-xxxx
Peach, Matthew H., xxx-xx-xxxx
Pedersen, Richard D., xxx-xx-xxxx
Phielix, James J., xxx-xx-xxxx
Popejoy, Russell F., xxx-xx-xxxx
Prentiss, Richard C., xxx-xx-xxxx
Raup, Karl A., xxx-xx-xxxx
Reese, Richard C., xxx-xx-xxxx
Reinschmidt, Albert L., xxx-xx-xxxx
Rickard, Russel, xxx-xx-xxxx
Roberts, George H., xxx-xx-xxxx
Roberts, William S., xxx-xx-xxxx
Rodriguez, Joseph R., xxx-xx-xxxx
Roe, Roland H., xxx-xx-xxxx
Rosanbalm, Robert D., xxx-xx-xxxx
Rumbo, Ralph C., xxx-xx-xxxx
Sachs, Sumner S., xxx-xx-xxxx
Sample, Walter E., xxx-xx-xxxx
Sargent, Galen B., xxx-xx-xxxx
Schnee, Frank W., xxx-xx-xxxx
Schroer, Louis J., xxx-xx-xxxx
Schwartz, Donald A., xxx-xx-xxxx
Shallcross, Harry C., xxx-xx-xxxx
Smith, Gene R., xxx-xx-xxxx
Snyder, Donald E., xxx-xx-xxxx
Stanley, Norman C., xxx-xx-xxxx
Starkman, Russell A., xxx-xx-xxxx
Steinke, Henry J., xxx-xx-xxxx
Stockett, Zack L., xxx-xx-xxxx
Strahan, Charles A., xxx-xx-xxxx
Suzanne, Jacques A., xxx-xx-xxxx
Taschioglou, Byron J., xxx-xx-xxxx
Vallone, John F., xxx-xx-xxxx
Vorhies, Marshall E., xxx-xx-xxxx
Warthling, Edward E., xxx-xx-xxxx
Waterhouse, Richard G., Jr., xxx-xx-xxxx
Wellman, Joseph D., xxx-xx-xxxx
Westphal, Eric J., xxx-xx-xxxx
Williams, Thomas E., xxx-xx-xxxx
Winn, Russell P., xxx-xx-xxxx
Wish, Joseph J., xxx-xx-xxxx
Yuill, John H., xxx-xx-xxxx
Yunge, Herbert H., xxx-xx-xxxx
Zulaski, Joseph F., xxx-xx-xxxx

CHAPLAINS

Cuthriell, William, xxx-xx-xxxx
Johnson, David H., xxx-xx-xxxx

MEDICAL CORPS

O'Dell, Stanley E., xxx-xx-xxxx

NURSE CORPS

Atkinson, Helen C., xxx-xx-xxxx
Bolterman, Phyllis, xxx-xx-xxxx
Brown, Patricia D., xxx-xx-xxxx
Carder, Bernice M., xxx-xx-xxxx
Dunn, Jane F., xxx-xx-xxxx
Pitt, Mary L., xxx-xx-xxxx

In the Marine Corps

The following-named officers of the Marine Corps for permanent appointment to the grade of chief warrant officer (W–4):

Robert M. Black	Samuel J. Jones
Talmadge Clark	Thomas E. Jordan
Robert L. Clay	Stephen M. Myorski
Kenneth L. Davis	Henry E. Noonkester
Edward J. Duerr	Lawrence Parretti
Roy K. Harris	Richard T. Powell, Jr.
Philip N. Healy, Jr.	Thomas F. Swearingen
William J. Hill	James O. Watson

The following-named officers of the Marine Corps for permanent appointment to the grade of chief warrant officer (W–3):

