SENATE—*Friday, February 18, 1972*

The Senate met at 11 a.m. and was called to order by Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia.

PRAYER

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

O God who hast "made of one blood all nations to dwell upon the face of the earth," keep ever before us the vision of a better world when all sovereignties are submissive to Thy sovereignty. Lead us to the promised day of one world and one people under divine direction, where freedom is assured and human values are supreme. Spare us from false reliance upon supernatural intervention instead of hard thought and strenuous labor for peace with justice and liberty. Make us to recover the sense of national purpose bequeathed by the Founding Fathers which is worthy of the apostles of freedom. To our daily duties here, may we bring alert minds, serene spirits, and implicit faith in Thee. Lead us to the peaceable ways of Thy kingdom, the law of which is love and the ruler of which is God.

In Thy holy name we pray. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 18, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

THE JOURNAL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, February 17, 1972, be dispensed with.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House insists upon its amendment to the bill (S. 2097) to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr. ROGERS, Mr. SATTERFIELD, Mr. KYROS, Mr. PREYER of North Carolina, Mr. SYMINGTON, Mr. ROY, Mr. SPRINGER, Mr. NELSEN, Mr. CARTER, Mr. HASTINGS, and Mr. SCHMITZ were appointed managers on the part of the House at the conference.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE CALENDAR

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of measures on the calendar to which there is no objection, beginning with Calendar No. 579 and continuing in consecution through Calendar No. 587.

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

WILLARD O. BROWN

The Senate proceeded to consider the bill (S. 2359) for the relief of Willard O. Brown which had been reported from the Committee on Foreign Relations with amendments on page 1, line 3, after the word "of", strike out "Austin" and insert "Abilene"; in line 7, after the word "May", strike out "1" and insert "13"; in line 8, after the word "May", strike out "1" and insert "13"; in line 10, after "class 1;" strike out "and"; in line 12, after the word "class", strike out "1." and insert "1; and"; at the top of page 2, insert:

(4) to have had in effect for the period from May 13, 1966, through April 30, 1970, that amount of group life insurance, and an equal amount of group accidental death and dismemberment insurance (purchased by the Civil Service Commission) to which he would have been entitled as a Foreign Service officer of class 1 during such period.

In line 14, after the word "class", strike out "1;" and insert "1, less an amount equal to the difference between the amount actually paid by the said Willard O. Brown in group life and accidental death and dismemberment insurance premiums and the amount of such premiums he would have paid for the coverage of such insurance during that period had he been a Foreign Service officer of class 1;"; and, on page 3, line 5, after the word "May", strike out "1" and insert "13"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Willard O. Brown, of Abilene, Texas, shall be held and considered—

(1) to have been appointed as a Foreign Service officer of class 1 under sections 511 and 621 of the Foreign Service Act of 1946, on May 13, 1966;

(2) to have served, during the period from May 13, 1966, through April 30, 1970, as a Foreign Service officer of class 1;

(3) to have retired on April 30, 1970, as a Foreign Service officer of class 1; and

(4) to have had in effect for the period from May 13, 1966, through April 30, 1970, that amount of group life insurance, and an equal amount of group accidental death and dismemberment insurance (purchased by the Civil Service Commission) to which he would have been entitled as a Foreign Service officer of class 1 during such period.

(b) The Secretary of State shall determine—

(1) the amount of salary (including increases in salary under section 625 of the Foreign Service Act of 1946) to which the said Willard O. Brown would have been entitled during the period from May 13, 1966, through April 30, 1970, as a Foreign Service officer of class 1, less an amount equal to the difference between the amount actually paid by the said Willard O. Brown in group life and accidental death and dismemberment insurance premiums and the amount of such premiums he would have paid for the coverage of such insurance during that period had he been a Foreign Service officer of class 1;

(2) the amount of any lump-sum payment to which the said Willard O. Brown would have been entitled under section 5551 of title 5, United States Code (relating to accumulated and accrued leave), upon his retirement on April 30, 1970, as a Foreign Service officer of class 1; and

(3) the amount of annuity to which the said Willard O. Brown would have been entitled under section 821 of the Foreign Service Act of 1946 from May 13, 1970, through the day prior to the date of enactment of this Act had such annuity been computed on the basis of the amount of salary referred to in clause (1) of this subsection and the service referred to in subsection (a) of this section.

(c) Each amount determined by the Secretary under subsection (b) of this section shall be (1) reduced by any amount paid to the said Willard O. Brown as salary during the period referred to in clause (1) of such subsection, as a lump-sum payment upon such retirement, or as an annuity, as the case may be, and (2) as so reduced, paid by the Secretary out of funds available for the payment of salaries of foreign service officers, lump-sum payments, or annuities to such officers, as appropriate.

(d) In the administration of section 821 of the Foreign Service Act of 1946, as amended, the said Willard O. Brown shall be entitled to be paid an annuity as recomputed on the basis of the provisions of subsection (a) of this section.

SEC. 2. No part of any payment authorized in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

The amendments were agreed to.

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

Mr. BYRD of West Virginia. Mr. Presi-

dent, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–611) explaining the purposes of the measure.

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

PURPOSE

This principal purpose of S. 2359, as amended, is to appoint Mr. William O. Brown retroactively as a Foreign Service Officer of class 1, effective May 13, 1966, and to authorize payments for back salary, unused annual leave, and annuity increases. The total amount involved, as calculated by the Department of State, is approximately $16,265.00. Pursuant to the terms of the amendments recommended by the State Department and approved by the Committee, this amount will be reduced to cover back payments for the costs of increased insurance and annuity benefits arising out of Mr. Brown's retroactive appointment.

BACKGROUND

Mr. Willard O. Brown's personnel file was misplaced in the Department of State for a period of 16 months (October, 1964–February, 1966) and thus was not available for review by the Selection Boards which met in 1965. As a result, Mr. Brown, who was then a class 2 Foreign Service Officer, was passed over for promotion and was subsequently forced to retire for time in grade. In spite of the fact that the State Department concluded that Mr. Brown was the victim of an inequity which should be remedied, it maintained that in the absence of appropriate legislation nothing could be done to rectify the situation. Accordingly, on July 28, 1971, Senator John Tower introduced a private bill designed to obtain redress for Mr. Brown.

A more detailed, chronological background relating to this case is contained in a letter from the Department of State and Mr. Brown's reply thereto which are reprinted in the appendix to this report.

COMMITTEE ACTION

On January 17, 1972, in reply to the Committee's request for comments of August 3, 1971, the State Department wrote that it "supports the enactment of S. 2359." Such being the case, the Foreign Relations Committee considered the bill in executive session on February 9, and ordered it favorably reported to the Senate, with amendments.

On the basis of evidence presented to the Commitee, Mr. Willard O. Brown was the victim of a series of errors in the personnel evaluation and promotion system in the Department of State which had the direct effect of depriving him of an opportunity for further advancement at a critical stage in his career. In view of the obvious—indeed, admitted—injustice which was done him in the past, the time for adequate redress is long overdue. The Committee strongly recommends, therefore, that the Senate take early and favorable action on S. 2359.

AMENDMENT OF THE BANKRUPTCY ACT IN REGARD TO SALARIES AND EXPENSES

The Senate proceeded to consider the bill (S. 1394) 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 which had been reported from the Committee on the Judiciary with an amendment on page 3, line 6, after the word "that", strike out "term: *And provided further*, That no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250." and insert "term."; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the title of section 40 of the Bankruptcy Act (11 U.S.C. 68) is amended to read as follows:

"§ 40. Compensation of referees and retirement of referees"

(b) Subdivision a. of such section is amended to read as follows:

"a. Referees shall receive as full compensation for their services, salaries to be fixed by the conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, at rates not more than $36,000 per annum for full-time referees and not more than $18,000 per annum for part-time referees. In fixing the amount of salary to be paid to a part-time referee, and in determining whether a position shall be part time or full time, consideration shall be given to the average number and the types of and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period of ten years, and to such other factors as may be material. Disbursement of such salaries shall be made monthly by or pursuant to the order of the Director."

(c) Subdivision b. of such section is amended to read as follows:

"b. The conference, in the light of the recommendations of the councils, made after advising with the district judges of the respective circuits, and of the Director, may increase or decrease any salary, within the limits and in the manner prescribed in subdivision a. of this section: *Provided, however*, That during the tenure of any full-time referee his salary shall not be reduced below that at which he was originally appointed under this amendatory Act, and during any term of any such referee his salary shall not be reduced below the salary fixed for him at the beginning of that term.

(d) Subdivision c. (1) of such section is amended to read as follows:

"c. (1) Except as otherwise provided in this Act, there shall be deposited with the clerk, at the time the petition is filed in each case, and at the time an ancillary proceeding is instituted, a filing fee of $40 for each estate: *Provided, however*, That in cases of voluntary bankruptcy such fee, as well as the fee of the trustee, may be paid in installments, if so authorized by general order of the Supreme Court of the United States."

(e) Subdivision c. (2) of such section is amended to read as follows:

"(2) Additional fees shall be charged, in accordance with the schedule fixed by the conference (a) against each estate wholly or partially liquidated in a bankruptcy proceeding, and be computed upon the net proceeds realized; (b) against each case in an arrangement confirmed under chapter XI of this Act, and be computed upon the amount to be paid to the unsecured creditors upon confirmation of the arrangement and thereafter, pursuant to the terms of the arrangement, and where under the arrangement any part of the consideration to be distributed is other than money, upon the amount of the fair value of such consideration; and (c) against each case in a wage earner plan confirmed under chapter XIII of this Act, and be computed upon the payments actually made by or for a debtor under the plan. Such schedule of fees may be revised by the Director, with the approval of the conference. The Director, with the approval of the conference, may make, and from time to time amend, rules and regulations prescribing methods for determining net proceeds realized in asset cases, fair values of considerations, other than money, distributable in arrangement cases, and payments actually made by or for a debtor under the plan in wage earner cases; prescribing the procedure for collection by the clerk of fees and allowances; and providing for the effective administration of the provisions of this paragraph (2)."

(f) Subdivision c. (3) of such section is amended to read as follows:

"(3) Charges for the expense of special services relating to or in connection with proceedings before referees shall be made and collected by the references in accordance with regulations to be prescribed by the Director, with the approval of the conference, and the proceeds shall be paid by the referees to the Clerk for transmission to the Treasury of the United States."

(g) Subdivision c. (4) of such section is amended to read as follows:

"(4) The amounts of the various fees and allowances collected by the clerks for the services of referees, and for their expenses, including the fees, allowances, and charges for their services and expenses as conciliation commissioners and as special masters under this Act, shall be covered into the Treasury of the United States. The salaries of the referees in active service and the expenses of the referees including the salaries of their clerical assistants, shall be paid out of annual appropriations from the general of the Treasury of the United States."

(h) Subdivision c. (5) of such section is amended by deleting from the second sentence thereof the following language: ", to be deposited to the credit of the salary and expense fund" and by deleting from the third sentences thereof the following language: "salary and expense".

SEC. 2. (a) Clause (1) of section 51 of the Bankruptcy Act (11 U.S.C. 79) is amended to read as follows:

"(1) account for, as for other fees received by them, the filing fees paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers;"

(b) Clause (2) of such section is amended to read as follows:

"(2) collect the filing fees, including the face of the trustee in each case instituted before filing the petition, except where installment payments may be authorized pursuant to section 40 of this Act, and collect the various other fees, allowances, and charges for the services of referees and for their expenses, including their services and expenses as conciliation and as special masters under this Act;"

(c) Clause (3) of such section is amended to read as follows:

"(3) collect the filing fee in each ancillary proceeding before filing the petition whereby the ancillary proceeding is instituted;"

(d) Clause (5) of such section is amended to read as follows:

"(5) Pay to the trustee, within ten days after the case has been closed, the fee collected for him at the time of filing the petition, and pay into the Treasury of the United States all other fees and allowances and charges collected pursuant to this Act."

SEC. 3. Section 52 of the Bankruptcy Act (11 U.S.C. 80) is amended to read as follows:

"§ 52. Compensation of marshals

"Marshals shall charge the estate where an adjudication in bankruptcy is made, except

as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to charge for the performance of the same or similar services in other cases in accordance with laws in force on July 1, 1898, or such as may be thereafter enacted, fixing the compensation of marshals."

SEC. 4. Clause (1) of subdivision a. of section 64 of the Bankruptcy Act (11 U.S.C. 104) is amended to repeal the words "the fees for the referees' salary and expense fund" from the phrase following the first semicolon and to enact in their place the words "all fees required under this Act to be paid into the Treasury of the United States".

SEC. 5. The second paragraph of section 72 of the Bankruptcy Act (11 U.S.C. 112) is amended to read as follows:

"No referee shall receive any compensation for his services under this Act other than his salary; and allowances made to a referee for compensation or expense while acting as a conciliation commissioner under section 75, or as a referee or special master under any chapter or section of this Act, shall be paid to the clerk, and by him transmitted to the Treasury of the United States."

SEC. 6. Paragraph (2) of section 624 of the Bankruptcy Act is amended to read as follows:

"(2) where a petition is filed under section 622 of this Act, by payment to the clerk of $15 to be paid to the Treasury of the United States in lieu of the fee of $40 prescribed in section 40 of this Act: *Provided, however,* That such fee may be paid in installments, if so authorized by general order of the Supreme Court of the United States."

SEC. 7. Paragraph (2) of section 633 of the Bankruptcy Act (11 U.S.C. 1033(2)) is amended to read as follows:

"(2) the debtor shall submit his plan, and deposit with the clerk, for payment into the Treasury of the United States a fee not to exceed $15, to be graduated and charged in the manner outlined in paragraph (2) of subdivision c. of section 40 of this Act: *Provided, however,* That such fee may be paid in installments, if so authorized by general order of the Supreme Court of the United States;"

SEC. 8. Paragraphs (1) and (3) of section 659 of the Bankruptcy Act (11 U.S.C. 1059) are amended to read as follows:

"(1) the fee specified in paragraph (2) of section 633;"

"(3) an additional fee for the Treasury of the United States, to be graduated and charged in the manner outlined in paragraph (2) of subdivision c. of section 40 of this Act, and to be computed upon the amount of the payments actually made by or for a debtor under the plan; and commissions to the trustee of not more than 5 per centum to be computed upon and payable out of the payments actually made by or for a debtor under the plan;"

SEC. 9. This amendatory Act shall take effect on the first day of the month following the day of enactment, and any funds appropriated for the salaries and expenses of referees as of that date, shall be chargeable to the general fund of the Treasury of the United States; any balance in the referees' salary and expense fund shall be transferred into the general fund of the Treasury.

The amendment was agreed to.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–612) explaining the purposes of the measure.

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

PURPOSE OF THE AMENDMENT

The purpose of the amendment is to eliminate the language "that no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250.00." which might have the unintended effect of barring referees from receiving increases which they would otherwise receive as a result of the actions of the Judicial Conference of the United States and the Presidential Salary Commission.

PURPOSE OF THE BILL

The purpose of the bill is to amend the Bankruptcy Act to abolish the criteria for fixing the salaries of full-time referees and thus permit the Judicial Conference of the United States to fix the salaries of all full-time referees at the same level and to abolish the referees' salary and expense fund.

STATEMENT

In introducing the proposed legislation, the Honorable Quentin N. Burdick said on the floor of the Senate:

"Mr. President, a bill relating to the administration of the Bankruptcy Act is S. 1394 which I have introduced today, in order to require that the fees in bankruptcy proceedings, which now are paid into a special fund used for defraying the salaries and expenses of referees, be paid in the general fund and that the salaries and expenses of referees be paid out of the general fund.

"The Judicial Conference at its March 16–17, 1970, meeting, upon the recommendation of its Committee on Bankruptcy Administration, authorized the Director of the Administrative Office to prepare a draft of an amendment to section 40 of the Bankruptcy Act (II U.S.C. 68), and related sections, to abolish the self-supporting bankruptcy system in accordance with the policy adopted by the Conference at its October 31–November 1, 1969, session—Conference report, page 76. In that report the action of the Conference on matter is reported as follows:

"'COMPENSATION FOR FULL-TIME REFEREES

"'Judge Weinfeld stated that a subcommittee which he had appointed reported to the full committee on the criteria and method of fixing the salaries of full-time referees. The subcommittee emphasized the statement of policy approved by the Judicial Conference at the March 1969 session to the effect that the maintenance of a self-supporting bankruptcy system, as contemplated by section 40 of the Bankruptcy Act, is no longer possible without placing an inordinate financial burden upon bankrupts and the assets of bankrupts. Pursuant to the subcommittee's report, the committee recommended to the Conference and the Conference approved a statement of policy that the present criteria for fixing salaries of full-time referees should be eliminated from the Bankruptcy Act and all full-time referees should be paid at the same rate within the limit upon such salaries established by the President's Salary Commission.'

"The salaries of full-time referees and part-time referees were increased respectively from maximums of $22,500 and $11,000 per annum to the present maximums of $36,000 and $18,000 per annum, commencing February 14, 1969, upon the recommendation of the President of the United States, pursuant to Public Law 90–206. See section 40a of the Bankruptcy Act (11 U.S.C. 68).

"As authorized by the Judicial Conference, the Bankruptcy Division of the Administrative Office prepared a draft of amendments to section 40 of the Bankruptcy Act (11 U.S.C. 68) and related sections, to abolish the self-supporting bankruptcy system and to eliminate the present criteria for fixing salaries of full-time referees. The Committee on Bankruptcy Administration of the Judicial Conference considered the draft at its July 8, 1970, meeting and recommended that the conference approve it and authorized the Director to seek its introduction in the Congress. The conference approved this recommendation at its October 29–30, 1970, meeting.

"The proposed bill makes only two substantive amendments in the existing law. The others are conforming and perfecting changes. The substantive changes are:

"First Section 1(b) of the proposed bill would amend the second sentence of subdivision a. of section 40 of the Bankruptcy Act to eliminate the statutory criteria now required to be considered by the conference in fixing the amount of salary to be paid a full-time referee. The existing criteria would continue to be applicable in the fixing of the salary of a part-time referee and in determining whether a position shall be part-time or full-time.

"Second. Section 1(g) of the bill would amend subdivision c.(4) of section 40 of the Bankruptcy Act to abolish the referees salary and expense fund established in the Treasury of the United States and provide that all fees and charges collected by the clerks in bankruptcy proceedings be paid into the general fund of the Treasury of the United States instead of the account of the referees salary and expense fund. The salaries and expenses of referees would be paid from funds appropriated from the general fund of the Treasury.

"Section 9 of the proposed bill provides that the amendatory act shall take effect on the first day of the month following the day of enactment. It also provides that any funds appropriated for the salaries and expenses of referees as of the effective date, shall be chargeable to the general fund of Treasury of the United States, and that any balance in the referees' salary and expense fund shall be transferred into the general fund of the Treasury.

"Salaries of referees are fixed by the Judicial Conference of the United States within the maximum limitation authorized by the Bankruptcy Act. At the close of business June 30, 1970, there were 218 authorized referee positions and of these 184 were full-time of which seven received a salary of $25,000 per annum and the remaining 177 received a salary of $30,000 each. Of the 218 referee positions, 34 were part-time referees and four of these received $18,000 per annum and the salaries of the remaining 30 ranged from $10,000 to $15,000 per annum.

"The clerical staffs of referees' offices, including full-time, part-time, and temporary employees, totaled 855 at the end of fiscal year 1970. The salaries of the members of the clerical staffs are fixed by the Director of the Administrative Office of the U.S. Courts.

"The salaries and expenses of the bankruptcy courts are paid out of the special fund, Referees Salary and Expense Fund, in the U.S. Treasury which is made up from a portion of the filing fees in bankruptcy proceedings and certain other charges against the assets of bankrupt estates. The table below shows the annual payments into the obligations against the fund from July 1, 1960, to June 30, 1970, as well as the accumulated surplus in the fund as of June 30, 1970:

REFEREES' SALARY AND EXPENSE FUND

Fiscal year	Receipts	Obligations	Surplus
1961	$6,694,264	$5,737,526	$956,738
1962	7,339,837	6,605,714	734,123
1963	7,849,219	7,381,413	467,806
1964	8,890,400	7,798,844	1,091,556
1965	9,840,697	9,828,677	12,020
1966	9,926,676	10,673,577	—746,901
1967	10,578,782	11,241,727	—662,945
1968	10,881,669	11,879,379	—997,710
1969	11,173,176	13,440,000	—2,266,824
1970	11,041,534	15,573,000	[1] —4,531,460

[1] Subject to adjustment.

Note: Accumulated surplus June 30, 1969: $7,470,467; accumulated surplus as of June 30, 1970: $1,526,864.

"It will be observed that obligations have exceeded receipts into the referees' salary and expense fund beginning fiscal year 1966. Recognizing this situation, the Bankruptcy Committee of the Judicial Conference of the United States proposed amendments to the schedules of fees and charges in asset, nominal-asset and arrangement cases to provide increased payments into the fund. These amendments were approved by the Judicial Conference to be effective July 1, 1969—pages 22 to 24, report of March 1969 session.

"A further increase in the schedules of fees and charges in asset, nominal-asset and arrangement cases was proposed and approved by the Judicial Conference of the United States at the March 1970 session to be effective July 1, 1970—pages 24 to 25, report of March 1970 session.

"Inasmuch as these fees and charges are not normally paid until the final stages of administration of the cases, the increased payments will not be reflected in receipts into the fund until fiscal year 1971 and thereafter. Receipts in 1971 and thereafter will also reflect the increased volume of bankruptcy business in 1970, particularly in the classifications of business cases and chapter XI—arrangement—cases.

"The Judicial Conference recognizes, however, that the increased payments into the referees' salary and expense fund resulting from these changes in the schedules of fees and charges will fall short of raising the total payments into the fund to the level of annual obligations against it. Additional increases in the schedules would place an inordinate burden upon bankrupts and the assets of bankrupt estates.

"The Judicial Conference concluded at its March 1969 session—pages 23 to 24 of the report—that the principle of a self-supporting bankruptcy system is outmoded and should be abandoned. Pursuant to this policy statement, the Director was authorized—page 25, report of March 1970 session—to draft an amendment to section 40 of the Bankruptcy Act (11 U.S.C. 68) and related sections to abolish the self-supporting bankruptcy system. This bill was approved at the October 1970 session of the Judicial Conference and is submitted herewith for introduction in the 92d Congress."

COMMITTEE AMENDMENT

Section 40 of the Bankruptcy Act deals with the salaries of referees in bankruptcy. It provides that such salaries are to be set by the Judicial Conference of the United States within the statutory limits prescribed by Congress in this section.

When Congress enacted section 40 in 1945, it added a proviso designed to protect referees from frequent small changes in their salaries. This proviso, which appears at the end of section 40b, is as follows: "* * * no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250.00."