James M. Barnes	William L. Buck III
Timothy C. Bell	Kenneth F. Burris
William A. Biggers	Donald R. Cameron
Delmar G. Booze	James J. Castonguay
Norman D. Braden	Wayland D. Chavers
Shella R. Bray, Jr.	William J. Clancy, Jr.
Lionel H. Bridges	Jessie R. Clark
Edwin J. Brown	Jack N. Clow
Donald E. Collier	Paul O. McAvoy, Jr.
Roger J. Combs	Roger A. McIntosh
Allen D. Crosier	John L. Meyers
Ralph W. Deaver	Jacques L. Miller
Charles F. Denison, Jr.	Dorne A. Millis
Roland A. Desjarlais	Robert J. Mocny
James H. Divis	Richard C. Moran
Peter Dobon, Jr.	Charles L. Morrow
Paul J. Donley	William E. Muirhead
John Doyle	Richard A. Nailor
William E. Duke	Monte V. Nelson
Roger A. Essi	Donald D. Nimmow
Thomas E. Evans	Billy W. Owens
Gerald D. Fabricius	Porter G. Pallett
James P. Fleming	Charles D. Parker
Harry A. Florence, Jr.	Fred R. Parry
Billy R. Freeman	Leonard J. Patchin
Bernard C. Glinka	Dean C. Pedlar
Donald W. Gregory	George A. Pelletier
Glenn R. Hammond	Billy E. Perry
Robert H. Hanevik	Robert G. Pontillas
Herbert G. Hase.	Richard L. Porter
Charles H. Henderson, Jr.	Joseph C. Raymond
Guy M. Howard	Donald D. Redmond
Jack R. Hoy	Carroll J. Riley
Henderson B. Jones	Robert D. Rogers
William Kasten	Robert J. Romano
Robert E. Katz	Roger L. Runkle
Ronald R. Kendall	Arthur I. Swanson, Jr.
James J. Knocke	Gary R. Thompson
Donald C. Lanson	Charles G. True
William P. Lepore, Jr.	Morton Vaserberg
Willard R. Lewis	Alan E. Wickens
Robert L. Lord	Jack A. Wilder
Carl K. Lunn	Sydney M. Wire
Enrique L. Machado	William C. Wright
Harry B. Malnicof	Robert H. Yoder
Edmund J. Mazzei	David A. Zeferjohn
	James H. Zimmerman

The following-named officers of the Marine Corps for permanent appointment to the grade of chief warrant officer (W–2):

Ronald Achten	Rayborn S. Clifton, Jr.
Carmen Adams	Jose T. Coccovaldez
David S. Aldrich	James E. Collette
Robert E. Allinger, Jr.	Garnet E. Cope
James L. Allingham	Robert R. Corcoran
Constantine G. Ambrose	Jose N. Corderotorres, Jr.
Curtis E. Anderson	William B. Corley, Jr.
Joseph N. Anderson	Lazaro Corpus, Jr.
Russell P. Armstrong	James A. Cothran
James B. Ash	Harry S. Cotton
Allan K. Austin	William H. Cox
Glenn R. Avey	Hilton Craig, Jr.
Welles D. Bacon	Oscar E. Creech, Jr.
Wayne D. Bahr	Douglas J. Danley
Claude R. Baldwin, Jr.	Kenneth V. Davis
Illuminado Berrios, Jr.	Louis D. Dearman
Neal S. Bezoenik	Jesse A. Dobson
Robert L. Blake	Howard G. Dodd
Victor H. Bode	Charles J. Dotson
Gerald J. Bolick	Steven J. Draper
Robert W. Bostwick	Samuel E. Driggers
Henry C. Boucher, Jr.	Sidney B. Edwards
Lescoe R. Bourne	Robert D. Embesi
Frank E. Box	Robert R. Epps
Donald B. Braun	Riley S. Ethington
Francis W. Brewer, Jr.	Jack H. Evans
Bruce Brightwell	John E. Fales
Victor E. Browning, Jr.	Michael D. Fazio
Murray W. Bryant	Bobby L. Ferguson
Bernard C. Burke	Harold D. Ferguson
Thomas R. Burham	Charles L. Ferko
Harold D. Byerly	Roy A. Ferrell
William G. Byrne, Jr.	Nelson R. Fincher
Billy R. Campbell	Joe M. Floyd
Donald L. Caroway	Ronald R. Fraizer
Francis J. Carr	George M. Francis
Michael J. Carroll	Donald L. Galvin
Ray A. Casterline	William C. George
John D. Cauble, Jr.	Craig D. Gibbons
Robert J. Caulfield	Leon E. Gingras, Jr.
Barbara J. Chovanec	Robert L. Goller
Bartley W. Christian	Ellwood D. Gordon
Hershel G. Chronister	Edward B. Guckert
Owen D. Clark	Pedro Gutierrez
Michael J. Clarke	Arnold S. Hageman
George C. Cleveland	Gerald E. Hanscom