Experience with the Bankruptcy Act since 1945 indicates that the fears which prompted enactment of this proviso are no longer justified. Furthermore, this proviso may now have the totally unintended effect of barring the referees from receiving increases which they would otherwise receive as a result of the actions of the Judicial Conference of the United States and the Presidential Salary Commission.

Under the circumstances, therefore, it would appear that retention of this proviso is no longer justified, that it creates an undue hardship upon the referees and that it should be repealed.

RECOMMENDATION

The committee believes that the bill, as amended, is meritorious and recommends it favorably.

AMENDMENT OF THE BANKRUPTCY ACT IN REGARD TO COMPENSATION ALLOWABLE TO RECEIVERS AND TRUSTEES

The Senate proceeded to consider the bill (S. 1395) to amend section 48 of the Bankruptcy Act (11 U.S.C. 76) to increase the maximum compensation allowable to receivers and trustees.

Mr. BYRD of West Virginia. Mr. President, on behalf of the committee, I offer an amendment to S. 1395 and ask that it be stated.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read the amendment as follows:

On page 2, in line 5, strike "Section 28a." and insert in lieu thereof "Section 48a."

The amendment was agreed to.

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

S. 1395

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 48a. (1) of the Bankruptcy Act (11 U.S.C. 76a. (1)) is amended to read as follows:

"a. (1) As CUSTODIANS.—Receiver appointed pursuant to clause (3) of section 2 of this Act who serve as mere custodians shall receive such amount as may be allowed by the court, but in no event to exceed 3 per centum of the first $2,500 or less, and one-half of 1 per centum on all above $2,500 on moneys disbursed by them or turned over by them to any persons, including lienholders, and also upon moneys turned over by them to the trustee and on moneys subsequently realized from property turned over by them in kind to the trustee."

(b) Section 48a. (2) of the Bankruptcy Act (11 U.S.C. 76a. (2)) is amended to read as follows:

"a. (2) With full powers-receivers appointed pursuant to clause (3) of section 2 of this Act who serve otherwise than as mere custodians shall receive compensation by way of commissions upon the moneys disbursed or turned over to any person, including lienholders, by them and also upon the moneys turned over by them or afterward realized by the trustees from property turned over in kind by them to the trustees, such amount as the court may allow, but in no event to exceed 10 per centum of the first $500 or less, 6 per centum on all in excess of $500 but not more than $1,500, 3 per centum on all above $1,500 and not more than $10,000, 2 per centum on all above $10,000 and not more than $25,000, and 1 per centum on all above $25,000: *Provided, however,* That in any case, after the trustee has paid all expenses of administration and has realized upon all available assets, where the maximum allowable to the receiver hereunder for serving as receiver with full powers does not exceed $150, the court may of its own motion allow the receiver, who serves otherwise than as mere custodian, a fee which with the commissions, if any, paid or to be paid him shall not exceed $150."

(c) Section 48c. (1) of the Bankruptcy Act (11 U.S.C. 76c. (1)) is amended to read as follows:

"c. (1) NORMAL ADMINISTRATION.—When the trustee does not conduct the business of the bankrupt, such sum as the court may allow, but in no event to exceed 10 per centum of the first $500 or less, 6 per centum on moneys in excess of $500 and not more than $10,000, 3 per centum on moneys in excess of $10,000 and not more than $25,000, 2 per centum on moneys in excess of $25,000 and not more than $50,000, and 1 per centum on moneys in excess of $50,000, upon all moneys disbursed or turned over by them to any persons, including lienholders: *Provided, however,* That in any case, after the trustee has paid all expenses of administration and has realized upon all available assets, the minimum compensation allowable to him hereunder does not exceed $250, the court may of its own motion allow the trustee a fee which with the commissions, if any, paid or to be paid him shall not exceed $250."

SEC. 2. The provisions of this Act shall apply only to those cases in which the petition initiating the proceeding under the Bankruptcy Act is filed subsequent to the date of the enactment of this Act.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–613), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to amend the Bankruptcy Act to increase the maximum compensation allowable to receivers and trustees.

STATEMENT

In introducing the proposed legislation, the Honorable Quentin N. Burdick said:

"Mr. President, I am introducing today S. 1395 which will facilitate the administration of the estates of bankrupts under the Bankruptcy Act.

"It is increasingly difficult to obtain qualified persons to serve as receivers and trustees, because of the limited compensation payable for necessary services rendered by such officers.

"There have been no increases in the statutory maximum allowances provided for receivers since they were first enacted in 1910 and there have been no increases in trustees' rates since 1956. In the meantime costs have increased and salaries of others have increased.

"The proposed legislation would permit the court to make discretionary allowances not to exceed $150 for a receiver and $250 for a trustee in those cases where the distribution is too small to provide an adequate basis for computing a reasonable allowance for the necessary services rendered.

"Under this proposed legislation, the maximum allowances which are at present permitted for a trustee will be applicable to receivers. This will represent an increase in the percentage rates for receivers and also have the effect of increasing, for receivers, the range of the application of the higher rates to the medium and larger distributions.

"The maximum allowances for trustees have been increased, with this proposal, by increasing the range in which the rates for a trustee are applicable.

"The proposed increase in the custodial rate would make it unnecesary for the referee to enlarge the duties of the receiver in order to fairly compensate him for his services.

"The proposed increases would apply only in bankruptcy cases initiated subsequent to the enactment of the proposed legislation.

"The above bill was approved by the Judicial Conference of the United States at its October 1970 session."

RECOMMENDATION

The committee believes that the bill is meritorious and recommends it favorably.

AMENDMENT OF THE BANKRUPTCY ACT TO PERMIT FULL-TIME REFEREES IN BANKRUPTCY TO PERFORM THE DUTIES OF A U.S. MAGISTRATE

The bill (S. 1396) 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 was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1396

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 35 of the Bankruptcy Act (11 U.S.C. 63) is amended (1) by inserting in the proviso to clause (2) thereof, immediately preceding the words "part-time referees", the words "full-time and part-time referees may, with the approval of the conference, serve as United States magistrates and" and (2) by striking the words "United States commissioners," from the proviso.

SEC. 2. Section 631(c) of title 28, United States Code, is amended by striking out wherever they appear therein the words "part-time referee in bankruptcy" and inserting in lieu thereof the words "referee in bankruptcy".

SEC. 3. The first sentence of section 634(a) of title 28, United States Code, is amended to read as follows: "Officers appointed under this chapter shall receive as full compensation for their services salaries to be fixed by the conference pursuant to section 633 of this title, at rates not more than $22,500 per annum for full-time United States magistrates, and not more than $11,000 per annum nor less than $100 per annum for part-time United States magistrates: *Provided, however,* That the salary of a full-time referee in bankruptcy, who is also serving as a part-time magistrate, may be fixed at an aggregate amount which does not exceed the maximum salary payable to a full-time referee in bankruptcy under section 40 of the Bankruptcy Act.".

SEC. 4. Section 631(e) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "In the case of an individual appointed to serve both as a referee in bankruptcy and a magistrate, his term of appointment as magistrate shall expire upon the expiration of his term as referee in bankruptcy.".

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD on excerpt from the report (No. 92–614) explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to amend the Bankruptcy Act to permit a full-time referee in bankruptcy to perform the duties of a U.S. magistrate.

STATEMENT

The proposed leigslation has been requested by the Administrative Office of the U.S. Courts on behalf of the Judicial Conference of the United States in order to facilitate the implementation of the new system of U.S. magistrates.

In introducing the proposed legislation, the Honorable Quentin N. Burdick said on the floor of the Senate:

"Mr. President, I introduce for appropriate reference S. 1396, to amend the Bankruptcy Act to permit full-time referees in bankruptcy to perform the duties of a U.S. magistrate.

"The Federal Magistrates Act, approved October 17, 1968, 82 Stat. 1107, provides that with the approval of the Judicial Conference of the United States 'a part-time referee in bankruptcy . . . may be appointed to serve as a part-time magistrate,' and authorizes the Conference to 'fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate and part-time referee in bankruptcy' 28 U.S.C. 634. The act, however, does not authorize a full-time referee in bankruptcy to perform the duties of a part-time U.S. magistrate. In addition, section 35 of the Bankruptcy Act, pertaining to qualifications for referees in bankruptcy, provides in part that an individual shall not be eligible for appointment as a referee unless he is 'not holding any office of profit or emolument under the laws of the United States or of any State or subdivision thereof other than conciliation commissioner or special master under this title.' Exceptions to this provision are made only in the case of a part-time referee in bankruptcy.

"In the design and organization of the new system of U.S. magistrates two difficulties have arisen which would be ameliorated in part if a full-time referee in bankruptcy were authorized to perform the duties of a U.S. magistrate. First, there is the problem of a "backup" for a magistrate who is ill, or temporarily away from his station on business or vacation. Some courts have requested authority to appoint a second part-time magistrate at some locations at a nominal salary to arraign defendants and set bail in the absence of the regular magistrate—a function which a full-time referee in bankruptcy might well perform. Second, certain language in the Magistrates Act and in the Bankruptcy Act seems to prohibit a court from combining a position of part-time referee in bankruptcy with a position of part-time magistrate, in order that it may have one full-time officer rather than two part-time officers. It is the view of the Judicial Conference of the United States and its Committee on Bankruptcy Administration and the Implementation of the Federal Magistrates Act that it would be in the interest of good judicial administration to permit full-time referees in bankruptcy to perform magistrate duties and to authorize a full-time combination position of referee in bankruptcy."

RECOMMENDATION

The committee believes that the bill is meritorious and recommends it favorably.

Attached and made a part of this report is a letter from the Administrative Office of the U.S. Courts transmitting a draft of the proposed legislation with a recommendation that it be enacted.

EXTENSION OF THE COMMISSION ON BANKRUPTCY LAWS

The joint resolution (S.J. Res. 190) to provide for an extension of the term of the Commission on the Bankruptcy Laws of the United States, and for other purposes was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

SENATE JOINT RESOLUTION 190

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution entitled "Joint resolution to create a commission to study the bankruptcy laws of the United States", approved July 24, 1970 (84 Stat. 468), is amended—

(1) in subsection (c) of the first section, by striking out "within two years after the date of enactment of the joint resolution" and inserting in lieu thereof the following: "prior to June 30, 1973"; and

(2) in section 6, by striking out "$600,000" and inserting in lieu thereof "$826,000".

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–615) explaining the purposes of the measure.

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

PURPOSE

The purpose of the resolution is to extend the Commission on the Bankruptcy Laws from July 24, 1972, to June 30, 1973, and to increase the limit on appropriations to the Commission from $600,000 to $826,000.

STATEMENT

In a letter to the chairman of the Committee on the Judiciary, Harold Marsh, Jr., Chairman of the Commission on the Bankruptcy Laws of the United States, has written:

"Senate Joint Resolution 190, introduced by Senators Quentin Burdick and Marlow Cook on January 28, 1972, would extend the term of the Commission on Bankruptcy Laws of the United States from July 24, 1972, to June 30, 1973, and would increase the limitation on appropriations to the Commission from $600,000 to $826,000. House Joint Resolution 1006 was introduced in the House of Representatives for the same purposes on December 13, 1971, and a hearing was held by Subcommittee No. 4 of the Committee on the Judiciary of the House on January 31, 1972.

"The Commission on Bankruptcy Laws was established by Public Law 91–354 (84 Stat. 468) on July 24, 1970, and was intended to do its work and make its report within two years from that date. The process of appointing the members, however, required nearly ten months after the date of the enactment of the law, and it was impossible for a staff to be recruited, an office to be established, and the work to be commenced until June 1, 1971, after almost half of the statutory term of the Commission had elapsed. Meanwhile the reasons for creating the Commission as disclosed in Senate and House Committee hearings and in the House Report accompanying Public Law 91–354 (House Rep. No. 91–927) have been confirmed by subsequent developments, and the need for a comprehensive study, report, and recommendations for reform of the bankruptcy laws of the country is even more plainly evident.

"The additional time authorized by Senate Joint Resolution 190 is substantially what the Commission would have had if it had been duly constituted and enabled to commence its work without delay. The additional funds requested will permit the Commission to authorize studies necessary for the preparation of an informed and comprehensive report on the bankruptcy laws, including recommended changes in both the substantive law and the system for administering the law. In particular the Commission needs additional time and money for carrying out the mandate of Public Law 91–354 to consider the applicability of advanced management techniques to achieve economies in the administration of the Act, to analyze the causes of bankruptcy, and to study and make recommendations respecting alternatives to the present system of bankruptcy administration.

"The Commission and its staff have been making good progress on the statutory assignment given the Commission, particularly on the problems connected with the incresing number of personal bankruptcies. It is clear, however, that the Commission cannot provide to Congress, the President, and the Chief Justice the comprehensive report on bankruptcy, reorganization, and all the other aspects of the operation of the bankruptcy laws as contemplated by Public Law 91–354 within the time and fund limitations imposed by that law and the appropriation made thereunder. The members of the Commission are willing and anxious to carry out their full responsibility for making the study, evaluation, and recommendations delineated in Public Law 91–354 and hope that the Senate Committee on the Judiciary will report favorably on Senate Joint Resolution 190."

RECOMMENDATION

The committee believes that the resolution is meritorious and recommends it favorably.

PROVIDING AN ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE OF THE UNITED STATES

The bill (H.R. 8699) to provide an administrative assistant to the Chief Justice of the United States was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-616), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 8699, is to add a new section 677 to title 28, United States Code, creating the Office of administrative assistant to the Chief Justice of the United States.

STATEMENT

Unlike some European countries where the head of the highest court of the land by tradition merely casts a tie-breaking vote in the decision-making process, the Chief Justice of the United States carries a full caseload as one of the nine Justices on the Supreme Court. Each of the nine Justices has three law clerks and two secretaries as a staff to assist in handling the workload of the Supreme Court, which in recent years has grown to an annual volume in excess of 4,000 cases. The Chief Justice, as presiding Justice of the Supreme Court, is responsible for administration of the judicial work involved in processing these cases and in this he is aided by one senior law clerk who acts as coordinator of all cases coming into the Office of the Chief Justice. Thus, the Chief Justice's responsibilities in the judicial work of the Court are a full-time job, as are the responsibilities of each of the eight Associate Justices.

In addition, the Chief Justice has numerous administrative and nonadjudicative responsibilities which require a considerable amount of his time and energy. With a brief description these may be enumerated as follows:

1. Administration, Supreme Court work.—The Chief Justice is charged with the primary responsibility for administration of the daily operation of the Supreme Court staff and personnel. Title 28, United States Code, authorizes four officers for the Court: Clerk, Marshal, Reporter of Decisions, and Librarian. Each of the officers has traditionally reported directly to the Chief Justice.

2. The Judicial Conference of the United States.—As Chairman of the Judicial Conference of the United States, the Chief Justice must plan and prepare for two meetings a year of the Conference, and interim meetings of the executive committee of the Conference. Each Conference in the fall and spring of the year is at least 2 days' duration, but preceding the Conference are many weeks of preparation including meetings with members of the Conference, chairmen of conference committees, and personnel from the Administrative Office of the U.S. Courts and the Federal Judicial Center relating to problems to be presented to the Conference.

3. The Federal Judicial Center.—As Chairman of the Board of Directors of the Federal Judicial Center, the Chief Justice meets with the Board four to six times a year for 1 or 2 days each meeting. As with the Judicial Conference, much preparation and planning must precede these meetings; frequent meetings are held with the directors of each of these groups and chairmen of its committees.

4. Relations with Chief Judges on administration.—In addition to the personal meetings mentioned above, the Chief Justice is in regular contact with Chief Judges of the 11 circuits and many of the 93 Federal districts on a wide range of problems facing the judiciary today, from the security of courtrooms and buildings, to programs for better utilization of juries, cooperation with State judges, and myriad problems many of which did not exist even 5 to 10 years ago.

5. Temporary assignment of judges to other courts.—Under chapter 13 of title 28 United States Code, the Chief Justice has the authority to assign judges from one circuit to another. Both active and retired judges may be so assigned. This is an important aspect of our Federal judiciary and gives the system a greater flexibility in meeting the exigencies brought about by illness, vacancies, variable caseloads in the several courts, and protracted trials.

6. Public responsibilities.—The Chief Justice of the United States is also the chief officer of a coordinate branch of the Federal Government. He is the titular head of our judicial system, both State and Federal, and as such he has leadership responsibilities not only to the Bench and bar, but to law schools, other colleges and universities, and to the national community in general. As part of these public responsibilities, Congress has seen fit, in the past, to designate him as Chairman of the Board of the Smithsonian Institute and of the National Gallery of Art. He is also Chairman of the Oliver Wendell Holmes Devise Committee.

These administrative and nonadjudicative responsibilities generate a mail volume of as many as 200 to 500 letters per day. While secretaries can process much of this mail, the Chief Justice personally sees all mail from members of committees of Congress or from Federal or State judges. In addition there are numerous daily contacts, in person or by phone, in connection with these responsibilities of the office. Testimony at the hearing held by the House Judiciary Committee indicated that to perform all these functions, the Chief Justice regularly puts in a 6½-day week, with rare and limited vacations.

An administrative assistant to the Chief Justice, as would be authorized by this bill, would relieve the Chief Justice of many of the time-consuming details involved in the nonadjudicative responsibilities. The administrative assistant's relationship to the Chief Justice would be a close one involving constant and personal contact, some of it of a confidential nature. The administrative assistant would handle the routine administrative matters not requiring the Chief Justice's personal attention, and, alternatively, he could prepare and process some of those matters on which final approval of the Chief Justice is necessary. This would include not only the day-to-day contact with all Officers of the Supreme Court, but also many of the administrative matters originating outside the Supreme Court. He would also act as liaison with the Director and staff of the Federal Judicial Center, the Director and staff of the Administrative Office of the U.S. Courts, the Judicial Conference of the United States, and with the chief judges of the various circuits and district courts. Thus, the Chief Justice's role of ultimate responsibility for sound judicial administration of our Federal court system would be enhanced by the new position authorized by this bill.

It is proposed that the person selected for this position should be primarily a person with high administrative and managerial talents. He should also have a legal background with experience in and knowledge of the Federal court system. In order to attract and retain such a qualified individual, it is proposed that the salary shall not exceed the salary of the Director of the Administrative Office of the U.S. Courts which is $40,000 per annum. The retirement benefits would also correspond to those afforded the Director.

The administrative assistant will be expected to attend many of the seminars and conferences held by the Federal Judicial Center for members of the Federal judiciary and he will also represent the Chief Justice at many meetings and conferences held in the 11 circuits. Therefore, it is also proposed that there be authorized a legal assistant, grade 14, as a "backup" for the administrative assistant.

As indicated by the attached letter of March 26, 1971, the concept of an administrative assistant to the Chief Justice was recommended by the Judicial Conference of the United States. H.R. 6953 and S. 2054, were introduced in this session of Congress embodying this concept. Hearings were held by the House Judiciary Committee on May 6, 1971, and the concept was supported by Mr. Justice Potter Stewart, Mr. Justice (retired) Tom C. Clark, and by Rowland F. Kirks, Director, Administrative Office of the U.S. Courts. The bill reported herewith, H.R. 8699, is a clear bill recommended by the House committee and passed by the House on July 13, 1971.

Each Member of Congress is authorized an administrative assistant. Under Public Law 91-647 each chief judge of a U.S. court of appeals is authorized to obtain the services of a court executive to assist in the discharge of administrative duties in relation to the courts within the judicial circuit. The President, by necessity, has much assistance in the administration of our laws.

The committee is of the opinion that the Chief Justice of the United States deserves the help of an assistant in carrying out his administrative and nonadjudicative responsibilities as enumerated in this report. Therefore, the committee recommend favorable consideration of H.R. 8699, without amendment.

COST

The committee adopts the following cost estimate as prepared by the Administrative Office of the U.S. Courts:

Personnel compensation:	
Administrative assistant, ungraded	$40,000
Secretary, grade 10	12,669
Legal assistant, grade 14	22,897
Total compensation (three positions)	75,566
Personnel benefits:	
Government contribtuions for retirement, insurance, etc	5,934
Travel	3,100
Miscellaneous expenses	2,000
Furniture and equipment	8,000
Total First-year cost	94,700
Less nonrecurring expenses	−8,100
Recurring annual cost	86,600

Of this estimated cost $38,000 is presently included in the State, Justice, Commerce, and Judiciary Appropriation Act, 1972 (Publice Law 92-77) as salary and benefits for the office of administrative assistant to the Chief Justice.

SECTIONAL ANALYSIS

H.R. 8699, adds a new section 677 to title 28, United States Code.

Subsection (a) authorizes the Chief Justice to select and appoint an administrative assistant. He shall perform such duties as may be assigned to him and he serves at the pleasure of the Chief Justice. The salary of the office is fixed by the appointing authority but shall not exceed the salary paid to the

Director of the Administrative Office of the U.S. Courts which is presently authorized at $40,000 per annum. Subsection (a) also authorizes the administrative assistant to elect the same retirement program as the Director, namely, eligibility at age 65, with 15 years of service, at 80 percent of salary.

Subsection (b) authorizes the administrative assistant, with the approval of the Chief Justice, to appoint and fix the compensation of necessary employees. As indicated by the cost analysis it is contemplated that this additional staff will be one secretary and one legal assistant. The budget of the Supreme Court as presented to and considered by the House Committee on Appropriations on March 1, 1971, included a requested appropriation for these positions.

Section 2 merely amends the sectional analysis of chapter 45, title 28, United States Code, by adding the new section 677.

TEMPORARY ASSIGNMENT OF U.S. MAGISTRATES

The bill (H.R. 9180) to provide for the temporary assignment of a U.S. magistrate from one judicial district to another was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–617), explaining the purposes of the measure.

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

PURPOSE

The purpose of H.R. 9180 is to add a new subsection to section 636 of title 28, United States Code, to permit the temporary assignment of U.S. magistrates from one judicial district to another in emergency situations and only upon the concurrence of the chief judges of the districts involved.

STATEMENT

One means of increasing the efficiency of a judicial system and of reducing the cost of operation is to provide for a degree of flexibility in the use of the personnel employed in the system. For many years, the chief judge of a circuit and the Chief Justice of the United States have been authorized to assign district judges to sit in other districts, or upon the court of appeals, or to assign a circuit judge from one circuit to sit in another circuit (28 U.S.C., secs. 291 and 292). A similar authority has existed with respect to the assignment of retired judges to temporary duty in the Federal courts (title 28 U.S.C., sec. 294). While these are temporary assignments, the system is benefited to the extent that a degree of flexibility is provided which permits a judge from a court with a light workload to be used in a court with a heavy workload, the use of able retired judges as extra judicial manpower and the employment of all judges in order to cover situations involving illness or temporary disability. This system for the temporary assignment of justices has worked well in the Federal system and also in certain State court systems which have been authorized to use the same practice.

H.R. 9180 would permit the same practice to be followed with respect to the position of U.S. magistrate. This matter was overlooked when the magistrate office was created by Public Law 90–578 to replace the commissioner system. Under the proposal contained in H.R. 9180, a magistrate assigned to another district would not receive extra compensation but would be reimbursed for expenses incurred in the performance of his duties.

Hearings were held by the House Judiciary Committee on September 7, 1971. H.R. 9180 was passed by the House on November 1, 1971. Having considered the matter, the Committee on the Judiciary adopts as its own the following further explanation from the Report of the House Committee on the Judiciary (Rept. 92–582):

"Under the act of October 17, 1968 (Public Law 90–578) a U.S. magistrate is authorized to perform official duties only within the territorial jurisdiction to which he is appointed. He may not be assigned temporarily to another district.

"The bill would authorize temporary assignment of magistrates from one district to another in an emergency and only upon the concurrence of the chief judge of the districts involved. A magistrate assigned temporarily to another district would not receive extra compensation, but from reduced detention time for prisoners and the reduction of part-time magistrates which would result from the additional flexibility of full-time magistrates. The committee concurs in the estimate of the administrative office and believes that legislation will result in a net saving to the Government."

LAW DAY, MAY 1, 1972

The joint resolution (S.J. Res. 169) to pay tribute to law enforcement officers of this country on Law Day, May 1, 1972, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

Whereas the first day of May of each year was designated as Law Day, U.S.A. and was set aside as a special day of celebration by the American people in appreciation of their liberties and in reaffirmation of their loyalty to the United States of America; and of their rededication to the ideals of equality and justice under laws in their relations with each other as well as with other nations; and for the cultivation of that respect for law that is so vital to the democratic way of life: Be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the celebration of Law Day, May 1, 1972, special emphasis be given by a grateful people to the law enforcement officers of the United States of America for their unflinching and devoted service in helping to preserve the domestic tranquility and guaranteeing to the individual his rights under the law.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–618), explaining the purposes of the measure.

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

PURPOSE

The purpose of the resolution is to pay tribute to law enforcement officers of the United States on Law Day, May 1, 1972.

STATEMENT

The law-enforcement officers of this Nation face formidable challenges in protecting our rights and property. They are charged with the duty of upholding and enforcing our laws, and they meet this difficult and dangerous obligation with courage and dedication. They have earned our praise and our appreciation.

In 1961 Congress designated each May 1 as Law Day, and for the past 10 years this program has been marked by various programs centered on national freedom and rights under the law. This seems to be a particularly appropriate occasion to reflect upon the debt of gratitude we owe to the law-enforcement personnel whose efforts guarantee this national freedom and rights under the law. Accordingly this joint resolution asks that on May 1, 1972, special emphasis be given by us to the law-enforcement officers whose devoted service has helped to preserve and guarantee our individual rights under the law.

The committee is of the opinion that this resolution has a meritorious purpose and accordingly recommends favorable consideration of Senate Joint Resolution 169, without amendment.

NATIONAL WEEK OF CONCERN FOR PRISONERS OF WAR/MISSING IN ACTION

The joint resolution (S.J. Res. 189) 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 was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That to demonstrate the support and concern of the people of the United States, for the more than one thousand five hundred Americans listed as prisoners of war or missing in action in Southeast Asia, and to forcefully protest the inhumane treatment these men are receiving at the hands of the North Vietnamese, in violation of the Geneva Convention, the President is hereby authorized and requested to issue a proclamation (1) designating the period beginning March 26, 1972, and ending April 1, 1972, as "National Week of Concern for Prisoners of War/Missing in Action", (2) designating Sunday, March 26, 1972, as a national day of prayer for the lives and safety of these men, and (3) calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–619), explaining the purposes of the measure.

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

PURPOSE

The purpose of the resolution is 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 March 26, 1972, as a national day of prayer for these Americans.

STATEMENT

There are more than 1,500 American servicemen listed as prisoners of war or missing in action in Southeast Asia, some of whom have been held captive since early 1964, almost 8 years ago. Many families have remained long years in anxiety without knowing the fate of their loved ones.

Despite repeated demands for compliance with the Geneva Convention regarding prisoners of war by the United States, the United Nations, the International Red Cross, and many others, the North Vietnamese Government persists in its refusal to permit the free flow of mail to and from prisoners, to repatriate the sick and wounded, to permit the inspection of prisoner facilities by an impartial observer, and to provide for repatriation or internment in a neutral country of those who have endured an extended period of captivity. These basic considerations

spring from fundamental human decency and go beyond politics or philosophy. Members of the U.S. Congress have on prior occasions reaffirmed their support for the principles asserted in the Geneva Convention of 1949. Whatever the many and varied perceptions of the conflict have been, the Members have concurred vigorously in the humane precepts of this Geneva Convention.

Favorable consideration of this resolution would demonstrate support and concern for those American listed as prisoners of war or missing in action in Southeast Asia and would forcibly register the protest of Members of the U.S. Congress over the inhumane treatment these Americans are receiving at the hands of the North Vietnamese in violation of the Geneva Convention.

Senate Joint Resolution 189 would therefore authorize and request the President of the United States to issue a proclamation designating the period beginning March 26, 1972, as "National Week of Concern for Prisoners of War/Missing in Action," and calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

The resolution would also designate Sunday, March 26, 1972, as a national day of prayer for the lives and safety of these Americans.

RECOMMENDATION

The committee is of the opinion that this resolution has a meritorious purpose and accordingly recommends favorable consideration of Senate Joint Resolution 189, without amendment.

Mr. BROCK. Mr. President, I wish to express my humble and sincere gratitude for today's heartwarming Senate action on our prisoners of war and missing in action by asking for a second national week of concern for these men.

Less than 2 weeks after Senate Joint Resolution 189 was introduced, it was reported favorably by the Judiciary Committee, whose chairman, and most of whose members joined the more than 70 cosponsors. Small though this gesture may seem, it means a great deal to the wives, parents, and children of these men to be reassured that they are not and will not be forgotten by those of us for whom they have suffered and sacrificed so much.

I believe I speak for every Member of this body when I assure the National League of Families that Congress, the President, and the United States today remain constant in concern that our men be speedily returned to their loved ones and that there be no need for another national week of concern.

I ask unanimous consent that a letter from the chairman of the board of the National League of Families, Mrs. Carole Hanson, be printed in the RECORD.

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

NATIONAL LEAGUE OF FAMILIES OF AMERICAN PRISONERS AND MISSING IN SOUTHEAST ASIA,
Washington, D.C., February 4, 1972.

Senator BILL BROCK,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BROCK: Last year we so very much appreciated your support by introducing and so-sponsoring a National Week of Concern for the POW/MIA's held captive in Southeast Asia. Once again you are introducing such legislation and we would like to convey to you our wholehearted gratitude.

This type of non-partisan, humanitarian effort has a twofold effect. It keeps the American and worldwide public aware of the plight of these men and it boosts the morale of those of us who are personally involved in the issue.

Our loved ones cannot be forgotten. Your endeavors and those of your colleagues will aid us in obtaining our objectives.

Thank you for your continuing concern and support.

Sincerely,

MRS. CAROLE HANSON,
Chairman of the Board.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

The legislative clerk read the nomination of I. H. Hammerman II, of Maryland, to be a member of the Board of Directors of the National Corporation for Housing Partnerships for the term expiring October 27, 1974.

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

SECURITIES INVESTOR PROTECTION CORPORATION

The legislative clerk read the nomination of Henry W. Meers, of Illinois, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1974.

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

COUNCIL OF ECONOMIC ADVISERS

The legislative clerk read the nomination of Marina von Neumann Whitman, of Pennsylvania, to be a member of the Council of Economic Advisers.

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

COMPTROLLER OF THE CURRENCY

The legislative clerk read the nomination of William B. Camp, of Maryland, to be Comptroller of the Currency.

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

U.S. AIR FORCE

The legislative clerk proceeded to read sundry nominations in the U.S. Air Force.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

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

U.S. NAVY

The legislative clerk proceeded to read sundry nominations in the U.S. Navy.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

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

U.S. MARINE CORPS

The legislative clerk proceeded to read sundry nominations in the U.S. Marine Corps.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the nominations be considered en block.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en block.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE ARMY, IN THE NAVY, AND IN THE MARINE CORPS

The legislative clerk proceeded to read sundry nominations in the Army, in the Navy, and in the Marine Corps which had been placed on the Secretary's desk.

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

Mr. SCOTT. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

Mr. SCOTT. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

WENDELL WILLKIE'S ONE WORLD

Mr. SCOTT. Mr. President, this morning, we observed, as we did last year, the anniversary of the death of that American who was never elected to public office but who may have had the greatest influence on his times and on our times in this country; namely, Wendell Willkie.

Wendell Willkie's unswerving dedication to principle and to the causes in which he believed were exemplified in his use of a phrase which has become common in our language "one world."

A conference resulting from his candidacy, held in New York, I believe contributed to the conversion of the great Senator Vandenberg to an internationalist posture, to the commitment that the United States, indeed, has recognized in the second chapter of Genesis that, in some ways, we are our brother's keeper.

Wendell Willkie, in that conference, attended by such persons as the then Senators from Vermont, Mr. Austin and Mr. Flanders, and many others, turned the Republican Party around.

He began the conquest of the disease

of isolationism which for so long had retarded and hampered the country. He opened the country's eyes to the opportunities of a new world.

Next week while the President of the United States is opening a dialog with the largest number of people in the world, some 800 million people on mainland China, one of the causes espoused by Wendell Willkie will come to pass. For, to us, the Chinese have been ranked throughout the world at the very bottom. To some people they are on the bottom and we are on the top. To some people they are on the top and we are on the bottom.

Our objective is that we shall be side by side for peace and that our hearts, our minds, and our intentions shall be in tune.

I believe that the Republican Party was exemplified in that way. Also, if we recall, other Republicans have said that our dedication should be to peace.

I can still hear Wendell Willkie's hoarse and fading voice as from one place in the country to the other he traveled tirelessly saying:

Only the productive can be strong, and only the strong can be free.

Then we had a leader in Thomas Dewey, who exemplified another of our problems when he said:

It must not take a war to make jobs.

Then with Eisenhower we had a promise, "I will go to Korea." And he did. We know that as a result of that an armistice arose and a more peaceful condition occurred.

President Nixon has now advocated a generation of peace and has said:

I will go to China, and I will go to Russia, and will go to those places in the world where what we do, exemplifying the United States, may promote this great cause of all of us, of all parties, for a generation of peace.

In this way, we may live in peace and tranquillity and ease with our neighbor and hope that we do beat our swords into plowshares and that we will no longer look to the heaven with terror, but rather in the hope that the still undiscovered secrets of the universe may be further revealed to us.

When the Republican Party speaks of peace, when it rushes to achieve it, when it emphasizes productivity, when it emphasizes that we live in the same world and must live in harmony with our neighbors, those in China and those in other parts of the world, those are the hours that commend the party.

An when we dissent—as both parties do with petty bickering and weighing the short-term gains as against the long-term responsibilities—we not only weaken ourselves but also lower the regard of the people for us.

There is temptation. There is a joy in battle and an excitement in confrontation. We would not be human if we were to reject these lustrous temptations. But overall and in the long view, we have got to reject them. The Democrats, independents, and Republicans alike have got to make their primary objective the achievement of peace and then in peace for all mankind, as the Bible says:

To follow after the ways that lead to peace.

ORDER OF BUSINESS

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

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

CANCELLATION OF SCHEDULED COMMITTEE MEETINGS

Mr. BYRD of Virginia. Mr. President, while the distinguished minority leader is present, I would like to invite attention to the fact that several days ago the distiguished minority leader informed the Senate of the need for speedy action on the administration's request to increase the debt ceiling.

The distinguished chairman of the Finance Committee phoned the Senator from Virginia yesterday and asked whether it would be satisfactory and convenient to have a meeting of the committee on Monday to consider the debt ceiling. He knew that the Senator from Virginia had three engagements in Virginia this weekend, one in Richmond, one in Newport News, and one in Henrico County.

I told the chairman of the committee that Senate business came first and that I would make it convenient and would be here.

I note by the paper that this meeting has been canceled because the administration witnesses were not able to be present. I am sure that it is for good cause, and it is perfectly all right with me. I am in no hurry.

However, I do want the RECORD to show that I will object to any unanimous-consent request in regard to the debt ceiling legislation. I think this legislation should be considered in the normal procedures of the Senate and that adequate time should be taken to understand the great financial problems facing our Nation.

I hope that the majority leader and the minority leader would protect the Senator from Virginia on any unanimous-consent request. I will not support any proposal to rush this legislation through the Senate.

I emphasize that I offer no criticism for the canceling of Monday's meeting but I do not want the delay to be an excuse for hurried Senate action.

Mr. SCOTT. Mr. President, will the Senator from Virginia yield?

Mr. BYRD of Virginia. I yield

Mr. SCOTT. Mr. President, I think the Senator is quite right. If the administration witnesses will not appear, while their reasons may be good, it is unfortunate. I have given notice to the administration that they must at all times cooperate in an effort to expedite the procedures of the Senate.

I will inquire as to why they will not be present and urge that they be here at the earliest possible moment that will suit the convenience of the committee.

It is most important that they be present.

We are plagued with absenteeism in this body. We should by no means be tolerant of any delay on the part of the administration in furnishing the committee with material which they need. I will certainly cooperate in this endeavor.

I regret that the Senator from Virginia canceled his engagements. I attended a committee meeting at which there was at least an understanding that we would vote on constitutional amendments. A number of Senators canceled engagements to be there. Then we arrived to find that there was not to be any vote.

I was unable to hear a discussion on the SALT talks by the Ambassador to the United Nations.

I am going to urge that when a committee meeting is announced, they live up to it and get to a vote.

Mr. CHILES. Mr. President, does the Senator from Virginia feel that he has adequately covered this subject?

Mr. BYRD of Virginia. Yes.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

(The remarks Mr. CHILES made at this point on the introduction of S. 3194 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

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

THE PROPOSED VALUE-ADDED TAX

Mr. PEARSON. Mr. President, each Member of this body is aware that the Federal, State, and local governments are in the midst of a financial crisis and we understand that this crisis is most acute in our public schools. Tragically, schools have had to close in districts across the country while many more barely keep their doors open to overcrowded classrooms in inadequate buildings with underequipped libraries and laboratories.

In an attempt to meet this crisis, there is some examination of the merits of a so-called value-added tax to provide an additional $16 to $18 billion in tax revenue. Mr. President, the value added tax is only a fancy term for a national sales tax. It is not a new idea; a similar tax has been used in Europe for about two decades and for many years our States have relied on the sales tax as a basic source of revenue.

Mr. President, even though the final form of this tax may not be known for many months, we already know enough about its principles to raise fundamental questions about its desirability.

We know, Mr. President, what a national sales tax would mean to each consumer in this country: he would pay more for each item. He would pay more whether he is rich or poor, whether he is buying food, clothing, medicine, or luxuries. He would pay, not according to his ability to pay, but in proportion to his need to buy. And the question quite nat-

urally arises: Can our Nation, in the middle of a national effort to control inflation, impose a tax which would raise the price of almost every item consumed?

While an objective of the imposition of a national sales tax would be to relieve property taxes, one must remember that no one has said that the property tax will be eliminated. If this national sales tax is imposed, American taxpayers would be burdened with two regressive taxes, the property tax and the national sales tax, instead of only one. Would this really relieve the heavy tax burden?

Mr. President, proponents of a national sales tax make a number of claims concerning its virtues. I ask that we examine these assertions most carefully.

National sales tax proponents claim that it is a hidden tax. They say that it is effective because people do not realize that they are paying the tax as they make each purchase. I submit, Mr. President, that it is fundamentally dishonest to attempt to hide a tax from those who pay it. Each American has a right to know exactly how much he pays to support his Government. To hide one tax from him while claiming to relieve the burden of another is nothing short of fiscal charlatanism.

Furthermore, Mr. President, I do not believe that we can hide a tax from the American people, and certainly not this tax. Each consumer will know that he is paying the national sales tax, and low and middle income people will know it much better than the rich. They will know that their dollars for food, medicine, and other necessities will not go as far. This tax will not be hidden from the elderly; they, especially, will feel the burdens of this latest form of Government-generated inflation. This tax will not even be hidden from the governments themselves because they will have to pay more for each item purchased, and so we are back to the taxpayer who will bear a heavier tax load to support increased costs of Government operations.

Proponents of a national sales tax say that U.S. exports would increase if we could follow the European practice of remitting taxes on goods sold abroad and that a national sales tax would enable us to do this. A number of tax experts dispute these claims. The issue is murky, at best.

I, however, have a more fundamental question about foreign trade advantages of a national sales tax. We have been told that the devaluation of the dollar would provide the impetus we needed to expand exports and reduce imports. Are we now asked to believe that an even greater advantage is necessary to correct our balance-of-payments deficit? Do proponents of a national sales tax really think that foreign nations would stand idly by while American goods gained further trade advantages. All of the rules of GATT notwithstanding, I find it hard to believe that they would.

Mr. President, even if our exporters needed a greater competitive advantage, at what cost to the American people should it be granted? Should, Mr. President, Americans pay higher prices for food and medicine so that an exporter can sell a few more widgets abroad? Important as foreign sales are to the American economy, I do not believe that American consumers should be taxed so that exporters can make higher profits.

Turning from international trade, Mr. President, have the proponents of a national sales tax examined its impact on the finances of State governments? If a national sales tax is levied, this would preempt a major source of State revenue. Could consumers bear a new national sales tax and continue to pay State sales taxes at present levels? A national sales tax would create the possibility that the States, with their tax bases preempted, may reduce their share of funds for public schools. We would gain little by increasing Federal aid to education while at the same time causing reductions of State aid. This is simply taking funds from the schools and returning them endowed with the holy name of Federal aid.

Mr. President, I do not understand why it is necessary to create this new tax. We do not add a new Federal tax each time we institute a new Federal program. We do not have a space program tax, nor do we have an antipoverty tax. Why then do we need an education tax? If we must increase taxes to pay for new programs, we have an adequate Federal tax structure to raise additional revenues. I do not believe, however, that we must raise taxes in order to increase Federal aid to education. We can, instead, begin to fulfill our rhetorical promises to reorder priorities by increasing Federal aid to education and decreasing outlays for less important items in our budget of which there are many.

In conclusion, Mr. President, we recognize that the Federal Government must help to alleviate the financial crisis which threatens our public schools and in doing so relieve some of the heavy burden of property taxes. But in my judgment, Mr. President, a national sales tax is neither an equitable nor an effective means to accomplish these objectives.

I yield back the remainder of my time.

ORDER OF BUSINESS

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

THE EDUCATION AMENDMENTS OF 1971

Mr. MONDALE. Mr. President, next week the Senate will consider S. 659, the Education Amendments of 1971. We are told this will be an antibusing debate. It should not be.

S. 659 represents a historic effort to meet the growing educational needs of this Nation.

S. 659 would provide a dramatic and badly needed new program of assistance to students and institutions of higher education. It would provide a new program of aid for the education of American Indian children attending public schools. And it contains the provisions of S. 1557, the Emergency School Aid and Quality Integrated Education Act, to provide financial help, on a completely voluntary basis, to school districts desegregating under Federal court order, under title VI of the Civil Rights Act of 1964, under State law, or as a matter of wholly voluntary local education policy.

These programs all have passed the Senate before by overwhelming margins. They do not require any school district to bus a single student. They do not require any school district to desegregate a single school.

Title VI of the bill, the Emergency School Aid Act, does offer to help local school districts meet the additional cost—including the cost of transportation—of educationally successful integration. But funds for transportation will be available only upon request of local school districts, and only where the transportation is required under the Constitution or State law, or adopted as a voluntary local educational decision.

School desegregation is a fact of American educational life. The law of the land is clear, and it will not change. Officially imposed school segregation—whether the result of State law or covert policy—must be overcome.

A unanimous Supreme Court resolved any lingering doubts last April with Chief Justice Burger's landmark decision in Swann against Charlotte-Mecklenburg. A racial balance is not required. All-white or all-black schools may remain after all reasonable steps have been taken. But every reasonable effort must be made to overcome the results of officially approved school segregation—whether the result of State law or official policy:

> School authorities should make every effort to achieve the greatest possible degree of actual desegregation. . . .

And reasonable transportation will be required where necessary to defeat the results of racially discriminatory student assignment policies. In the words of the Court:

> We find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school.

Nothing we do here next week will reverse 18 years of unanimous rulings by the Supreme Court, or alter 14th amendment requirements.

The Senate has faced this test before. Almost every year since the Civil Rights Act passed the Congress in 1964, we have confronted at least one major effort to cripple Federal support for school desegregation.

In addition, this year we may be asked to vote on a constitutional amendment designed to virtually repeal the 14th amendment and end school integration. I have opposed all such efforts in the past. I oppose any such constitutional amendment, and I will continue to oppose any legislative effort which is designed to impede compliance with the Constitution or deny school districts the resources necessary to carry out the mandates of the Federal courts.

I have opposed such legislation in the past because I believe we cannot permit

continuation of officially imposed school segregation—whether sanctioned by State law, or by the express or covert policies of school districts or other public agencies.

I have opposed such efforts because I believe that quality integrated education—sensibly achieved, and with community support—is one of the best hopes for the education of our children, and the future of divided communities throughout this Nation.

Now we are asked to fight those same battles all over again. And we are hearing the same arguments about thousands of children riding buses for long distances, about the disruption of public education, about what the Supreme Court has said or has not said, about what polls show is popular or unpopular, about the need to concentrate on quality education instead of desegregation.

We have also heard legitimate and concerned criticism regarding the process of school desegregation.

Some court orders have at times been arbitrary.

Some student transportation has in a few cases worked unnecessary hardships.

Some Federal administrators have been overbearing and rigid. And there are other equally legitimate criticisms which we have heard less often:

Thousands of qualified black teachers and administrators have been demoted or dismissed.

Too often black children have been subjected to abuse by fellow students, by teachers and by school administrators.

Too often the wealthy have fled to suburbs or placed their children in private schools, so that desegregation has affected only the poor.

And confusion exists as to some of the legal issues involved.

But we will not answer these criticisms by refusing the Federal support needed to make school desegregation educationally successful, or by withdrawing the Federal Government from enforcement of the 14th amendment.

Mr. President, we do have a choice to make—not only for ourselves, but for our children and for future generations of Americans. That choice is not between blind acceptance of massive busing for racial balance or total rejection of support for any transportation to achieve school desegregation.