Donald L. Hanson
John A. Harris
Frank R. Hart
James E. Haskins
Joseph B. Hatfield
John D. Henry
Harold L. Henry
Donald L. Herpy
Herbert O. Hicks, Jr.
Francis A. Higginson
William A. Higgs, Jr.
Paul R. Hoffman
Julius B. Hopkins
Bobby E. Humeston
Edward W. Humphrey
Holland C. Hutchinson
Barton E. Immings
Lowell B. Jackson
Arthur L. Johnson
Ronald L. Jones
Gene C. Kamplain
Harold A. Keith
Joseph E. Kelly
Michael B. Kennedy
Carl E. King.
Thomas F. King, Jr.
Ray E. Kittilstved
Joseph Kochuba
Leroy A. Kramvik
George D. Krebs
Raymond L. Kunkle
William A. Kuykendall
Aurel E. Lafreniere
Donald A. Lane
Robert L. Laudun
Thomas L. Laws
Juan M. Lem
Donald C. Lewins
Babre Lewis
Donald R. Ladnier
Donald C. Long
Roger L. Lorenz
Gary L. Losey
Patrick J. Lynch
Jose Magallan
Paul L. Malone
John R. Marcucci
William T. Maroney III
Harold T. Martin
Jerry L. Massey
Aove E. Mattox
Roger L. Mauldin
Bryan M. McGill
James F. McLean
James R. Mcrae, Jr.
William D. Meadors III
Daniel E. Miller
Robert M. Miller
William F. Milton, Jr.
Eugene E. Montgomery
Earl F. Morris, Jr.
Thomas W. Morris
James Muschette, Jr.
Louis Myers
Ronald C. Newman
William G. Nickels
John A. Nowicki
Sam G. Ochoco
Jerry W. Odell
Joseph N. Parisi
Roger B. Peterson
Ronald J. Peterson
Jesse P. Pullin
Francis B. Quallen
Paul F. Quinn
Virgil G. Rhoads
Gordon A. Rice
Carl S. Richardson
Joseph F. Rizzo
Richard J. Roberts
Dorsey Robinson, Jr.
Charles R. Roden
Ramon Roman, Jr.
Robert A. Roquemore
Paul A. Rossano
James F. Ryan
Stephan C. Salamack
Dale F. Saunders
Peter B. Sawin
Eileen R. Scanlon
John L. Schell
Richard J. Schmidt
William F. Schrider
Walter R. Schuette
Thomas R. Sellers
Jimmie R. Shafer
Michael L. Shanklin
David F. Shewmake
William F. Shreve, Jr.
Edwin P. Simpson III
Theron Simpson, Jr.
Robert M. Skidmore
Lloyd L. Skinner
Thomas L. Slaughter
Francis C. Slavin, Jr.
Robert R. Sloan
Charles L. Smith
Alan J. Southard
Herbert B. Stafford
Patrick L. Stevens
John F. Stewart
Kimble H. Stoltz
Robert L. Strawser
Richard C. Stricklin
Robert R. Stutler
Bobby G. Taylor
Robert E. Taylor
Gary G. Thomas
Larry F. Vance
Robert L. Vincent
Kenneth E. Weadbrock
Jesse L. Webb
Ronald E. Webb
Gaines L. Willis
Joseph C. Wilson
Bruce M. Windsor, Jr.
Stanley G. Woinoski
James E. Woodruff, Jr.
James M. Thomas
Frank C. Towers
Terry N. Tracy
Louis G. Troutman
James A. Turner
Wayne D. Wildgrube
Clarence F. Williams
Gene R. Williams, Sr.
George E. Williams
Leroy Williams
Barbara A. Wynnyk
James J. Yantorn
Richard L. Yoerk
William C. Young
Kenneth P. Zrubek