Busing is the means—and at times the only means—by which segregation in public education can be reduced. But in itself, busing can be either helpful or harmful.

It can be the safest, most reasonable way for children to reach integrated schools of high quality. Or it can be used to uproot stable communities, and destroy the one chance that parents have to provide the best for their children.

Like the President, I do not support unnecessary transportation to achieve an arbitrary racial balance. None of the hundreds of educators with whom I have talked in the past 2 years supports this kind of effort. And the Supreme Court has made it crystal clear that busing will be required only where it is reasonable and does not place undue burdens on schoolchildren. In the words of the Court:

Busing will not be allowed to significantly impinge on the educational process.

Nor do I believe that educationally advantaged students should be bused to schools where they will be overwhelmed by a majority of students from the poorest and most disadvantaged backgrounds. All the evidence we have collected indicates that this kind of desegregation helps no one at all.

But if we bar the use of reasonable transportation as one tool for achieving desegregation, we will set in concrete much school segregation which is the clear and direct product of intentional Government policy—segregation which would not exist if racially neutral policies had been followed in the first place.

In South Holland, Ill., for example, a U.S. district court found public agencies deeply involved in fostering school segregation.

First, schools were located in the center rather than at the boundaries of segregated residential areas in order to achieve school segregation.

Second, school assignment policies were adopted under which black children living nearer to white schools attended black schools, and white children living nearer to black schools attended white schools.

Third, schoolbuses were used to transport students out of their neighborhoods in order to achieve segregation.

Fourth, teachers were assigned on a racial basis.

All of these practices contributed to the growth of segregated schools within segregated residential areas in South Holland. And if transportation to achieve desegregation is prohibited, public school segregation in South Holland will continue—because the location of schools to achieve segregation has both exploited and fostered residential segregation so that effective desegregation cannot be achieved by any other means.

The courts have found virtually identical conditions in Norfolk, Va.; Pasadena, Calif.; Charlotte, N.C.; Denver, Colo.; and countless other communities.

And contrary to popular impression, courts just have not generally ordered excessive busing or engaged in indiscriminate racial balancing. The proportion of children riding buses to school in the Deep South is less than 3 percent above the national average, and barely 7 percent above the average for the Northern and Western States. And recent HEW studies show that aggregate busing has not increased as a result of desegregation. In Louisiana and Florida, although the total number of students bused has increased, the average distance traveled has decreased substantially.

And in the South's 25 largest school districts this year, 33 percent of the total black enrollment attend virtually all-black schools. This hardly indicates overzealous racial balancing.

Mr. President, the question before us is whether we are going to try to understand and deal realistically with the legitimate concerns—and the irrational fears—which surround this explosive issue, or whether we will abandon the courts and countless school districts to their own resources.

We have only two choices. We can assume our share of the burden. We can begin to ask the right questions—not whether we should resist school desegregation, but how we can best work to assure that school integration is conducted in a sensible, educationally beneficial manner. We can fulfill the commitment to equality of opportunity which we have made in the past. We can build on the hopeful examples of successful integration, help the courts avoid educational mistakes, and make school desegregation work.

Or we can stand in the schoolhouse door. We can resist the rulings of the Supreme Court and the advice of educators. We can abandon all the efforts of the past 17 years to eliminate discrimination and end racism—in pursuit of a policy of national resistance toward what the Constitution requires and what each of us knows to be morally right.

If we refuse to help, the results are predictable—more disruption of public education, more racial bitterness, and a continuing loss of respect for ourselves and for the integrity of our Government.

Mr. President, for nearly 2 years, I have served the Senate as Chairman of the Select Committee on Equal Educational Opportunity. It has been a painful 2 years for me, and I believe for other members of the committee as well. We have heard almost 300 witnesses on the issues which the Senate confronts today. And we have learned a great deal about success and failure in American public education.

We have tried to look deeply into the workings of public education in all parts of this country. We have not concentrated on the South by any means.

And, I am left with a deep conviction—that American education is failing children who are born black, brown, or simply poor.

In Hartford, Conn., the median I.Q. level of black elementary school students is perilously close to eligibility for special schools for the mentally retarded.

In rural Appalachia, fewer than 50 of every 100 fifth graders graduates from high school.

In New York City, the dropout rate of Puerto Rican children between grades 10 and 12 is 56.7 percent.

Fifty percent of American Indian students never complete high school.

And we cannot ignore the findings of Charles Silberman, Kenneth Clark, and others—that in many instances the public schools are damaging rather than encouraging the intellectual growth of even our most privileged children. And that the gap between the realities of American life and the principle of racial justice—for which we fought a bitter and terribly divisive civil war—is contributing in major part to the growth of a generation marked with a profoundly cynical distrust in the decency of our Government.

There are those who urge us to abandon school integration. They say all our energies should be devoted to improving the quality of education in racially and economically isolated schools.

They rightly point out that thousands of children attend schools that will not be integrated—racially or economically—in the next decade.

Ways must be found to provide better education in schools serving only the disadvantaged. But we have not found those ways. With few exceptions, an annual Federal investment of $1.5 billion in compensatory education has little perceptible impact on mounting educational disadvantage. We must increase our efforts, but success is far from certain. We cannot afford to abandon other hopeful approaches.

And it has been demonstrated that integrated education—sensitively conducted and with community support—can be better education for all children, white as well as black, and rich as well as poor.

President Nixon recognized this in his March 24, 1970, message on elementary and secondary school desegregation:

> We also know that desegregation is vital to quality education—not only from the standpoint of raising the achievement levels of the disadvantaged, but also from the standpoint of helping all children achieve a broad-based human understanding that increasingly is essential in today's world.

And Elliot Richardson, Secretary of Health, Education, and Welfare, testified before the Education Subcommittee:

> Every major report or research project dealing with educational problems, indeed of the disadvantaged children, has concluded that educational development, that is, learning, is greatly hindred by homogeneous learning environment. Children learn more from each other than from any other resource of the education environment.

The fact is that integrated education—sensitively conducted and with community support—has been tried, and it is working in countless communities in every section of this Nation. It can and does result in better education for all children, white as well as black, rich as well as poor.

Thousands of black and brown and white students are in classes together in communities like Berkeley and Riverside, Calif.; Raeford, N.C.; White Plains and Niagara Falls, N.Y.; Gulfport and New Albany, Miss.; and Baldwin, Mich. These communities quietly desegregated their school systems—without fanfair, without incident, voluntarily and without coercion or Federal intervention. They did it not because the Constitution requires it but because it is morally and educationally right for all their students.

Other communities have been required under court order to desegregate their schools to correct past discrimination. Some have fought school desegregation every inch of the way—with open resistance, even violence or with years of legal maneuvering and subtle avoidance. But in many communities—Atlanta, Charlotte, Miami, Savannah, and Pasadena—school superintendents, teachers, principals, parents and students are quietly going about the business of education in integrated schools.

Both research and experience show that disadvantaged and minority group children do better in integrated schools, particularly when their classrooms contain a majority of advantaged children.

The massive Federal study, "Equality of Educational Opportunity," known as the Coleman report, found that the average 6th grade black student in 1965 was 2 years behind the average white student in the 6th grade, 2.6 years behind in the 9th grade and 3.3 years behind in the 12th grade. The report indicates that this gap was substantially reduced by racial and economic integration. Black students in all-black classes were achieving one whole grade level behind black students in classes with a majority of white students, and for 9th grade black students who attended integrated schools in metropolitan areas of the northeast throughout most of their careers, the achievement gap was cut in half.

These findings are supported by the study, "Racial and Social Class Isolation in the Schools" conducted by the New York State Board of Regents.

And integrated education is a demonstrated success in communities throughout the Nation.

Nearly 1,000 minority group students, selected on a random basis, are bused each day from the Hartford, Conn., ghetto to suburban schools, as part of Project Concern. Extensive testing of these children since the inception of Project Concern in 1966 shows that time spent in the suburban schools has a dramatic impact on achievement. Fifth grade students who have been in the program 2 years, are 5 months ahead of those who have been in the project for only 1 year. Those who have spent 3 years in the project in turn, scored another 4 months ahead of the 2-year group or a full academic year ahead of the first group. The chances for a significant gain in basic reading and arithmetic skills have been increased threefold for Project Concern children.

In Berkeley, Calif.—where a major effort has been made to record the educational impact of integration—average achievement of black students increased by 60 percent while the achievement rate for white students also rose.

Although relatively few integrated districts have undertaken comprehensive testing programs, similar results emerge from less comprehensive testing programs in Sacramento, Calif., and White Plains and Rochester, N.Y.

School superintendents from these and other communities have told the committee of their impressions of integrated education. Some are undertaking it voluntarily. Others were compelled by court order. None would turn the clock back to separate school systems. Listen to the words of just a few:

Dr. Elbert Brooks, the superintendent in Nashville, Tenn.:

> I cannot accept the argument which many give that we are ruining our school system by integration. I think that there are many factors in favor from an educational standpoint and from a social standpoint of integrating schools.

Dr. David H. Porter, Harrisburg, Pa.:

> You had to witness firsthand the fact that 2 years ago students and teachers were merely accepting a certain methodical, dullness about education. Students went to school not really to learn and teachers not really to teach. It was merely a place you were supposed to be for 5 days a week . . . We probably would not have admitted to any failure because we probably would not have recognized it.
>
> It's strange the way a school system can die before your very eyes as you mistake the death rattle for the sound of children learning. The cycle had to be broken . . .
>
> The mandate from the State Human Relations Commission to eliminate de facto segregation, though castigated by many, may well have been precisely the right thing at the right time. Not only did it wake us up to our responsibilities in race relations but it made us aware of the educational and administrative flaws that were permeating our entire system.
>
> The change has been dramatic. Walk into an early childhood center or an elementary school and look at the faces, hear the sounds, watch the kids at work and play. You can't show it on paper yet, but down inside, you know it's working.

Dr. Wayne Carle from Dayton, Ohio:

> The sins of the school are partly those of society but they are also those of educators, school boards, and legislatures that have failed to correct inequity and injustice. We must confess the devastating results of racial and economic isolation in the schools. We can no longer kid you that compensatory education will overcome the effects of putting poor children in poor schools with poor programs and poor results. Nor can we say that affluent students in affluent schools with college prep courses are being saved from drugs or being prepared for life in a multi-ethnic society.
>
> If the Members of Congress care about the cost of alienation and delinquency, if they care about the costs of dropouts and dependency if they care about the costs of failure and illiteracy—they will fund this bill promptly, and they will give schools every tool they need—including transportation—to put the issue of race behind us and create schools designed for the success of every parent's children.

Dr. E. Ray Berry, Riverside, Calif., superintendent:

> I see desegregation as an important element. I think it is quite possible to adequately educate minority children in a segregated situation academically, there are fine ways to turn them on, take the lid off, create the attitude about education, but I really believe it is far easier in an integrated situation, and ultimately I think it is the only answer in terms of if we really believe in an integrated society. I don't see any other way to do it.

Dr. Berry told how the parents feel about integrated education. He presented the results of a questionnaire:

> Over 80 percent of the parents believed that the quality of education was as good or better in integrated schools than before integration.
>
> Approximately 90 percent of the parents said that their children liked school and seldom or never wished to go to another school.
>
> After three years of integration, over 90 percent of the parents were opposed to the idea of separate schools. The responses were not significantly different when the three ethnic groups were compared with each other.

And success can be measured in human terms as well.

Hoke County is a small rural community of 18,000 in eastern North Carolina. Its schools serve 4,850 children: 50 percent black, 35 percent white, and 15 percent Lumbee Indian. Hoke County had a triple school system—separate schools

and classes for each group—and a triple transportation system.

In 1968 and 1969, Hoke County eliminated its triple system and established a unitary system under which each school reflected the countywide population distribution. They didn't just mix the children together and forget them once they entered the schoolhouse door. They tested every child to determine his level of achievement and took account of the low-achieving students' special needs. They made sure that no teachers or principals were displaced or demoted—in fact, Indian and black personnel were promoted. They talked with fearful parents and counseled apprehensive students; they integrated all extracurricular activities so that every school-sponsored organization had representatives of all races in both its membership and its leadership.

Here is a school system which is 65 percent minority and it is making integration work. How did it do so? Simply by being human about it and by focusing on what happens at the end of the bus ride.

Donald Abernethy, Hoke County's school superintendent, described the results:

When we first integrated you would see in the lunchroom for example, tables of black kids, tables of red kids, and tables of white kids. They were not mixed up.

You would see them standing around in clusters on the campus. This was at first. Now you see very little of this. The children have learned to get along with each other. They respect one another. They vote for each other in elections . . .

Students also had fears and concerns. An example of a fear is best expressed by the Indian student who, after attending the integrated high school several weeks, was talking with his former principal who asked how the student was liking the new school. "I like it," the Indian reported. "You know, Mr. Oxendine, some of those white boys are not as smart as I am." Of course, the remark revealed a feeling of inferiority that had been imposed upon the Indian by the segregated system. For the first time, he had realized that he could perform as well as some of his white counterparts.

And there has been academic improvement as well. Before integration, white sixth graders were a year ahead of their Indian and black counterparts. By 12th grade the gap was 2 full years. In other words the black and Indian students were achieving at the rate of about 8/10th of a year per year. At the end of the first year of integration, white students continued to progress as before. Black students gained a year and a half; their rate of achievement was more than 50 percent better as a result of integrated schooling.

Could this have happened without integration? The superintendent thought not:

I don't think it would ever happen,

He said—

if we kept the schools segregated and kept pouring in money for compensator education in segregated schools. But I believe in an integrated system that we will eventually work it out.

Just two final comments on Hoke County:

The children ride to school on buses—15 fewer minutes each day to integrated schools than they did under the segregated school system.

The five member local school board which provided the kind of positive leadership necessary to make integration successful and which, as Mr. Abernethy told us, never reneged, publicly or privately on its commitment to integration was reelected—and one candidate who thought the system moved too fast toward integration finished last in a field of nine candidates.

Hoke County is not unique. Nor is Berkeley, Calif., the largest city in the Nation to integrate its entire schooll system voluntarily. Berkeley is 45 percent white, 44 percent black and 11 percent Asian and Spanish-surnamed. Berkeley's schools were integrated more than 3 years ago. And they are building a quality, integrated education system, because everyone is involved.

Every group—every interested community organization, parents, teachers, students, school administrators—got together, tried to understand each others' problems and aspirations. Together they worked out a desegregation plan, with crosstown busing and balanced distribution of all minorities in every school. Together they went to work on the schools themselves to improve the quality of education in integrated classrooms.

Education is improving in Berkeley—for both black and Anglo students. Anglo youngster's achievement rates are accelerating and those that are growing the fastest are students who have been in integrated classes longest. White third graders, for example, who have been in integrated classes for 2 years gained 4 months over those third graders in integrated classes for 1 year. At the same time, black student achievement has increased as a result of integrated education from half to eight-tenths of a year's growth per year.

But the Berkeley experience is important not only for its academic success. It is important because others can learn, as I learned listening to parents, teachers and students, what made it successful.

Mrs. Amanda Williams, mother of four, told the fears of parents and how they were met:

The time is critical for leadership that will deal with the educational issues and the myths being created by this hereditary fear that is the root of today's climate, parental fear, and it is real fear. We as parents dealt with these in Berkeley. White parents have fears that their children will be physically assaulted or that their learning will be downgraded. Black parents are concerned about their children being bused across town and what would happen in the event a child becomes ill and needs to come home, the kind of humiliation he might receive having gone into a foreign neighborhood. These are examples of a few expressed fears.

In Berkeley, we had house meetings with parents coming together and counselors were hired in the school district at the elementary and intermediate schools, which proved helpful in all instant feedback to parents' problems and concerns. The superintendent and his team of school administrators went into homes to listen and offer solutions to problems. I feel leadership both of the school district and staff is the primary cause for success. You have to have an administration that will listen to all concerns and problems and deal with them so that confidence will be built where parents feel they are wanted and needed. I believe that has been one of the things that has made Berkeley's integration in school work.

There is something to be learned in Berkeley. The Berkeley experience is a multiple achievement, in which the parents whose children are bused have played a key role. We seek to express and expose the fantasies and to share the realities in our experience of integrating the school district. We want to tell the parents and each individual school its constituency met and dealt with the very real problems that an integration program presents. Most important we want to tell you that Berkeley is getting on with the educational issues that every urban school faces which Berkeley now confronts to make our schools responsive to community needs.

Integration has not solved all of the problems of the Berkeley school system, or of any other. But it has increased the quality of education for all students, and deeply involved all segments of the community in the search for educational excellence.

Berkeley is a university town with a high tax base. It is well above average in per pupil expenditure.

Baldwin, Mich. is dirt poor and it needs Federal help. It has a low tax base, a low per pupil expenditure, a school operating budget deficit of $100,000 a year and dismally low achievement levels. Its schools are the second worst academically in the State of Michigan. Twelve percent of its working force is unemployed; 40 percent of its families have incomes under $3,000 per year; 53 percent of its people have less than 9 years of formal education. Baldwin has its problems.

But busing and racial balance are not among them. Every child in the Baldwin school system is in an integrated class. More than 80 percent of its 1,041 students are bused to school. Some students board their buses as early as 7 a.m. and travel 60 miles to arrive at school at 8:20. The shortest one way bus ride in this 370 square mile school district is 20 miles.

As the superintendent told the select committee:

With 370 square miles they could not get there otherwise. . . . We have been busing for years.

He went on to say:

I think we have gotten the children together. I think we have a lot of good things going. The really hard problem that I see is how we are going to finance the kind of programs we need to get these children through our schools so they are in a competitive position with other segments of society.

I am talking about our black children and our white children because they are all trapped in the same area . . . we are trying to work with the community, with the staff, with the students, in a very positive way to pull things together to make Baldwin a place we can be proud of.

We are proud of the fact that we are an integrated school system. In fact this year during our football season we came up with a little pin that really exemplifies what we are talking about. I would like to leave this with you. It says, "Baldwin has Soul".

I asked the Baldwin School superin-

tendent whether there was any opposition to busing in his Michigan school district. He said:

Our neighbors in Cadillac, Luddington, Big Rapids, etc., are pretty shook up over there. They think we are going to bus some of our black children over to their schools. So busing is an issue in Baldwin only as far as our neighbors are concerned.

Mr. President, the case for integrated education has been made in thousands of pages of testimony over the past 2 years before the Select Committee on Equal Educational Opportunity. I have cited only three examples. I could have cited many more. Integration was not easy for any of these districts, but they made it work. They have created a climate of understanding, they have calmed the fears of parents, and they are trying very hard to provide the best education they can for each child.

Public support has been the key to success in these communities and in countless others which have gone about the business of desegregation without the national attention that resistance brings.

But public support on the local level cannot often be realized if the Congress and the administration fail to exercise leadership at the national level.

Last March, the Senate provided that leadership. The integration bill, which we are now debating again, would supply financial help to support the best quality education in desegregating school districts. All desegregating districts—whether under court order, State law, title VI plan, or voluntary plan—would be eligible for financial assistance. And help would be available for all costs of successful desegregation including the cost of getting children to school.

I might add at this point, Mr. President, that at the time that bill was before the Senate, it enjoyed the support of the administration.

A version of that bill was added as title XXI to S. 659, the education amendments of 1971 in the House on November 4, 1971.

But before title XXI was adopted three senseless and divisive amendments were added. With these amendments, the Emergency School Aid Act is no longer a bill to support quality education in desegregating school systems. As amended, the House bill represents the Federal abandonment of every desegregating school district in the country in midcareer.

The so-called Ashbrook amendment would prohibit use of any Federal funds to support transportation to achieve racial desegregation. This amendment would apply not only to funds provided under the Emergency School Assistance Act, but to all Federal education funds. It would prohibit using Federal funds to support transportation of students where required by court order, or under title VI plan, under State law or even where school districts decide to desegregate on a wholly voluntary basis.

The so-called Green amendment would prohibit all agencies of the Federal Government from urging, persuading, including, or requiring school districts to use their own funds or State funds for these purposes. In effect, the Green amendment both repeals title VI of the Civil Rights Act of 1964 and prohibits the Department of Justice from enforcing the Constitution in court actions.

A third amendment—the so-called Broomfield amendment—would remove from Federal district courts any discretion to enter desegregation orders effective pending appeal, if these orders involve use of any transportation. This amendment would flood the Federal courts with frivolous appeals.

The anti-integration message of these amendments is more important than the dollars the bill might provide.

Let us just be candid with ourselves and with the American people for once on this issue of school desegregation.

Busing is the way the overwhelming majority of school children outside our central cities get to school. Twenty million elementary and secondary school children are bused. They rode 256,000 yellow buses 2,200 million miles last year. The annual cost of busing last year was $2½ billion. And 40 percent of our schoolchildren—65 percent when those riding public transportation are included—ride to school every day for reasons that have nothing at all to do with school desegregation.

The issue is not busing or racial balance. The issue is whether we will build on hopeful examples of successful integration to make school desegregation work—or endorse segregation on principle; whether we will help the courts to avoid educational mistakes—or leave them to face the complexities of school desegregation alone.

But beyond that, the issue was, and is, racism. The issue is whether we are going to have as the Kerner Commission warned two societies, one white, and one for the rest of us.

What the House did was to turn a hopeful equal education opportunity bill into a school segregation bill. A bill that says to every school district, "If you want to integrate, do not come to us for help; we will neither tell you how to make it successful, nor provide the funds." A bill which assures that many school districts under court order will have to slash their budgets to supply funds needed for transportation. And this at a time when many school systems are on the brink of bankruptcy.

Court-ordered desegregation is costing Pontiac, Mich., $700,000—the cost of new transportation each year. Pontiac has had to cut educational programs to meet these costs. The superintendent said:

The school district programs are impoverished this year as compared with last year . . . the quality of things available is less and I cannot argue that that doesn't affect the quality of [education in the school district].

The superintendent and chairman of the school board in Dade County, Fla., testified before the House Education Committee last June:

The financial impact of desegregation is placing severe demands and burdens on the affected school systems.

Dade County has a $250 million school budget. School desegregation cost an additional $1.5 million in just 6 months. Additional transportation is costing $670,000 per year. The chairman of the school board testified:

If we are to survive as a county or as a school system, we are going to have to lick the battle of desegregation, regardless of where it is located or what type of desegregation it is . . . this is a massive thing. We are trying to change attitudes that have been building up for 200 or 300 years, and we are not going to change them overnight unless we have some help.

I think the initial step, though, has to come from us. We have to offer the leadership . . . so that is our responsibility. But once we take that responsibility, we have to have some financial help because these problems are monumental.

Pasadena, Calif., is using $300,000 in Federal aid for impacted areas which would otherwise be used for instructional programs. Pasadena is implementing a Federal court order. It needs help.

Harrisburg, Pa., is desegregating under State administrative procedures. Additional transportation expenses are more than $500,000 a year. Harrisburg has had to cut additional programs to pay for busing. The superintendent testified:

We need help. We need it badly. If we are going to see a rekindling of pride and enthusiasm for the American way of life, we have got to make education work . . . hopefully we are not too late.

Dr. Raymond Shelton, superintendent of schools of Tampa, Fla., testified:

When demands are placed upon school systems without accompanying means to satisfy those demands, something must give. In our case it has been our kindergarten program, teacher salaries, capital construction and most other parts of our educational program.

In Nashville, Tenn., because of an inadequate number of school buses, opening times for schools have been staggered so that some children start school as early as 7 a.m., and others arrive home after dark. The inconvenience this has caused threatens public support for education in Nashville. As Superintendent Elbert Brooks testified:

. . . neither those who support integration, nor those who tolerate integration will accept for long their children's continued exposure to hardship and danger brought about by inadequate transportation services.

The cause of the hardship to the children of Nashville and Tampa—and children of many other communities—is not the Federal courts, or the State laws, which ordered desegregation. The real culprit is the Department of Health, Education, and Welfare which refused to allow expenditures of any of the $65 million in emergency desegregation funds appropriated by Congress this year to support transportation expenses.

And yet, the House acted to extend this indefensible ruling to the $1.5 billion School Assistance Act.

Busing children to achieve integration is unpopular but in many areas sensible transportation of children is the only way for this generation to achieve some school integration. Busing will continue to be required by the courts. That issue was decided once and for all by the Supreme Court earlier this year in Swann against Charlotte-Mecklenberg and is companion cases. And local communities trying to provide better education for students of all races will want to use buses as well.

Mr. President, there are roughly 11 million children attending approximately

1,500 desegregating school districts throughout the Nation.

We cannot change the law.

But if the Senate accepts the amendments proposed by the House—or if we adopt others today which have the same effect—we will sacrifice the education of those 11 million children on the altar of political expedience.

No one is suggesting that every school can—or should—be integrated tomorrow. And no one is requiring this. Segregated schools remain in Atlanta under Federal court order; segregated schools will continue in the great urban centers of the North despite our best efforts; and districts which have not practiced discrimination in assigning students will choose themselves whether and how quickly they will achieve that goal.

But if we abandon support for school integration where it can be accomplished—if we refuse to support an essential remedy, and if we destroy the public good will necessary to make desegregation successful once it has taken place—we will work tragic harm.

Black children, and their parents, know that the real issue is not massive busing to achieve an arbitrary racial balance. They know that the real issue is our willingness to accept integrated schools. White children know this, too. And the health and stability of our society over the next 50 years will reflect the lessons which we teach our children today.

The President has said this as well as anyone:

> Few issues facing us as a nation are of such transcendant importance; important because of the vital role that our public schools play in the nation's life and in its future; because the welfare of our children is at stake; because our national conscience is at stake; and because it presents us a test of our capacity to live together in one nation, in brotherhood and understanding.

This country is at a crossroads. School desegregation in the South is largely completed.

But we from the North are now beginning to feel the pressure—which our colleagues from the South have felt for so many years—to abandon the course set by the 14th amendment.

If we do, we will deal a blow to public education, in the North and in the South, from which it may never recover. We will prove true those who have said the North favors racial equality only below the Mason-Dixon line—and those who have said that the South cares more about winning the battle over school desegregation than it cares for the future of its children.

Eric Erikson has said:

> The most deadly of all sin is the mutilation of a child's spirit.

I hope the Senate will demonstrate its ability to rise above the politics of the moment, and to exercise the kind of leadership which our children have the right to expect.

Mr. JAVITS. Mr. President, the Senator from Minnesota has addressed himself, as we are all addressing ourselves right now, especially those of us who will have the responsibility for the higher education bill when it is on the floor—Senator WILLIAMS, the chairman of the committee, and I, as its ranking member, will share the responsibility with Senator PELL, the chairman of the Education Subcommittee, and Senator DOMINICK, who is the ranking minority member of the subcommittee—to the question of busing and the misnomer which is now—I think happily—being abandoned of "involuntary busing."

The ultimate issue is going to be between those who want a constitutional amendment and those who do not. I am opposed to a constitutional amendment, because I believe that it would implant into our basic law principles bound to cancel, change, or adversely affect the 14th amendment, the fundamental charter of equal opportunity for every American, gained after oceans of blood and mountains of treasure were expended in the Civil War.

Mr. President, I hope we will not be guilty of that error with its vast and very deep consequences of social divisiveness, of which we have seen enough already.

I think the Senator from Minnesota has given us some indication of what will occur, when he says in his speech that 11 million children are attending 1,500 schools throughout the Nation in the process of desegregating now in compliance with the 14th amendment; that is an enormous boat to rock.

Mr. President, that does not mean that great changes, great reforms, great acknowledgements of what is troubling our people, cannot be legislated, and I hope to deal with that upon another occasion. But it does deal with the proposition that a fundamental change in the basic and organic constitution of the country would be most ill advised and would be exactly what calmer heads must avoid at a moment when a constitutional amendment seems so easy a solution. The public, because of its legitimate concerns about a situation of adjustment to the desegregation of schools everywhere in the country for many, many reasons, should not be led into a basic change in the government of our country, in the institution of government of our country, which would be so adverse to our people and so socially divisive.

I believe that that is going to be the issue—not what law we shall pass on busing. I am confident that we will be able to work out something on that. But, shall we change the organic law of the United States? Senator MONDALE says no, and I say decidedly no. I am sure that in the days ahead we will be debating that issue, but I deeply believe that the moment has come for Senators to express themselves on that fundamental issue of principle and policy, which I herewith do. As I have said, that is going to be the dividing line in this whole fight between those who want to change the United States basically and organically and repeal in some fashion the 14th amendment and those who do not, and I aline myself with the latter.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, not to exceed 30 minutes, with a limitation of 3 minutes on each Senator being recognized.

PRESIDENT NIXON'S JOURNEY FOR PEACE

Mr. BYRD of West Virginia. Mr. President, as I speak, the President of the United States is en route to the People's Republic of China to meet with the leaders of the most populous nation in the world.

I applaud the President's decision to make this journey for peace after a hiatus of almost a quarter of a century when communication between the two countries has been virtually cut off. President Nixon has cautioned us not to expect miracles from a week of dialog and has made it clear that his primary purpose is to assure the 800 million people of the People's Republic and their leaders that the United States seeks only peace and mutual cooperation in the western Pacific. If the President is successful in establishing a mutuality of interest, if nothing else, his mission will have been of the utmost importance for the future security of the United States and the world.

Most of us in this chamber can recall the bitter and emotional controversy that raged throughout America when Chiang Kai-shek's Kuomintang and Mao Tse-tung's Communist forces were battling for control of China during and after World War II. It may still be too early to pass judgment on who was right or who was wrong, but American policy toward mainland China and toward Taiwan has been implacable for close to 25 years. President Nixon and his advisers have decided that this rigidity might well be tempered with intelligent flexibility, and pragmatism would seem to indicate that this decision has merit.

We may or may not know for some time to come whether success has attended President Nixon's efforts. There are so many imponderables attached to a dialog that is being resumed after so many years of distrust and so much ignorance of each other's way of life that even conjecture is imprudent. We can express the hope, however, that when the President leaves Peking to return to the United States, both he and the leaders of the People's Republic of China will have a better understanding of each other and of the nations for whose future peace and security they have the present responsibility. I wish our President well in his historic mission.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business?

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

FORCED SCHOOL BUSING

Mr. GAMBRELL. Mr. President, I have prepared a statement for the RECORD which would extend beyond the 3 minutes allowed if I were to read it in full. I will say that it deals with the matter that has been referred to by the Senator from Minnesota (Mr. MONDALE) and the Senator from New York (Mr. JAVITS). I am interested to hear that they recognize that we are finally to face up to the question of forced school busing, whether by constitutional amendment, legislative amendment, or otherwise.

The substance of my comments is that we have reached this crisis as a result of a failure of leadership. Last year we had an opportunity during the debate on the desegregation bill to deal with the question of forced school-busing, but we passed it by.

Last September I called on President Nixon to adopt a policy to deal with and to avoid a crisis which was about to arise on this subject.

I can only say that blindness to the arising crisis by those in authority in Washington has led us to the point where we can no longer avoid dealing with the question on a constitutional basis. Those members of the Democratic Party who are now campaigning in Florida have had an opportunity to face up directly to the problem, and we see that they are no longer insulated from the very substantial impact that is now taking place.

Mr. President, on Wednesday I heard the joint leadership engage in a colloquy between themselves and with the senior Senator from Florida (Mr. GURNEY) regarding their position on various antibusing proposals, and the intentions of the joint leadership with regard to the consideration of such legislation on the floor of the Senate. Both leaders expressed opposition to a constitutional amendment on the subject, calling for committee consideration thereof, and expressed preference for dealing with antibusing sentiment through statutes.

May I state at this time, with all due respect for the two Senators who are the joint leadership, that I must agree with the Senator from Florida that this Congress needs immediately to consider on the floor of both Houses, constitutional amendments, as well as statutes on this subject.

If such consideration is deemed to be outside of the orderly bounds of the legislative process, I can only say that the national leadership here in Washington has permitted this crisis to arise. The American people have already digested the matter, are way ahead of the leadership, and are ready for action.

In my own State, our public school systems are almost 100 percent desegregated pursuant to court order, and four of our largest cities are under massive busing orders, along with a number of smaller communities. In Augusta, as has previously occurred in Atlanta, Macon, Columbus, Savannah and elsewhere, citizens are outraged, and are demonstrating in the streets.

A boycott of the public schools is planned, and the whole process of education in Georgia is in disarray. Other Members of this body are faced with situations similar to that we now face in Georgia.

What bothers me, and I am sure what bothers the senior Senator from Florida, is the tendency of the leadership, both here in the Senate, and in the White House, to continually defer consideration of this question, and in fact to sweep it under the rug.

In a statement which I issued Wednesday, I stated that President Nixon is stalling consideration of this issue for political purposes. I ask unanimous consent to have that statement printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GAMBRELL. Mr. President, on last September 13, on the Senate floor, after President Nixon had announced his alleged opposition to forced school busing, I called upon him "to exercise some degree of leadership in order to avoid a national crisis." It has now been 6 months, and all he has done is to hold another meeting. He still has exercised no leadership.

I will say that the President has shown a vague awareness of the problem which has not been displayed until recently on the floor of this Senate.

Insofar as committee hearings are concerned, on November 8, 1971, I wrote the chairman of the Senate Subcommittee on Education, the Senator from Rhode Island (Mr. PELL) asking for an opportunity for orderly legislative consideration of a package of legislation which I have offered on this subject. I even offered to appear before his committee to present my views. Copies of this were sent to the joint leadership, including the majority and minority leaders of both parties.

I have received no response from that request.

I ask unanimous consent that the text of my November 8 letter be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., November 8, 1971.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Education, U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: This will confirm my understanding with you that I will be notified prior to any request, motion or other Senate action with respect to S. 659 (the Higher Education Bill with amendments) as passed last Thursday evening or Friday morning by the House of Representatives. You indicated that no decision had been reached on what procedure to follow in reference to that matter, and I would appreciate having a fair opportunity to adapt my own position to whatever action your Committee, or the leadership proposes.

This request has also been communicated to the Assistant Majority Leader, Mr. Robert Byrd.

I am making this request because a number of the amendments to the Higher Education Bill are ones that I have supported, including the Emergency School Aid Act, and the amendments relative to forced school busing. As you may know, I have introduced an amendment to the EEOC Bill proposing restrictions on forced school busing.

In some cases, the House amendments go beyond what I proposed, and in some respects they fall short.

Your consideration in agreeing to permit me an opportunity to take a position on these matters is greatly appreciated. Should the Committee consider it of value to have the opinion of Senators not on the Committee, I would be happy to appear for this purpose.

Sincerely,

———— ————.

Mr. GAMBRELL. Mr. President, frankly, I have drawn the conclusion that the leaders of the Labor and Public Education Committee have hoped that the busing issue would go away by being ignored. The report of that committee accompanying S. 659, at page 11 deals with "Federal Funds for Transportation" as if the availability of Federal funds is what the busing debate was all about. I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks that section of the committee report.

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

(See exhibit 2.)

Mr. GAMBRELL. Mr. President, that is why the people of this country need a constitutional amendment. Apparently nothing short of a legislative blockbuster will get across to the leaders in the executive, legislative, and judicial branches of this Government what the people want on this issue.

Regrettably, after all this procrastination, the problem is almost out of hand. The possibility of achieving a reasonable solution to the matter has all but escaped our grasp. I lay the blame at the door of executive and legislative leadership in Washington. I have done all within my power to bring about a reasonable adjustment of this outrageous situation.

Hardly anyone directly involved in this matter, including myself, is any longer willing to settle for the moderate adjustments of the matter which I proposed back in September. Maybe that is for the better, and maybe that is what leadership is for—to catch the floodtide at its crest and be carried comfortably to the distant shore. I just hope no innocent victims drown in the process.

EXHIBIT 1

After studying the outcome of President Nixon's White House meeting on Monday, I can only conclude that the President is playing a political shell game with the busing issue. In August last year, he claimed to be opposed to forced busing of school children after a widely-heralded meeting with HEW Secretary Elliott Richardson. Immediately thereafter, in a speech on the Senate Floor, I urged him to put action behind his words on this issue which is destroying the public school systems of many Georgia communities. I also personally contacted Secretary Richardson and demanded action on this subject.

For seven months, seven long months, nothing more has been heard from President Nixon, in spite of vigorous efforts by myself and other members of Congress, including every member of the Georgia delegation, to put a stop to the practice of busing.

Then on Monday, February 14, after more

busing disasters in Richmond, Virginia, Richmond County, Georgia and elsewhere, another widely-publicized White House meeting was held on busing.

Was any action taken? None—absolutely none. The President says he will appoint a committee, including Secretary Richardson, to study the matter.

Congressman Norman Lent (R–N.Y.), the principal Republican spokesman in the Congress on the subject of busing stated after the White House conference that "we will not know what the answer is until well after the President returns from China."

The only possible reason for further procrastination after more than seven months of delay, is that early action on this issue might prevent President Nixon, and other Republican candidates from exploiting it to the fullest political advantage.

The President has decided to let it smolder a little longer, while Georgia schools are destroyed, and Georgia's parents and children suffer.

I express the utmost sympathy for the parents and children of the Richmond County public schools in their demonstration of concern, while they await action from the White House. They now join hundreds of thousands of parents and children in Savannah, Columbus, Cordele and other communities in Georgia, as well as throughout the Nation, in suffering through this agony.

I hope that their well justified protest will be peaceful, and will not be used for political exploitation. I am sure that they know that the main battles on this issue are here in Washington. Richmond County citizens may be assured that their Congressman, Bob Stephens, as well as Senator Talmadge and myself are expending every effort to bring this matter to a successful conclusion.

There is some reason to hope that positive action will be taken within the next fortnight on legislation which I have introduced in the Senate to put an end to forced busing for integration purposes. I would like to see it on the President's desk when he gets home from Peking. However, my guess is that his leaders in Congress will stall it so that he can enjoy another round or two of public acclaim on this issue, on which nearly 90% of Americans agree.

I say that President Nixon is stalling for political purposes, and call on his Republican apologists in Georgia to prove otherwise. Better they should be leading anti-busing rallies outside the White House in Washington, instead of outside the school houses in Richmond County.

EXHIBIT 2

THE USE OF FEDERAL FUNDS FOR TRANSPORTATION

The House Amendment to S. 659 contains several provisions relating to the transportation of, or the assignment of, students in connection with desegregation plans or plans to achieve racial balance. A number of amendments to S. 659 were introduced in the Senate which relate to these same matters. The Committee gave careful consideration to the question of transportation as an educational tool under present law and under the provisions of the Committee substitute for the amendment of the House.

Under present law, Federal funds may be used for transportation services as such, if the recipient local educational agency so desires, only under the impacted areas program (Public Law 874, 81st Congress). In addition, if transportation services are found necessary to carry out an otherwise fundable project, Federal funds may be used for such services under titles I (special projects for educationally deprived children), II (supplementary centers and services), and VII (bilingual education) of the Elementary and Secondary Education Act of 1965, and under the Education of the Handicapped Act. To the extent that the Committee has been able to determine, the only Federal education funds which could be used for transportation solely for the purpose of altering the racial composition of the enrollment of schools are those available under the impacted areas program, and then only because Federal funds are comingled with State and local funds. Only if the local educational agency decides to use its own pool of funds for transportation would the Federal funds be used.

To the extent consistent with law, the Committee believes that the question of transportation should be decided at the local level. Therefore, in order to clarify Federal policy on this subject, the Committee recommends that the Senate amendment contain the following provision, "no provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance".

This language makes clear that in no way does the Committee amendment require the assignment or the transportation of any student or teacher in order to overcome racial imbalance or achieve desegregation. The Committee amendment would provide financial support for school desegregation, including, where necessary transportation services, undertaken pursuant to desegregation plans under a Federal Court order, the Civil Rights Act of 1964, State law or court orders, or a voluntary plan initiated by the local educational agency.

Transportation to achieve desegregation has been undertaken in communities throughout the nation—as a matter of wholly voluntary local education policy, or under Federal court or administrative order to remedy unconstitutional discrimination, or under State law. Although title VII does not require the transportation of students, funds under title VII could be used at the request of local school officials to assist in paying the cost of desegregation-related transportation.

The Committee believes that a prohibition against Federal assistance to meet the cost of desegregation-related transportation at the request of local school authorities would result in additional tax levies at the local level, or cutbacks in vital education services in many of these communities.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CHILES). 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.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A joint resolution of the Legislature of the State of New York; to the Committee on Public Works:

"JOINT RESOLUTION No. 3

"Joint resolution of the Legislature of the State of New York memorializing Congress to meet its responsibility with regard to the environment and to provide the funds necessary to carry forth essential environmental programs and to adopt a resolution continuing the construction grants authority of the Clean Water Restoration Act of nineteen hundred sixty-six and providing for reimbursement to the State of New York and its municipalities of the amounts committed for prefinancing the federal share of the cost of construction of sewage treatment works and to request the Attorney General, if necessary, to take appropriate action to ascertain and protect the interests of the State of New York

"Whereas, The Federal Government has recognized a basic responsibility regarding the environment and environmental standards have been set by the state and approved by the Federal Government which are considered realistic in the light of available technology and the funding that the Congress has heretofore indicated that it would appropriate for this purpose; and

"Whereas, The Clean Water Restoration Act of nineteen hundred sixty-six provides financial assistance for construction of sewage treatment works through June, nineteen hundred seventy-one and further assured the state and its municipalities that if they prefinanced the Federal share that the Congress would make timely reimbursement; and

"Whereas, The subsequent congressional resolutions have failed to provide assurance the Congress will reimburse in order to continue the program; and

"Whereas, Since nineteen hundred sixty-six the state and its municipalities have prefinanced in excess of $1.3 billion of the Federal share of the cost of sewage treatment works without Federal reimbursement; and

"Whereas, The Congress has not appropriated the promised funds to finance its share of anti-pollution programs that it has enacted; and

"Whereas, In reliance the State of New York has advanced its funds to its localities which funds the Federal Government has not reimbursed; and

"Whereas, The State of New York has met all its responsibilities under the Clean Water Restoration Act of nineteen hundred sixty-six; and

"Whereas, In reliance upon the previous representations of the Congress, New York State has entered into grant agreements with various municipalities of this State to accomplish the objectives of the Clean Water Restoration Act of nineteen hundred sixty-six, pursuant to which agreements millions of dollars have been expended by State and municipalities for planning and design and construction of sewage treatment facilities; and

"Whereas, In most cases it is not financially possible to proceed further with these anti-pollution projects in the absence of federal funding of this program; and

"Whereas, It is imperative to protect the health and welfare of the people of this State that these projects be implemented without delay; and

"Whereas, The Congress must now meet its responsibility for the environment and reimburse the State for the prefinanced federal share expended subsequent to nineteen hundred sixty-six and by resolution continue the Clean Water Restoration Act; now, therefore, be it

"Resolved, That the Legislature of the State of New York hereby memorialize Congress to adopt a resolution continuing the Clean Water Restoration Act of nineteen hundred sixty-six sewage treatment works grant program so as to provide full funding of federal sewage treatment works grants including insurance of reimbursement to a state or municipality if the state or municipality prefinances the federal share of the

cost of such sewage treatment works and further that any amendments to the Clean Water Restoration Act of nineteen hundred sixty-six should provide authorization for full reimbursement to the state or municipality for amounts prefinanced subsequent to nineteen hundred sixty-six; and be it further

"Resolved, That a copy of this resolution be transmitted to the President of the United States, the Secretary of the Senate, the Clerk of the House of Representatives, and to each member of Congress elected from the State of New York and that they be urged to devote their best efforts to the task of accomplishing the purpose of this resolution; and be it further

"Resolved, That the Attorney General of the State of New York be and he hereby is requested to take appropriate action, if necessary, to ascertain and protect the interests of the State of New York with respect to having the United States of America fulfill its obligations to the State of New York under the aforementioned programs."

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

S. 3197. An original bill to increase the dollar limitation on the cost for construction of Federal Reserve bank branch buildings (Rept. No. 92–633).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. MAGNUSON, from the Committee on Commerce:

Peter G. Peterson, of Illinois, to be Secretary of Commerce.

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

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

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

Andrew F. Durkee, Jr., and sundry other officers, for promotion in the Coast Guard;

Roderick M. White, of the permanent commissioned teaching staff of the Coast Guard Academy, for promotion to the grade of captain;

Jules A. Peebles, and Gordon T. Tooley, Reserve officers, to be permanent commissioned officers in the Coast Guard;

Bienveni D. Abiles, and sundry other graduates of the Coast Guard Academy, to be permanent commissioned officers in the Coast Guard; and

Ronald E. Meeker, and sundry other Reserve officers, to be permanent commissioned officers of the Coast Guard.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CHILES:

S. 3194. A bill to provide financial assistance to local educational agencies in each State in order to strengthen the neighborhood schools of such agencies and to increase the use of such schools as community cultural and educational centers, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. MONDALE (for himself, Mr. HUMPHREY, Mr. HARTKE, Mr. PROXMIRE, and Mr. BURDICK):

S. 3195. A bill to provide price support for milk at not less than 90 percent of the parity price therefor. Referred to the Committee on Agriculture and Forestry.

By Mr. BENTSEN:

S. 3196. A bill to amend the Library Services and Construction Act to provide for a public library services program for older persons. Referred to the Committee on Labor and Public Welfare.