HOUSE OF REPRESENTATIVES—*Wednesday, February 16, 1972*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

If any man will come after Me, let him deny himself, take up his cross and follow Me.—Matthew 16: 24.

O God, our Father, by whose mercy we have come to the beginning of another period of Lent, grant that we may enter it this day with humble and contrite hearts. Help us by self-denial and prayer to prepare our spirits for a deeper penitence, a greater faith, and a better life. Confirm us in our purpose to walk more sincerely in Thy ways and to be more earnest in our service to our country.

We pray for our President as he leaves for China. Grant unto him safety in his journey, wisdom in his conversations, firmness in his efforts for peace, and understanding in his concern for good will among the nations.

Lead us all into a closer fellowship with Thee that we may be made worthy of this day, adequate for our tasks, and ever ready to lead our people in the paths of peace: through Jesus Christ our Lord. 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 SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 1857. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 1893) entitled "An act to restore the golden eagle program to the Land and Water Conservation Fund Act, provide for an annual camping permit, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BIBLE, Mr. CHURCH, Mr. MOSS, Mr. ALLOTT, and Mr. HANSEN to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 2097) entitled "An act to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MCCLELLAN, Mr. RIBICOFF, Mr. METCALF, Mr. CHILES, Mr. PERCY, Mr. JAVITS, Mr. GURNEY, Mr. HUGHES, Mr. RANDOLPH, Mr. WILLIAMS, Mr. KENNEDY, Mr. MONDALE, Mr. CRANSTON, Mr. PACKWOOD, Mr. DOMINICK, and Mr. SCHWEIKER to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 3054. An act to amend the Manpower Development and Training Act of 1962.

NATIONAL DAY OF PRAYER FOR CAUSE OF WORLD PEACE

Mr. ARENDS. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 524) and ask unanimous consent for its immediate consideration.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 524

Whereas the American people share with all the peoples in the world an earnest desire for peace and the relaxation of tensions among nations; and

Whereas it is the policy of the United States to engage in negotiations rather than confrontations with other nations; and

Whereas on February 21, 1972, the President of the United States will begin a historic visit in the Peoples Republic of China to confer with that nation's leaders with the purpose of seeking more normal relations between the two countries and exchanging views on questions of mutual concern; and

Whereas the people of the United States hold the highest and most fervent hopes for the success of the President's mission: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress—

(1) That Monday, February 21, 1972, be commemorated as a day of united support for the President's efforts in pursuit of the relaxation of international tensions and an enduring and just peace;

(2) That the leaders of all nations and men of good will throughout the world be urged to devote all possible efforts to promote the cause of peace and international harmony as set forth in the preamble to the Charter of the United Nations;

(3) That the President designate Sunday, February 20, 1972, as a National Day of Prayer for the cause of world peace; and

(4) That copies of this resolution be sent to the Governors of the several States and be delivered by the appropriate representatives of the United States Government to the appropriate representatives of every nation of the world.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. ARENDS asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. ARENDS. Mr. Speaker, I am introducing in the House a companion resolution to that being introduced today in the Senate by Senator ROBERT DOLE, of Kansas, asking that Sunday, February 20, be designated a National Day of Prayer for the cause of world peace.

In 1969, this Nation sent three men on a journey to the moon. Their vehicle bore the inscription, "We come in peace for all mankind."

On Monday, February 21, one man—the President of the United States—will begin a journey as historical and as hopeful as the first moon landing. He also goes in peace for all mankind.

I know that we all support the purposes for which he embarks on this long