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

S. 3197. An original bill to increase the dollar limitation on the cost for construction of Federal Reserve bank branch buildings. Ordered to be placed on the calendar.

By Mr. BROCK:

S. 3198. A bill to authorize and direct the Secretary of the Army to convey to the Andrew Jackson Lodge No. 5, Fraternal Order of Police, of Nashville, Tenn., certain lands of the United States of America at the Old Hickory lock and dam project, Cumberland River, Tenn. Referred to the Committee on Armed Services.

By Mr. HATFIELD:

S. 3199. A bill to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes. Referred to the Committee on Commerce.

By Mr. FULBRIGHT (by request):

S. 3200. A bill to amend the Arms Control and Disarmament Act, as amended, in order to extend the authorization for appropriations. Referred to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHILES:

S. 3194. A bill to provide financial assistance to local educational agencies in each State in order to strengthen the neighborhood schools of such agencies and to increase the use of such schools as community cultural and educational centers, and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. CHILES. Mr. President, on September 14, 1971, I introduced a bill, S. 2508, to protect the concept of the neighborhood schools. In my statement that day I pointed out that few issues dominated the thinking of the people in my State of Florida more than the assault on the neighborhood school, which traditionally has been the bulwark of our public educational system for over a hundred years. S. 2508 would define the neighborhood school concept. This legislation would say no student would be denied the right to attend his neighborhood school on the basis or race, color, religion, or national origin. At the same time this legislation would guarantee a student the absolute right to transfer and be provided transportation out of his neighborhood school when he is a member of a minority race and his race constitutes a majority of his neighborhood school.

We know that while we have had the neighborhood system in the past it has not been an equal school system. There have been disadvantaged children who have had to go to schools that were not equal. When any of us talk about the neighborhood school system, we do not want to go backward or to provide education of a lesser quality, but we want provided the best neighborhood school system. While allowing anyone who wished to do so the right to transfer, if a student elected not to transfer, he should not be held at a disadvantage.

In many cases where there were all black schools, the school board or the courts, rather than trying to bus white children into these schools, took the easier solution of closing the schools completely. In Gainesville, Fla., for example, a formerly all-black high school is standing empty while the students who would ordinarily attend it are transported to a formerly white high school that is forced, by its greatly increased enrollment, to go on triple sessions. In my statement last September I remarked that the closing of a disadvantaged school was not the long lasting solution. The primary effect a closing has is to shutout and close not only the school, but a community center as well. I believe Congress needs to face the problem of providing Federal funds that allow a lower pupil-teacher ratio and provide additional funds for guidance counselors, vocational-technical education and recreational equipment in disadvantaged schools. I am today introducing legislation to key in on the disadvantaged schools and make prize schools out of them. This would allow children in a deprived neighborhood a chance to "catch up." It would attempt to meet the child's needs where they are, raise educational requirements, and provide for a center for the community, giving a point of pride from which to build the neighborhood and develop leadership.

My bill zeroes in on the worst schools to give them the financial aid that is one of the important ingredients needed to make a prize school. It offers financial aid and provides that neighborhood schools be used as community cultural and educational centers. I think it is a plan which would be a beginning toward making the neighborhood school a real point of pride for the community.

Title VII of the Education Amendments of 1972, as outlined in the Senate committee report provides funds to upgrade educational quality in school districts which have adopted a comprehensive districtwide plan for the elimination of minority group isolation to the maximum extent possible in all its schools. The point of the eligibility requirements controlling these funds seems to be to eliminate, reduce, and prevent minority group isolation from occurring. My bill is a financial assist to help protect the concept of neighborhood schools. I cannot support a neighborhood school system if the kind of education that neighborhood school offers is far below

standard. If we are going to protect this traditional concept of our public education system, we must improve it. We must be able to offer the children in these areas a real choice—S. 2508 would allow students the right to transfer and be provided transportation out of their neighborhood school if they are members of a minority race and that race constitutes a majority in the neighborhood school. But no student would be denied school on the basis of race, color, religion or national origin.

The assistance this bill offers would be used in meeting the special needs of educationally disadvantaged children. This disadvantaged school is further defined as one where not less than 40 percent of the children enrolled are in families with an annual income less than $4,000. My bill would provide that schools considered disadvantaged would receive a Federal payment equal to the amount of 65 percent of the average per pupil expenditure in the State or in the United States, which ever is higher, times the enrollment of students in the particular school. These special funds are to be used only in disadvantaged schools, only for programs and projects designed to meet the special educational needs of educationally deprived children and for new or innovative school and community educational recreational programs. The program builds upon the assumption that money poured into schools has some relationship between the two. Disadvantaged children attend disadvantaged schools where there is often neither sufficient funds for equipment and facilities and little or no funds for recreational and cultural "extras," which help turn the school into a "prize" school that has the possibility of serving as a true center for the community—a vehicle for drawing people together because they are proud of what they have, rather than something to be ashamed of and something that divides the community.

One of my primary reasons for introducing this bill is to provide for a means of strengthening community involvement in a more effective use of the neighborhood schools. Particularly in disadvantaged neighborhoods, school facilities are in use a mere 6 or 7 hours a day. The buildings, as well as equipment in the school—if it is prosperly equipped—remain dormant for much of the day—in fact, much of the year. Schools are unused at night or on weekends, basketball courts remain dark and unused at night; library doors are closed. The money my bill provides in especially directed toward remedial and other services to meet the special needs of the educationally disadvantaged children. It would allow the hiring of additional professional or other staff personnel with special emphasis on recruiting parents and other local community members to assist in achieving the educational goals of such schools.

For example, there is in Washington, D.C., a group called PEER—Parents Enhancing Education Readiness. It is, basically, a program to increase the readiness of children entering school, and seeks to accomplish this by increasing the knowledge and skills of the pupil personnel staff so that they, in turn, may help parents of preschool children become more aware and more competent teachers of their own children in the home. The group conducts workshops in child development and facilitative techniques including demonstrations, films, discussions, field trips and workshops on human reproduction, readiness as it relates to developmental maturation, demonstrations of teaching and training techniques. The pupil personnel staff tutors the children going into homes for an hour per session to talk to, play with, read to children, and to model behavior for the parent, helping parents to understand how to teach their children in the home some of the basic skills necessary for successful school life. The preliminary sessions of the PEER program would be only one example of the kind of activity that could go on at a school "after hours" and on weekends if more funds were available where they were needed the most.

Funds provided in my bill would be available for comprehensive guidance, counseling, and other personal services for educationally disadvantaged children, development and employment of new instructional techniques, career education programs, and school-community educational recreational programs designed to stimulate further community interest and involvement with the education process. It would also include provisions for professional staff home consultations with parents and students where necessary, special administrative activities, and evaluation programs.

Funds provided through this proposal would be expended only in disadvantaged schools for the programs and activities for which such assistance is sought. I have tried to build in provisions to assure that such funds will not be mixed with State funds and will be used as intended that is to increase the level of money that would be available for the purposes I have just described. The Commissioner of Education will be authorized to see that good evaluation is made annually to assure the effectiveness of programs and activities encouraged through the program. The Commissioner could terminate further payments if he finds that the program or activity for which the grant was made has been changed as to no longer comply with the act's provisions.

Mr. President, we are faced today with a situation in which many children choose to attend a school a good distance from home, because the level of instruction, the quality of education offered at his neighborhood school is low.

The bill I am introducing today is designed to meet the child's needs where they are. The parent and child and teacher could remain closer to each other, the child would not have to spend so much time getting to and from school, leaving more time for his homework and extracurricular activities; and most of all children would be allowed to attend their neighborhood school if they chose to. That choice would be made more real, more practical by the upgrading of that disadvantaged neighborhood school.

Mr. President, I send the bill to the desk for appropriate reference.

By Mr. MONDALE (for himself, Mr. HUMPHREY, Mr. HARTKE, Mr. PROXMIRE, and Mr. BURDICK):

S. 3195. A bill to provide price support for milk at not less than 90 percent of the parity price thereof. Referred to the Committee on Agriculture and Forestry.

THE NEEDS OF DAIRY FARMERS

Mr. MONDALE. Mr. President, today I am sponsoring, with my colleague Senator HUMPHREY and other Senators, a bill to provide a price support of not less than 90 percent of parity for milk.

This renews my position on the needs of dairy farmers for a reasonable income. Throughout my career I have felt that the price of milk should be raised to 90 percent of parity.

There are others who argue that by raising prices to a more reasonable level, we would bring about increases in milk production. I do not believe that low prices are an appropriate tool for controlling the production of any farm commodity.

Mr. President, dairy farming is a very demanding type of work. It requires a tremendous amount of labor every day throughout the year. Capital investment requirements to continue producing a nutritious and wholesome food in abundance are increasing at a rapid rate and so are taxes. It is only fair that the income be raised to a level in line with both the social and economic requirements of dairy farm families.

To most of the dairy farm families of this Nation, milk is the end product of all their labor. Cattle must be housed, carefully handled and fed for 2 years before they come into production. The entire growing season is spent producing grain and forage to be fed to the cattle. The only return the dairy farm family receives for all this labor is the money they are paid for milk. The net income which is left after all the capital expenses and interest is paid averages several thousand dollars a year less than that received by the average wage earner in the city. In many cases it is less than that of welfare recipients in the major cities.

The Commissioner of Agriculture in Minnesota recently issued statistics showing that the average Minnesota farm family earns only about $0.84 an hour for their labor. That is shocking, especially in view of the fact that these people are more productive than any other businessmen in the world.

Dairy farmers deserve a better return for their labor and investment. I urge other Senators to support our efforts to establish it for them.

The increase in consumer milk prices, in any at all, would be only pennies a gallon. But to many milk producers, this additional income would decide whether or not they stay on their farms. To Minnesota producers, it would amount to $60 million of added income. It would mean equal or bigger increases for several other dairy States.

Mr. President, I ask unanimous consent that a statment by Senator HUMPHREY on this measure be printed in the RECORD at this point, together with

a letter and certain tables which were sent to Secretary of Agriculture Butz on yesterday.

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

STATEMENT OF SENATOR HUMPHREY

Mr. President, I am introducing today, a bill for myself, Senators MONDALE, HARTKE, PROXMIRE, and BURDICK, to require an increase in the dairy price support level to 90% of parity beginning on April 1, 1972. Although the current support level of $4.93 per cwt established was set at 85% of parity last April, it has since dropped to 80% and will likely fall below that level by April 1 of this year due to increases in production costs and other inflationary pressures.

The bill I am introducing today would prevent such deterioration in the future because it provides for recalculating the support rate at the beginning of each quarter throughout the marketing year. It would automatically adjust the per hundred pound price to reflect any increase in production costs. It would be very similar to the cost of living clauses found in many labor contracts.

Dairy producers simply cannot earn a decent living at current price levels when their costs, capital outlays and labor requirements continue to escalate upward.

Furthermore, I believe we need to stimulate dairy production in order to maintain a more adequate supply of dairy products to meet both primary and secondary market demands. Production last year increased very little over the year before and was actually less than total production of only a few years earlier. Government-held dairy stocks are the lowest it has been in several years, with small amounts of cheese available to move into feeding programs for the needy and schools lunches. I should also like to call attention to the sharp drop in the number of dairy farms. In just the last ten years, the number of dairy farms dropped from over one million to less than 400,000 today. Unless these producers can expect a fair return on their investments and labor, many thousands more will quit this business and move to our already overcrowded and overburdened cities.

Although this increase in the support rate for dairy products may mean a very small, if any, increase to the consumer, it will bring needed income relief to our nation's dairy farmers. To the housewife, it should mean no more than a 1½ cent increase in a quart of milk. But to the dairy producers, the added income gained by this increase in support level will mean whether many of them remain or leave the dairy business. To Minnesota producers, it would mean an added $60 million in milk income. To the producers of Wisconsin and Pennsylvania, it would mean an added $122 million and $58 million in income respectively.

Mr. President, yesterday several Senators joined me in a letter to Secretary Butz requesting that he employ the authority he now has to increase the 1972 dairy support rate to the 90 percent level which is the maximum now permitted by law. And, I hope that he takes this action. However, in the event that he doesn't, I will urge the Congress to act upon the bill I am introducing today.

S. 3195

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 202 of the Agricultural Act of 1970 is amended by striking out the language preceding paragraph (a) and inserting in lieu thereof the following: "Effective beginning April 1, 1972 and on the first day of each calendar quarter thereafter—"

(b) Paragraph (b) of such section 202 is amended to read as follows:

"(b) Paragraph (c) of section 201 of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(c)), is amended to read as follows:

"(c) The price of milk shall be supported at such level not less than 90 per centum of the parity price therefor as the Secretary determines necessary to assure an adequate supply. Such price support shall be provided through purchases of milk and the products of milk."

U.S. SENATE,
Washington, D.C., February 16, 1972.

Hon. EARL L. BUTZ,
Secretary, U.S. Department of Agriculture, Washington, D.C.

DEAR MR. SECRETARY: We urge you to establish 1972 dairy price supports at 90% of parity on April 1. There are several reasons for you to take this action and we are pleased to document them in this letter.

Present indications are that on April 1 the current dairy price support of $4.93 per cwt. will be less than 80% of parity, a catastrophic drop from the 85% level established a year ago. A re-establishment of the 85% level is so obviously apparent that it is not worthy of our comment when we believe there are so many compelling reasons to go beyond this—to the 90% maximum permitted by law.

Milk production, though up in 1971, has not increased as much as had been anticipated and is far less than the total production of only a few years ago. To assure an adequate supply of dairy products, in the light of this lowered production, increases in dairy price supports are needed. As I believe you stated yourself recently, "we are only a swallow away from a shortage of milk.

As evidence that there is not an over-abundance of dairy products it is pointed out that the aggregate total of government-held stocks is the lowest in recent years. Our latest figures (January 15) show these to be 31.6 million lbs. of butter, 6.8 million lbs. of cheese and only 1.5 million lbs. of non-fat dry milk.

Both butter and non-fat dry milk inventories are the lowest we have seen in the past five years. Of particular note is the fact that non-fat dry milk, though absorbing the biggest share of recent price increases, has a virtually non-existent government inventory. The overseas butter sales program has been a key factor in lowering butter stocks.

The small amounts of cheese in storage tend to move quickly into feeding programs for needy families and for school lunches. In fact, these programs could use much more than the present totals if such stocks were available.

Though support prices were increased last April 1 the total cost of the dairy price support program this year will be *less* than it was a year ago.

In projecting dairy production we are alarmed at the drop in dairy farm numbers. From over a million in 1959, your Department has estimated a drop to about 400,000 in 1969, ten years later, and this trend has continued. There are many other factors to be considered in retaining the dairy farms, but an increase in price supports will tend to slow this exodus.

As you know, dairy farming is among the most demanding of agricultural enterprises, especially in terms of substantial capital and labor requirements. Failure of dairy farmers to earn a fair return on these investments will force many of them off the farm into our already crowded cities.

Therefore, the increase in support level we are requesting would appear completely in line with both the social and economic requirements of these producers. Also, we believe the above arguments, based solely on the dairy situation, overwhelmingly state the case for increasing dairy price supports to 90% of parity.

Sincerely,

WALTER F. MONDALE,
HUBERT H. HUMPHREY,
WILLIAM PROXMIRE,
QUENTIN BURDICK,
VANCE HARTKE,
GAYLORD NELSON.

MILK PRODUCTION

	Billion pounds
Year:	
1964	127.0
1965	124.2
1966	119.9
1967	118.9
1968	117.2
1969	116.3
1970	117.4
1971	118.6

PRICE-SUPPORT LEVEL

Marketing year	Percent parity equivalent [1]	Support level per hundredweight	Increase (cents)
1967-68	87	$4.00	0
1968-69	89	4.28	+.28
1969-70	83	4.28	0
1970-71	85	4.66	+.38
1971-72	85	4.93	+.27

[1] Beginning of marketing year.

DAIRY PRODUCT PURCHASES

[In millions of pounds]

Marketing year	Butter	Cheese	Nonfat dry milk
1967-68	246.6	175.4	633.6
1968-69	186.4	69.0	555.9
1969-70	182.3	31.0	357.6
1970-71	305.4	56.8	452.3
1970-71 (April-December)	187.3	42.9	369.0
1971-72 (April-December)	175.7	76.8	372.9

GOVERNMENT PURCHASE PRICES FOR DAIRY PRODUCTS

[In cents per pound]

Marketing year	Butter	Cheese	Nonfat dry milk
1967-68	66.442	43.75	19.85
1968-69	66.394	47.0	23.35
1969-70	67.596	48.0	23.35
1970-71	69.784	52.0	27.2
1971-72	67.784	54.75	31.7

GOVERNMENT STOCKS OF DAIRY PRODUCTS

[In millions of pounds]

Marketing year	Butter	Cheese	Nonfat dry milk
1967-68	128.2	53.8	306.3
1968-69	72.9	27.7	201.9
1969-70	44.6		91.7
1970-71	166.7	8.5	20.7
1970-71 (April-January 15)	48.0	1.3	21.8
1971-72 (April-January 15)	31.6	6.8	1.5

COST OF PRICE SUPPORT PURCHASES

Year beginning July 1:	Net support purchases (millions)
1967-68	$357.1
1968-69	268.8
1969-70	168.6
1970-71	315.4

PRICE PROJECTIONS

USDA estimates that the parity equivalent price for manufacturing milk as of the beginning of the 1972-73 marketing year (Apr. 1, 1972) will be $6.23 per 100 pounds. Based on this, the following are their estimates of certain parity price percentages:

Percent of parity:	Estimated price
80	$4.98
85	5.30
90	5.61

By Mr. BENTSEN:

S. 3196. A bill to amend the Library Services and Construction Act to provide for a public library services program for older persons. Referred to the Committee on Labor and Public Welfare.

Mr. BENTSEN. Mr. President, I introduce for appropriate reference a bill which would amend the Library Services and Construction Act to provide public library services for older Americans.

In a speech before the Senate on January 25 of this year, I said:

> The public library, because of its neighborhood character, offers an excellent opportunity as a community learning resource for the elderly.

I also announced my intention to introduce legislation on this subject during this session of the Congress.

Mr. President, the White House Conference on the Aging made a specific recommendation that a title be added to the Library Services and Construction Act which would focus directly on bringing library services to older citizens. The legislation I introduce today is a response to that recommendation and an effort to bring the resources of our public libraries to thousands of older Americans who do not now have the opportunity to take advantage of them.

During the past several years, we have witnessed an accelerated interest by older Americans in continuing their education. Thousands of older men and women have recognized that education is a continuing process, not confined to any age group.

Yet education programs for older Americans have received relatively little attention from the Federal Government or the States. A recent report of the Senate Select Committee on Aging notes that:

> Education . . . is seldom mentioned when reviewing available resources which would be of use in meeting challenges of old age.

The White House Conference on Aging took note of the neglect of education programs for the elderly and then proclaimed:

> Education is a basic right for all persons of all age groups. It is continuous and one of the ways of enabling older people to have a full and meaningful life.

I believe, Mr. President, that we should explore a wide variety of education programs for the elderly and in particular those which do not proceed in formal educational institutions. Informal education, in libraries, churches, and other public or private organizations, can often be more effective and indeed more inviting to the person of advanced years who may be reluctant to enter a formal educational setting.

The harsh truth is that few libraries have established special programs for the elderly. This is, in large measure, the result of financial strictures which have not allowed them to do so. It is, in part, the result of inadequate administration budget requests for library programs, which frequently are the first to be cut back in times of financial stress.

Whatever the cause, the statistics are not encouraging; a recent survey of public libraries revealed that a majority give lowest priority to the aging, with less than 0.5 percent of all funds being budgeted for programs in this special field.

Statistics compiled by the Cleveland Public Library reveal that State libraries also give the lowest program development priority to the aging, with less than $400,000 being allocated for these purposes from the State from 1960 to 1971. Federal funds traceable to library programs and services to the aging are estimated to total less than $2 million since 1967.

Mr. President, in my view we are neglecting a valuable social and learning resource by not utilizing our libraries to benefit the elderly. The few programs which have been estabilshed have been singularly effective. The Detroit Public Library, for example, has provided direct service to many nursing homes within the city, bringing the magic of books and films to elderly individuals who are confined to their quarters. The San Francisco Public Library provides services to the aging within the central city through deposit collections, bookmobile services, and special programs. Unfortunately, these programs have proved to be the exception rather than the rule.

For the elderly man or woman confined to a nursing home or confronted with a daily routine lacking in emotional or intellectual stimulation, the delivery of books or other library materials and the visit of a librarian can be a window to the outside world. For the elderly who have some mobility, special library programs provided by public libraries can be an equally valuable experience.

In brief, Mr. President, library programs for the elderly can help to overcome the intellectual and social isolation that is a major burden for older Americans.

The bill I introduce today would earmark approximately $36 million over the next 3 fiscal years in grants to States specifically for programs for the elderly, including: first, the training of librarians to work with the elderly; second, special library programs for the aged; third, purchasing special library materials for use by older persons; fourth, paying salaries for older persons who wish to work on library programs for the elderly; fifth, in-home visits by librarians and other library personnel to homebound elderly; sixth, outreach programs to notify the aging of programs available; and seventh, transportation to enable the elderly to have access to library services.

This legislation is a comprehensive measure directed at the specific library needs of homebound older Americans as well as those who have access to local libraries. Moreover, it offers older Americans the opportunity for productive work in library programs established for the benefit of others in their same age group.

In my view, the special characteristics of our aging population require legislation directed specifically at their needs. Many older Americans, in order to receive the benefits of library materials and programs, have to rely on special devices which enable them to participate; these may include page turners, prism glasses, large print materials, and a variety of services for the homebound, whose world is often narrowed to the dimension of a bed or a room.

In fact, President Nixon, on June 25, 1971, in pointing out the unique characteristics of our aging population, said:

> The generation over 65 is a very special group which faces very special problems—it deserves very special attention. That is why we have been moving to insure that our older citizens get that special attention that they deserve.

Mr. President, this bill recognizes one of the special problems to which the President alluded.

I strongly urge the Senate Labor and Public Welfare Committee, which will be considering a variety of measures affecting older Americans, to give careful consideration to the programs set forth in this bill.

Mr. President, I ask unanimous consent to have printed at this point the text of the "Older Readers Services Act of 1972" in the RECORD.

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

S. 3196

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 "Older Readers Services Act of 1972".

DECLARATION OF POLICY

SEC. 2. Because public libraries serve to support the cultural, informational, and recreational aspirations of all residents in many communities, and because older persons are increasingly participating in life-time education, it is the purpose of this Act to assist the States in the extension and improvement of public library services for older persons.

PROGRAM AUTHORIZED

SEC. 3. (a) Section 4(a) of the Library Services and Construction Act is amended by adding at the end thereof the following new paragraph:

"(4) For the purpose of making grants to States to enable them to carry out public library service programs for older persons authorized by title IV, there are authorized to be appropriated $11,700,000 for the fiscal year ending June 30, 1973, $12,300,000 for the fiscal year ending June 30, 1974, $12,900,000 for the fiscal year ending June 30, 1975, and $13,700,000 for the fiscal year ending June 30, 1976."

(b)(1) Section 5(a)(1) of such Act is amended by striking out "or (3)" and inserting in lieu thereof "(3), or (4)".

(2) Section 5(a)(2) of such Act is amended by striking out "or (3)" and inserting in lieu thereof "(3), or (4)".

(3) Section 5(a)(3) of such Act is amended by striking out the word "and" at the end of such paragraph (B) thereof, by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon and the word "and", and by inserting after paragraph (C) thereof the following:

"(D) with respect to appropriations for the purposes of title IV, $40,000 for each State,

except that it shall be $10,000 in the case of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands."

(4) The last sentence of section 5(a)(3) of such Act is amended by striking out "or (3)" and inserting in lieu thereof "(3), or (4)".

(5) Section 5(b) of such Act is amended by striking out "or (3)" and inserting in lieu thereof "(3), or (4)".

(c) Section 6(a) of such Act is amended by striking out "and III" and inserting in lieu thereof "III and IV".

(d)(1) Section 7(a) of such Act is amended by striking out "or (3)" and inserting in lieu thereof "(3) or (4)".

(2) Section 7(b)(1) of such Act is amended by inserting "and title IV" after "title III".

(e) Such Act is further amended by adding after title III, the following new title:

"TITLE IV—OLDER READERS SERVICES

"GRANTS TO STATES FOR OLDER READERS SERVICES

"SEC. 401. The Commissioner shall carry out a program of making grants to States which have an approved basic State plan under section 6 and have submitted a long-range program and an annual program under section 403 for library services for older persons.

"USES OF FEDERAL FUNDS

"SEC. 402. (a) Funds appropriated pursuant to paragraph (4) of section 4(a) shall be available for grants to States from allotments under section 5(a) for the purpose of carrying out the Federal share of the cost of carrying out State plans submitted and approved under section 303. Such grants shall be used for (1) the training of librarians to work with the elderly; (2) the conduct of special library programs for the elderly; (3) the purchase of special library materials for use by the elderly; (4) the payment of salaries for elderly persons who wish to work in libraries as assistants on programs for the elderly; (5) the provision of in-home visits by librarians and other library personnel to the elderly; (6) the establishment of outreach programs to notify the elderly of library services available to them; and (7) the furnishing of transportation to enable the elderly to have access to library services.

"(b) For the purposes of this title, the Federal share shall be 100 per centum of the cost of carrying out the State plan.

"STATE ANNUAL PROGRAM FOR LIBRARY SERVICES FOR THE ELDERLY

"SEC. 403. Any State desiring to receive a grant from its allotment for the purposes of this title for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 6, submit for that fiscal year an annual program for library services for older persons. Such program shall be submitted at such time, in such form, and contain such information as the Commissioner may require by regulation and shall—

"(1) set forth a program for the year submitted under which funds paid to the State from appropriations pursuant to paragraph (4) of section 4(a) will be used, consistent with its long-range program for the purposes set forth in section 302, and

"(2) include an extension of the long-range program taking into consideration the results of evaluations."

EFFECTIVE DATE

SEC. 3. The amendments made by section 2 of this Act shall be effective after June 30, 1972.

By Mr. HATFIELD:

S. 3199. A bill to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes. Referred to the Committee on Commerce.

ENDANGERED SPECIES CONSERVATION ACT OF 1972

Mr. HATFIELD. Mr. President, in the past 150 years, more than 200 species of birds, fish, and mammals have become extinct. According to the Department of the Interior, the United States accounted for 48 of those species. Simply stated, that means short of a new creation of the world, these birds, fish, mammals will never exist again. Exotic animals such as Steller's sea cow or the dodo may not seem such a loss—although the diminishing of nature in any of its parts diminishes it totally in ways we are only just beginning to understand—but man is now threatening the less exotic wolf, whale, kangaroo, tiger, to name just a few. Will we read Jack London to remind ourselves of the timber wolf or Herman Melville for a glimpse of the whale? Will William Blake's "Tiger, Tiger" burn brightly only in imagination and the kangaroo in folk song? It is not impossible.

In 1969, under the provisions of the Endangered Species Act, the Department of the Interior listed 78 species requiring special protection just to survive. Today, 4 years later, almost 400 species are on that list. The dimensions of this problem, its ramifications, and its time frame have made it apparent that steps must be taken to strengthen the protection afforded endangered species. I am, therefore, pleased to put before the Senate legislation entitled "The Endangered Species Conservation Act of 1972" which is designed to greatly strengthen the existing program.

An important provision of this legislation would enlarge the definition of endangered species in the 1969 act to include those animals presently endangered and those likely to be extinct because of foreseeable actions. This would place a healthy stress on prevention, rather than reaction. After all, we have accomplished little when we preserve a species, such as the buffalo, in such limited numbers, under special conditions, and thereby rob them, and us, of their role in nature. It is preferable to forestall these artificial measures and to keep nature in balance.

Additionally, the legislation would prohibit the unauthorized import, export, taking and interstate transportation by any person of any species listed as threatened with extinction. Civil penalties can be levied against offenders. A further aid to protecting wildlife would be the removal of the ceiling on acquisition of habitats.

Man's lack of respect and moral insensitivity to life in all its forms is a constant source of amazement to me. Since we seem perpetually immune to the waste of human life cheaply spent in wars and street crime and disease, perhaps I should not be surprised that we sacrifice animal life for transmission fluid, dog food, lipstick, fur coats, belts or simply in a primitive thrill of killing. I should not be, but I am. I am glad to introduce this legislation and believe it adds significantly to existing statutes.

Mr. President, I ask that the full text of the Endangered Species Conservation Act of 1972 be printed at the end of my remarks.

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

S. 3199

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 "Endangered Species Conservation Act of 1972".

SEC. 2. (a) The Congress finds and declares that one of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish and wildlife; that serious losses in other species of wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico and the Convention on Nature Protection and Wildlife Preservation in the West Hemisphere, the International Convention for the Northwest Atlantic Fisheries, the International Convention for the High Seas Fisheries of the North Pacific Ocean, and other international agreements, to conserve and protect, where practicable, the various species of fish and wildlife, including game and nongame migratory birds, that are threatened with extinction; and that the conservation, protection, restoration, and propagation of such species will inure to the benefit of all citizens. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species and subspecies of fish and wildlife, including migratory birds, that are threatened with extinction, or are likely within the foreseeable future to become threatened with extinction.

(b) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to protect species or subspecies of fish and wildlife, including migratory birds, that are threatened with extinction or are likely within the foreseeable future to become threatened with extinction, and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies, and services, shall utilize their authorities in furtherance of the purpose of this Act.

(c)(1) A species or subspecies of fish or wildlife shall be regarded as an endangered species whenever, in his discretion, the Secretary determines, based on the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, and, in cooperation with the Secretary of State, the country or countries in which such fish and wildlife are normally found or whose citizens harvest the same on the high seas, and to the extent practicable, with interested persons and organizations, and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife, in the judgment of the Secretary, is either presently threatened with extinction or will likely within the foreseeable future become threatened with extinction, throughout all or a significant portion of its range, due to any of the following factors: (i) the destruction, drastic modification, or severe curtailment or the threatened destruction, drastic modification, or severe curtailment of its habitat; or (ii) is overutilization for commercial, sporting, scientific, or educational purposes; or (iii) the effect on it of disease or predation; or (iv) the inadequacy of existing regulatory mechanisms; or (v) other natural or man-made factors affecting its continued existence.

(2) After making such determination, the Secretary shall publish in the Federal Register and from time to time he may revise, by regulation, a list, by scientific and com-

mon name or names of such endangered species, indicating as to each species so listed whether such species is threatened with extinction or is likely within the foreseeable future to become threatened with extinction and, in either case, over what portion of the range of such species this condition exists. The endangered species lists which are effective as of the date of enactment shall be republished to conform to the provisions of this Act: *Provided, however,* that until such republication nothing herein shall be deemed to invalidate such endangered species lists. The provisions of section 553 of title 5, United States Code, shall aply to any regulation issued under this subsection. The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, also conducts a review of any lised or unlisted species or subspecies of fish or wildlife proposed to be removed from or added to the list, but only when he finds and publishes his finding that, to his satisfaction, such person has presented substantial evidence to warrant such a review.

(d) For the purposes of this Act, the term—

(1) "fish and/or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk or crustacean, or any part, products, egg, or offspring thereof, or the dead body or parts thereof;

(2) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam;

(3) "person" means any individual, firm, corporation, association, or partnership subject to the jurisdiction of the United States;

(4) "take" means to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill;

(5) "Secretary" means the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan No. 4 of 1970;

(6) "import" includes commerce with a foreign country, entry into a foreign trade zone, and transshipment through any portion of the United States without customs entry.

SEC. 3. (a) The Secretary shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as appropriate, to carry out a program in the United States of conserving, protecting, restoring, and propagating those species and subspecies of fish and wildlife that he lists as endangered species pursuant to section 2 of this Act.

(b) In addition to the land acquisition authorities otherwise available to him, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of those species or subspecies of fish and wildlife that he lists as endangered species pursuant to section 2 of this Act.

(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating those species or subspecies of fish and wildlife, including migratory birds, that he lists as endangered species pursuant to section 2 of this Act.

(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize, where practicable, their authorities in furtherance of the purpose of this Act by carrying out programs for the protection of endangered species and by taking such action as may be necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species.

SEC. 4. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species.

(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).

SEC. 5. (a)(1) Notwithstanding any other Act of Congress or regulation issued pursuant thereto, and except as hereinafter provided, any person who—

(i) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or

(ii) takes or causes to be taken within the United States, the territorial sea of the United States, or upon the high seas; or

(iii) ships, carries, or receives by any means in interstate commerce, any species or subspecies of fish or wildlife which the Secretary has listed as an endangered species threatened with extinction pursuant to section 2 of this Act, shall be punished in accordance with the provisions of section 7 of this Act.

(2) The prohibitions contained in this section shall not apply to American Indians, Aleuts, or Eskimos who take endangered species for their own consumption or ritual purposes in accordance with a treaty or pursuant to Executive Order or Federal statute.

(3) In order to minimize undue economic hardship to any person importing, exporting, taking, or transporting in interstate commerce any species or subspecies of fish or wildlife which is listed as an endangered species threatened with extinction pursuant to section 2 of this Act under any contract entered into prior to the date of original publication of such listing in the Federal Register, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may permit such person to import, export, take or transport such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.

(b) Whenever the Secretary, pursuant to section 2 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction, he shall issue such regulations as he deem necessary or advisable to provide for the conservation, protection, restoration and propagation of such species or subspecies, including regulations subjecting to punishment in accordance with section 7 of this Act any person who—

(1) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or

(2) takes or causes to be taken within the United States, the territorial sea of the United States, or upon the high seas; or

(3) ships, carries, or receives by any means in interstate commerce, any such species or subspecies of fish or wildlife likely within the foreseeable future to become threatened with extinction.

SEC. 6. (a) The Secretary may permit, under such terms and conditions as he may prescribe, the importation, taking, or the transportation in interstate commerce of any species or subspecies of fish or wildlife listed as an endangered species threatened with extinction for zoological, educational, and scientific purposes, and for the propagation of such fish and wildlife in captivity for preservation purposes, but only if he finds that such importation, taking, or transportation in interstate commerce will not adversely affect the regenerative capacity of such species in a significant portion of its range or otherwise affect the survival of the wild population of such species.

(b) The Secretary may, by regulation, delegate to a State the authority to regulate the taking by any person of an endangered species when he determines, in his discretion, that such State maintains an active program to manage and protect such endangered species in accordance with criteria issued by the Secretary.

(c) Any action taken by the Secretary under this section shall be subject to his periodic and continual review at no greater than annual intervals. Such review shall include the consideration of comment received from interested persons.

SEC. 7. (a) (1) Any person who violates any provision of section 5 or 6 of this Act or any regulation or permit issued thereunder, or any regulation issued under subsection (d) or (e) of this section, other than a person who commits a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In the case of Guam such actions may be brought in the district court of Guam, in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands, and in the case of American Samoa such actions may be brought in the District Court of the United States for the district of Hawaii and such courts shall have jurisdiction of such actions. In hearing such action, the court shall sustain the Secretary's action if supported by substantial evidence.

(2) Whenever any property is seized pursuant to subsection (c) of this section, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection, any property so seized may be proceeded against in any court of competent jurisdiction and forfeited. Fish or wildlife so forfeited shall be conveyed to the Secretary for disposition by him in such a manner as he deems appropriate. If, with respect to any such property so seized, no compromise forfeiture has been achieved or no action is commenced to obtain the forfeiture of such fish, wildlife, property, or item within 30 days following the completion of proceedings involving an assessment of a civil penalty, such property shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

(b) Any person who knowingly violates any provision of section 5 or 6 of this Act, or any regulation or permit issued thereunder, or any regulation issued under subsection (d) or (e) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year,

or both, and any Federal hunting or fishing licenses, permits, or stamps may be revoked or withheld for a period of up to 5 years. Upon conviction, (1) any fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property seized pursuant to subsection (c) of this section may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. If no conviction results from any such alleged violation, such property so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within 30 days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section.

(c)(1) The provisions of sections 5 and 6 of this Act and any regulations or permits issued pursuant thereto, or pursuant to subsection (d) or (e) of this section, shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency.

(2) Any authorized agent of the Department of the Interior, the Department of Commerce, or the Department of the Treasury may, without a warrant, arrest any person who such agent has probable cause to believe is knowingly violating, in his presence or view, section 5 or 6 of this Act, or any regulation or permit issued thereunder, the penalty for which is provided under subsection (b) of this section. An agent who has made an arrest of a person in connection with any such willful violation may search such person at the time of his arrest and seize any property taken, used, or possessed in connection with any such violation.

(3) Any authorized agent of the Department of the Interior or the Department of Commerce or officer of the Customs shall have authority to search and seize without a warrant, as provided by the Customs laws and by the law relating to search and seizure. Said officer or agent is authorized to execute warrants to search for and seize any property, including, for the purposes of this section, any fish, wildlife, aircraft, boat, or other conveyance, weapon, business records, shipping documents, or other items which have been taken, used, or possessed in connection with the violation of any section, regulation, or permit with respect to which a civil or criminal penalty may be assessed, pursuant to subsection (a) or (b) of this section. The several judges of the courts established under the laws of the United States and the several States, and United States magistrates, may, within their respective jurisdictions, upon proper oath and affirmation showing probable cause, issue warrants and subpoenas under the Federal Rules of Criminal Procedure to enforce subsections (a) and (b) of this section. Any property seized pursuant to this section shall be held by any agent authorized by the Secretary or the Secretary of the Treasury, or by a United States Marshal, pending disposition of proceedings under subsection (a) or (b) of this section; except that either Secretary may, in lieu of holding such property, either (1) permit a bond or other satisfactory surety to be posted, or (2) place the fish or wildlife in the custody of such person as he shall designate. Upon the imposition of a civil or criminal penalty, or a forfeiture, the costs to the Government of transfer, board, and handling, including the cost of investigations at a non-designated port of entry, shall be payable to the account of the Secretary. The owner or consignee of any property so seized shall, as soon as practicable following such seizure, be notified of the fact in accordance with regulations established by the Secretary.

(d) For the purposes of facilitating enforcement of sections 5 and 6 of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the importation of fish and wildlife, other than shellfish and fishery products imported for commercial purposes, into the United States. The importation of such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at non-designated ports in the interest of the health or safety of the fish or wildlife. Such regulations may provide other exceptions to such prohibition if the Secretary, in his discretion, deems it appropriate and consistent with the purposes of this subsection.

(e) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the purposes of this Act, and the Secretaries of the Treasury and the Department in which the Coast Guard is operating are authorized to promulgate such regulations as may be appropriate to the exercise of responsibilities under subsection 7(c)(1) of this Act.

SEC. 8. (a) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to species or subspecies of fish and wildlife threatened with extinction, to take measures to prevent any fish or wildlife from becoming threatened with extinction, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, and propagation of fish and wildlife. The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife and their habitat. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with extinction.

(b) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (19 U.S.C. 1306; 21 U.S.C. 101–105, 111–135b, and 612–614) and the Tariff Act of 1930, as amended (section 1306 of Title 19). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determintion under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

(c) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 1527 of Title 19 relating to the importation of wildlife taken, killed, possessed or exported to the United States in violation of the laws or regulations of a foreign country.

SEC. 9. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows:

"With the exception of endangered species listed by the Secretary pursuant to section 2 of the Endangered Species Conservation Act of 1972, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715 i(a)), is further amended by inserting "on likely within the foreseeable future to become threatened with" between the words "with" and "extinction".

(c) Subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383) as amended (16 U.S.C. 715s (a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and extinction" in the last sentence thereof.

(d) Subsection 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903), as amended (16 U.S.C. 460 1–9(a)(1)), is further amended by inserting "or likely within the foreseeable future to be come threatened with" between the words "with" and "extinction".

SEC. 10. (a) Sections 1 through 3 of the Act of October 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C. 668aa–668cc), are hereby repealed in their entirety.

(b) Sections 1 through 6 of the Act of December 5, 1969 (83 Stat. 275–279; 16 U.S.C. 668cc–1 through 668cc–6) are hereby repealed in their entirety.

By Mr. FULBRIGHT (by request):

S. 3200. A bill to amend the Arms Control and Disarmament Act, as amended, in order to extend the authorization for appropriations. Referred to the Committee on Foreign Relations.

Mr. FULBRIGHT. Mr. President, by request, I introduce for appropriate reference a bill to amend the Arms Control and Disarmament Act, as amended, in order to extend the authorization for appropriations.

The sum requested is $22,000,000 for fiscal years 1973 and 1974. This contrasts with the amount of $17,500,000 authorized for fiscal years 1971 and 1972, an increase of $4,500,000.

The bill has been requested by the President of the United States and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the President dated February 10, 1972, to the Vice President.

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

S. 3200

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of section 49(a) of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2589(a)), is amended by inserting immediately after $17,500,000", the following: ", and for the two fiscal years 1973 and 1974, the sum of $22,000,000,".

THE WHITE HOUSE,
Washington, D.C., February 10, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate,
U.S. Capitol.

DEAR MR. PRESIDENT: As I have often said, the work of the Arms Control and Disarmament Agency is among the most significant work undertaken by our Government. Intelligently directed arms control and disarmament efforts are an important element of our foreign policy and are essential to our national security.

Carefully designed arms control arrangements offer the prospect of halting an arms race especially in the strategic arms field—that could both drain the resources and decrease the relative security of all participants. The quest for reliable ways of controlling armaments in a manner that will bring a greater measure of security than we can obtain from arms alone deserves the very best we can muster in the way of brains, experience, knowledge, and negotiating skill as well as strong public and Congressional support.

It is my conviction that the Arms Control and Disarmament Agency has done much to assist in attaining this objective through the Strategic Arms Limitations Talks, as well as through the work of the Conference of the Committee on Disarmament at Geneva. The work of this Agency is vital to future progress in these difficult areas and I anticipate that it will be faced with new, additional responsibilities in the future.

Accordingly, I am forwarding herewith draft legislation to authorize appropriations for the Arms Control and Disarmament Agency for another two years after the current authorization expires on this coming June 30. I urge the Congress to give this bill its prompt and favorable consideration.

Sincerely,

RICHARD M. NIXON.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 936

At the request of Mr. MONTOYA, the Senator from Arkansas (Mr. FULBRIGHT) was added as a cosponsor of S. 936, a bill to extend medicare coverage for out-of-hospital prescription drugs.

S. 963

At the request of Mr. MONTOYA, the Senator from West Virginia (Mr. BYRD) and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of S. 963, a bill to authorize the Secretary of Agriculture to cooperate with and furnish financial and other assistance to States and other public bodies and organizations in establishing a system for the prevention, control, and suppression of fires in rural areas, and for other purposes.

S. 1928

At the request of Mr. MONDALE, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 1928, to designate the Lower St. Croix River as a component of the National Wild and Scenic Rivers System.

S. 2040

At the request of Mr. BOGGS, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 2040, a bill to make the provisions of the Vocational Education Act of 1963 applicable to individuals preparing to be volunteer firemen.

S. 3067

At the request of Mr. JAVITS, the Senator from Massachusetts (Mr. BROOKE) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 3067, a bill to eliminate racketeering in the sale and distribution of cigarettes and for other purposes.

S. 3152

At the request of Mr. CHILES, the Senator from New York (Mr. BUCKLEY) and the Senator from Georgia (Mr. GAMBRELL) 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.

S. 3182

At the request of Mr. SCOTT, the Senator from Wisconsin (Mr. PROXMIRE) was added as a cosponsor of S. 3182, a bill to implement the Convention on the Prevention and Punishment of the Crime of Genocide.

EDUCATION AMENDMENTS OF 1971—AMENDMENTS

AMENDMENT NO. 903

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

Mr. ERVIN (for himself, Mr. BAKER, Mr. BENNETT, Mr. BROCK, Mr. BYRD of Virginia, Mr. EASTLAND, Mr. ELLENDER, Mr. GAMBRELL, Mr. GURNEY, Mr. HOLLINGS, Mr. JORDAN of North Carolina, Mr. LONG, Mr. MCCLELLAN, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, and Mr. TOWER) submitted an amendment intended to be proposed by them jointly to the committee amendment in the nature of a substitute for the House amendment to S. 659, a bill to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, and related acts, and for other purposes.

AMENDMENT NO. 904

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

Mr. ERVIN submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute for the House amendment to S. 659, a bill to amend the Higher Education Act of 1965, the Vocational Educational Act of 1963, and related acts, and for other purposes.

SOCIAL SECURITY AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 905

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

ADULT CATEGORIES OF WELFARE AND SOCIAL SECURITY

Mr. RIBICOFF. Mr. President, today I am introducing an amendment to H.R. 1 to assure that no recipient of Federal payments under old-age assistance, aid to the blind, or aid to the permanently disabled receives less under title III of H.R. 1 than he or she is now receiving. My proposal would also assure that payments made under these so-called adult assistance categories are not reduced when social security benefits are raised.

The debate over welfare reform has focused primarily on the provisions of title IV or H.R. 1 which covers welfare reform for families. The problems of the aged, blind, and disabled are often overlooked, even though title III of H.R. 1 contains major changes in the programs of public assistance for those in the "adult categories."

Under current law each State determines the level of assistance it will provide to needy aged, blind or disabled persons. Title III of H.R. 1 would establish a Federal program for these people with nationally uniform levels of assistance—up to $150 a month for an individual and $200 a month for a couple.

Unfortunately, these amounts are less than many States now pay and there is no requirement in title III of H.R. 1 that States must make supplemental payments where necessary to maintain present benefit levels. My amendment would assure that recipients receive no less adequate benefits under title III of H.R. 1 than they are now receiving, by requiring States to make supplemental payments. These payments would have to include the bonus value of food stamps as well as an amount necessary to bring adult assistance payments up to the levels paid under the present system. This amendment is similar to the one I have already introduced as part of my proposal for improving title IV or H.R. 1.

The second part of my proposal establishes a pass-through mechanism to assure that adult assistance payments are not reduced when social security benefits are raised.

At present most States require cutbacks in welfare payments when social security benefits are raised, under the assumption that higher social security payments decrease the need for welfare assistance. Unfortunately, social security payments do not provide benefits adequate to obviate the need for welfare. One million two hundred thousand aged Americans must rely on old age assistance—welfare—as well as social security. In order to offset these welfare cutbacks which are triggered by social security changes, my proposal would require the supplemental payment made by a State to include an additional $4 monthly per individual—$6 monthly per couple. This amount is roughly equivalent to the 5-percent social security benefit increase provided for in H.R. 1. To provide a measure of equity to those not on social security and thus not ordinarily affected by the social security triggering mechanism, my proposal would also provide this additional $4—$6 for couples—to those persons not covered by the social security system.

Under the terms of my emergency welfare fiscal relief bill, the costs of these proposals, less than $100 million, would be borne by the Federal Government once a State reached its fiscal 1971 cash public assistance outlays level.

AMENDMENT NO. 906

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

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

NOTICE OF HEARINGS ON SETTLEMENT COSTS

Mr. SPARKMAN. Mr. President, for some time now the Housing and Urban Affairs Subcommittee, of which I have the honor to be chairman, has been concerned with the costs of settlement inherent to home mortgages. Because of this concern and, because this is a deeply involved subject—in some instances crossing State jurisdictions as well as involving areas over which the Congress has no legislative jurisdiction—at my suggestion, we included in the Emergency Home Finance Act of 1970—specifically section 701 of Public Law 91-351, approved July 24, 1970—a provision which directed the Secretary of the Department of Housing and Urban Development and the Administrator of the Veterans' Administration to undertake a study and make recommendations to the Congress as to legislative and administrative actions which could be taken to reduce and to standardize settlement costs. Section 701 of the act further directed that this report be sent to the Congress no later than 1 year after enactment of the Emergency Home Finance Act of 1970 or, in other words, by July 24, 1971.

A preliminary report on the subject of "settlement costs" was sent to Congress on July 24, 1971, and, from that time onward, we have anticipated, from one day to the next, receiving the final report. On the one hand, we could perhaps condemn and criticize the administration—the Department of Housing and Urban Development and the Veterans' Administration—for the delay in getting this report to us. On the other hand, I, at least, am very much aware of the difficulties and complications which were involved in this deeply complex subject and understand that the administration needed the time it has taken to get this report to us.

I am pleased to announce that the final report was received on yesterday, February 17, 1972. In accordance with my original plans, I wish now to announce that the Housing and Urban Affairs Subcommittee of the Banking, Housing and Urban Affairs Committee will commence hearings on the issues contained in the settlement costs report, as well as any bills and other proposals relating to this matter, on March 1, 1972, in room 5302, New Senate Office Building. Persons wishing to testify on the subject of "settlement costs" should contact Mrs. Othella C. Pompier, room 5226, New Senate Office Building, 225-6348.

ADDITIONAL STATEMENTS

BUILDING FOR 1972 AND BEYOND

Mr. HANSEN. Mr. President, the December 1971, issue of Railway Age contains an article that is most encouraging to those of us throughout the United States who believe that the Nation's railroads have a significant role in our future.

The article, entitled "Building for '72 and Beyond," leads off with an interview with the president of the Union Pacific, the railroad that spans Wyoming from east to west, and from west to east, with a double track.

President John C. Kenefick makes it clear that the UP does not take lightly its responsibilities as a prime mover of America's goods. He also outlines some of the evidence that UP planners are not looking just at the years immediately ahead in their research and development, but decades ahead.

The interview is followed by the article entitled: "Union Pacific: Efficiency and Service."

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

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

JOHN C. KENEFICK AND UNION PACIFIC: BUILDING FOR '72 AND BEYOND

Q. In many respects, 1971 has been a peculiar year for the railroad industry. How does it add up for Union Pacific?

A. We haven't had a bad year, by any means. At the same time, 1971 certainly wasn't as good as we hoped it would be. The UTU strike hurt, and hurt plenty—not just for the 18 days we were shut down but for the next month, because it took that long for traffic to build back to pre-strike levels. The West Coast dock strike created problems. So did the coal strike, although it didn't hit us as hard as it hit some railroads. And, frankly, in October business generally seemed to be slumping.

Q. Against that backdrop, how do you view 1972?

A. Again, we hope we're going to have a good year—certainly a better year than we've had in 1971. But it's hard to predict business levels under any circumstances—and we have the continuing effect of the wage/price freeze to consider.

Q. Under these conditions, what are you planning for 1972 equipment and property improvements?

A. Traditionally, about 75% of our capital budget has gone for equipment, and we expect that ratio to hold up in 1972. Of course, expected business levels have an effect on our planning. Our proposed total budget is about the same as our 1971 expenditure, or approximately $100 million.

Q. How about planning for improvements beyond 1972?

A. So far as equipment is concerned, we don't see any dramatic changes coming. We've had heavy equipment expenditures in recent years—365 new locomotives and more than 31,000 freight cars in the past six years. In general, our fleet is in good shape. We will have a replacement program, plus whatever is needed to meet hoped-for increases in volume. If our coal business increases as we expect it to, for example, we'll be acquiring more open-top cars than we have in the past.

Q. And on motive power. . . .

A. For the past several years, we've been buying super-power, to the point where we have pretty well saturated the service in which these high-horsepower locomotives are useful. Now, we will be concentrating on units of less horsepower, with nothing bigger than 3,000 hp in our 1972 program.

Q. Inevitably, there is the question of electrification. . . .

A. We're making studies, in cooperation with electric utilities and General Electric, of mainline electrification from North Platte, Neb., to Green River, Wyo., or perhaps to Ogden. This is not outside the realm of possibility. We're serious about looking into it. There isn't any set timetable for completing the studies, and frankly the amount of money involved scares me just a bit. But that doesn't mean that we won't go ahead with this, because it does not look unattractive.

Q. UP has also been spending a considerable amount on fixed-plant improvements. . .

A. We've built Bailey Yard at North Platte and we've improved our East Los Angeles Yard. We should be doing something in the Pacific Northwest, but we haven't quite decided what. We've completed our new diesel facility at North Platte, and we have improvements under way on the locomotive department at Omaha. We've been making improvements at Pocatello, Idaho, and we're planning changes at our Salt Lake City diesel facility. We have studies in progress on installation of rip tracks at various points, and we also have to improve our facilities for heavy repair of freight cars. We're extending sidings, particularly on the Kansas Division. And I hope we can go along each year with $1 million to $2 million for line improvements, principally curvature reductions.

Q. UP is known as an operating man's railroad—a railroad of super-power and heavy trains. Is this a totally accurate image?

A. Are we committed to the big train? Sure, we are—but that doesn't mean we always run the big trains. If the demands of the service can be met only by running a light train, then we'll run a light train. But if we can provide the services the customer requires and get good equipment utilization with the big train, then we'll run the big train. I don't think there's anything unusual about that. If we were in the trucking business, we'd be plugging for triple-bottoms instead of double-bottoms. If we were in the tanker business, we'd be building bigger and bigger tankers. If we were in the airline business, we'd be buying 747s. But for some reason, in the railroad business it seems to be a sin to want to run freight trains like the airlines run 747s. Certainly, the bigger the train you run the lower the cost. But you don't see the airlines putting a 747 on every run, and we don't do everything on the big-train scale.

Q. Would there be potential, for UP in the kind of operation represented by a "Super C" or a minitrain?

A. As I understand it, these operations are designed to meet specific requirements that couldn't really be met in any other way. In a congested area, for example, a minitrain can eliminate delay, and of course this is good. But our operation doesn't really lend itself to much service of this kind.

Q. What if you could run mainline trains with smaller crews? Would this lend to a significant increase in the number of trains operated?

A. Maybe, but what do you gain by that? Put it another way: If we have 150 cars to move from Omaha to Ogden, 1,000 miles, and we can pull them with one crew and get there just as fast, I don't see any reson why we should pull them with two crews.

Q. In this operating context, will UP get substantial benefit from work-rule changes negotiated with the UTU and the Brotherhood of Locomotive Engineers?

A. It depends on what you mean by substantial. Will we save a lot of money? No, not a great deal. But to the extent that we can have a more flexible operation, certainly we will benefit by being able to give a better service. I'm thinking now of the road/yard and interchange provisions that were agreed to and interdivisional runs. You know, we're not bashful about spending a half-million dollars to take out a couple of curves and save five or 10 minutes on every train that goes over that route. So if we can get similar time-savings in the terminals, and on interdivisional runs, it's worthwhile. Perhaps the benefits are rather intangible, but that doesn't mean that they aren't real.

Q. Some of these benefits will be a long time showing up. In the meantime, costs keep going up. What can you do in this situation?

A. We know we have to keep even, even if we have to give wage increases that work out to about 1% per month. So we do a number of things. We lengthen sidings so that we can operate fewer but longer trains and still move traffic efficiently. We modernize our servicing and repair facilities. Hopeful, we can further mechanize our mainteinance-of-way-and-structures activity. We simply must have improved equipment and/or improved methods and procedures to improve productivity. I would say that the workrules agreements are a very small first step in the same direction, toward improving productivity.

What about this matter of improved equipment? Are you satisfied with the extent of the research-and-development work that is being done?

A. I think we could do a lot better. For instance, we're still working with the same basic freight car we had 50 years ago. I don't say that improvements have not been made. They have been. But we are not moving fast enough toward building the kind of equipment that can give better service and be cheaper to maintain.

Q. Will DOT's R&D effort at Pueblo help?

A. My impression is that this, so far, is pretty much passenger-oriented—and we aren't.

Where should R&D work be concentrated? Railroads? Suppliers? The AAR?

A. It's difficult for individual railroads to go very far in this area. Their resources may be limited or their applications may be limited. I don't know that the big burden should rest on the supply industry—though the man who builds a better mousetrap can be pretty sure he'll have a market for it. I do think that a lot more of this kind of work could be done through the AAR—and I'm glad that the AAR research department is being beefed up, with a substantial increase in its 1972 budget. There is, of course, another area where valuable R&D might be done—and that by the Federal government. When you consider what government spends on research involving aircraft and highway construction, well . . .

Q. Does this reflect the need for better understanding of railroads on the part of government?

A. Perhaps it does. I guess we may still be considered as a stodgy industry. But I'll guarantee you that we're a lot less so than we were 20 or 15 or 10 or even five years ago.

Q. If there is an educational job to be done in government, how about the one that remains to be done in the industry itself—the recruiting, training and retaining process to keep the executive pipeline filled?

A. If I had one single, major worry in my job, it would be in doing what you refer to—keeping the executive pipeline filled. I suppose if there's any single job a president should do that's more important than all the rest, that's it. But, to answer the question: We are recruiting, and we're having reasonable success. We're trying to get a handle on the training problem. I'm not satisfied that we have been doing all that we should have been doing in this area.

Q. What directions will training programs take?

A. I've been grappling with these problems for the past 10 or 15 years. I wish I had the answers. College and university graduates can be rather easily blended into an organization in marketing areas, finance, law, accounting. But the operating side is the big one, when we talk about personnel infusion. And it's tough, bringing these graduates into the kind of training program that you need in order to develop operating officers.

Q. It sometimes takes a rare breed. . .

A. It sure does. And yet, I don't know how you become a good superintendent without having been a trainmaster, or how you become a good general manager without having been a superintendent. I'm not rigid on this concept—but the problem is there and it has to be recognized.

Q. One area where the school/work transition is a little easier might be the computer room. What do you want computers to be doing for you five years from now?

A. In one word, more.

Q. Specifically?

A. We hope to get a much better handle on car utilization and distribution. We hope to get much better information on costs, on a current basis, for control applications. And we hope to get more and better information about our traffic—where we're getting business, where we're losing it, where we should be getting business and aren't, how our profitability works out, how our sales effort stacks up in terms of effectiveness.

Q. On this matter of profitability. UP has recently set up its TOFC/COFC operation on a profit-center basis. . .

A. We have, and we think this is working out well. Let's be modest, though, and say that there's nothing really new about this: The New York Central did it about 10 years ago, and the systems are about the same.

Q. Why pick TOFC/COFC as a starter?

A. First, we thought it was possible to get a good fix on figures. Second, we knew that there were enough variables to make changes significant—changes that can be made and controlled by our managers. In other words, with TOFC/COFC you can't say "Well, I made money yesterday and I'll make money the same way tomorrow."

Q. How about setting up other profit centers?

A. We may. But this depends on where you need the concept and how you use it. Take the coal business. Very soon, the bulk of our coal business will be moving in unit trains. When unit trains are set up, you have a certain standard set of conditions, as to volume, speed, frequency of service, and so forth. There's a price attached to the service. So long as all the standards are met, your profit isn't going to change much. There just isn't much you can do about it. But with TOFC/COFC, you have all kinds of variables—traffic balance, flow of empties, terminal costs. These things can vary all over the lot. You could discover that you made money yesterday on piggy-back, and that would be no indication whatever that you would be making money tomorrow. So, we assigned all TOFC/COFC revenues to the profit center. Then we assigend all the expense that could be specifically attributed and controlled—trucking expense, equipment expense, including a per diem on cars regardless of who happens to own them. We charge the center with a rate per car-mile, loaded or empty, which is close to the system average revenue per car-mile, loaded or empty.

Q. What does this give you?

A. Well, what happens on the bottom line is not necessarily an indication of absolute profitability, but it does give us a base for comparisons. Since we've been using this system, that bottom figure on the TOFC/COFC has turned from a deficit to a profit. Now, I'm not sure in absolute terms that we had a deficit in the beginning. I'm pretty sure we don't have one now, because, if anything, we're charging the profit center a bit too much on line-haul. Where did the improvement come from? Our people say it has come largely from improved equipment utilization. When you put their feet to the fire, they're more careful about cross-hauling empties, things like that.

Q. Is this to a point where the profitability of individual moves can be judged?

A. We want to get it to that point. There are too many areas now where you know you have a can of worms—but you can't find and isolate the worm that's causing the problems. We're getting into responsibility accounting, on a railroad system basis, and the aim of this is somewhat similar. We have to know where the specific problems are.

Q. Is this also a complicating factor—isolation of cost and profitability—in rate-increase situations?

A. There's no question but that some in the industry haven't done either their cost homework or their marketing homework. There's no question, either, about future rate increases. If the scheduled wage increases go into effect, obviously there will have to be rate increases. There's no other way for the industry to stay solvent. Oh, UP might last a little longer than some, but . . .

Q. Do we see more across-the-board increases—or is there a chance for selective adjustments?

A. To begin with, we estimate the cumulative effect of across-the-board freight-rate increases at 38% since 1960, with most of that coming since 1967. In the same period, the consumer price index has gone up by 38.8%—and the cumulative effect of railroad wage-rate increases adds up to 79.1%.

As to how we make increases, if we could sit here and make rates without worrying about anything but UP local rates, I don't think we'd ever go for an across-the-board increase. There are just too many factors that should be taken into account to handle a price increase in this fashion. Competition—intermodal and in the customers' market—is one factor. You also have to consider the sensitivity of some commodities and movements. For instance, we have situations where we're making a decent profit on traffic and where we'll continue to make a good profit as things stand. But the rate is at a level where if we go any higher, we're going to lose the business. The problem, or one of them, is that railroads have not been able to agree. And when we consider the time-lag involved in ICC rate proceedings plus the immediate need for more revenue, we tend to get desperate and go for the across-the-board increase, to avoid any further delays in arguing among ourselves. Then, we make the holddowns or roll-backs wherever they seem most needed.

UNION PACIFIC: EFFICIENCY—AND SERVICE

If you think of Union Pacific as a transportation machine, an operating man's railroad, a prime example of what efficiency can do, you are right. But if you think of UP only in those terms, you are missing half the

story. UP is also coming into its own as a market-oriented railroad with a healthier-than-ever regard for customer needs. And its performance in recent years is evidence of both operations and service orientation:

UP takes a train and runs it. Its average length of haul is 640 miles, or about 140 miles greater than the industry average. Over the past five years, however, UP has been able to hold its freight train-miles constant while gross ton-miles have increased substantially. Tons-per-train are up by more than 16%. Ton-miles per employee are up from a 1,268-to-1 ratio to 1,620-to-1.

Capital-spending programs have created a transportation capability which UP regards as second to none. In the 1966–70 period. UP expenditures added up to more than $738 million, and 1971 programs will boost that figure by about $100 million. UP and its customers have gotten quite a bit for the money—including 365 new locomotives, 31,-399 new freight cars, the $20-million-plus Bailey Yard at North Platte, Neb., with its $10-million diesel facility, and a $2.8-million yard improvement at East Los Angeles. The average age of UP's 71,000-car fleet is 11.3 years; well under the industry average of 14.4 years. And on a basis of equipment-investment-per-revenue dollar, UP spending in the past five years has run 18 cents per dollar, more than twice the industry average.

Operating men, marketing men: Traditionally, the route to the top at UP's Omaha headquarters has been through the operating department. It still is—but with a couple of differences. For one, John C. Kenefick has been more of a boomer than most recent UP presidents—with a service record that includes Rio Grande. New York Central and Penn Central (in addition to a post-war, five-year hitch with Union Pacific). For another, both Kenefick, and UP's vice president-operations, William J. Fox, talk and act as much like marketing men as like operating specialists.

Bill Fox, for instance, will begin a conversation with the observation that "service has to be our first consideration"—and he means it. He is openly critical of railroads generally (and historically) for being "too rigid about schedules." It is with a certain pride that he notes UP "has no qualms about changing or adding schedules, if that's what the service requires."

Fox knows costs. He is well aware that "you always get in trouble if you over-train in any direction," and he goes down the line with UP's emphasis on the big train. But it was also UP that set in motion new schedules from North Platte to the West Coast—4,000-ton-or-under, high-speed schedules that get runthrough traffic off in a hurry and may pick up a full day on delivery of late-arriving business from connections.

Fox shrugs: "We know we suffer on costs when we run trains of 4,000 tons. But we realize that our connections may encounter problems such as weather, or any other conditions that may affect on-time operations. Our objective is to accomplish on-time delivery and we will increase horsepower and reduce tonnage, if necessary, to do so. We'll adjust schedules for as short a period as 30 or 60 days under certain conditions to do this. We don't advertise it—we just do it. The traffic may originate on a connecting line, but we still regard it as our obligation to get it on-time."

Rising to the occasion, UP style: In effect, that is one more challenge for an operating group that is used to challenges. Ever since Gold Spike days, a century and more ago, UP has had a tough and hardy breed in the operating department—and it is not surprising, since UP offers just about every operating condition on its 9,500-mile system, including plains railroading, mountain railroading, railroading at sea level and up to about 8,000 feet, railroading where the temperature goes to 120 above and 40 below.

Last summer, however, UP's operating people experienced something new, even for them—railroading without regular crews, when the United Transportation Union called the walkout that eventually stretched over 18 days. It was a trying time—but a time in which UP proved something to itself.

Union Pacific did not just fold up. When the strike began, supervisory crews were assigned to clean up the railroad, and on the second day of the strike more than 60 trains operated. Other roads took UP deliveries and, despite its own situation, UP said it would accept deliveries when connecting lines were later faced with the spreading UTU walkout. UP also found the opportunity to experiment with a real runthrough—flying a supervisory crew into Los Angeles to bring a train all the way to North Platte, with only the required rest stops, meal stops and servicing inspection stops.

This ability to maintain a degree of train operations, however, was not the only success that Fox and his people were able to record. Again using supervisory personnel, UP was able to do "a tremendous amount of work" at the new North Platte diesel facility—and the diesel fleet was in great shape from an availability standpoint when the strike ended. Meanwhile, mainline rail relay programs proceeded almost as if there were no strike. On one particular project—rail-laying on the approaches and through a tunnel—UP estimates it saved about 50% of the normal labor cost: With traffic at such reduced levels, Fox recalls, "We zipped right through."

Costs—and benefits: UP's vice president-operations is cautious, but hopeful, on the benefits that may come from work-rule changes now negotiated. Obviously, there will be expenses involved in implementing the changes—for example, in working out inter-divisional runs through home terminals. On the plus side, however, Fox sees gains in the provision under which a crew making a delivery need not fill one track before doubling to another track. He likes the provision by which a road crew may deliver its train intact to a connecting line: "On a runthrough, we've all had to use a yard crew on the yard-to-yard move. Say the crew just came on duty. They have eight hours to work—and maybe they're not really in a hurry to get that train delivered. But if the road crew goes through to the receiving line's yard? Well, the road crew wants to get the job done and go home."

Fox is also optimistic about the service improvement that may be possible with longer road-crew runs: "Maybe you save only a few minutes on the change of crews itself. But when you consider the time involved in slowing a heavy train and then starting it up again, you have something like 20 minutes on every crew change. Add up the number of changes on a through train, and you come up with a considerable time savings."

Service improvement is not just the responsibility of the transportation people in Fox's department. Service improvement is also what it is all about for Chief Mechanical Officer F. D. Acord and Chief Engineer R. M. Brown. And the programs which they have under way and planned for 1972 reflect this.

Mechanical improvements: Frank Acord, for example, is well along with a multi-phase upgrading of UP's locomotive servicing and repair facilities, a project that began with construction of the North Platte shop and is continuing with conversion of the locomotive department of Omaha Shops to component rebuild. UP is also looking closely at the possibilities to converting aging GP9 units in-house. Like a number of other roads, UP will be needing replacement power in the low-to-midhorsepower range, 1,750-to-2,000-hp, for yard, road-switch and local-service use. And if the decision is to convert rather than by new, UP could get started as early as next spring with perhaps as many as 50 units scheduled.

Meanwhile, UP will be acquiring 70 road units in '72, all 3,000 hp, with 50 coming from EMD and 20 from GE. Several considerations entered into the decision to go for what, compared with the 6,600-hp Centennial units, is light power. One prime factor: The development of runthrough operations, and the fact that some connecting lines just cannot handle UP's biggest power.

Runthroughs, Acord notes, are also having their effect in another area—standardization. And, while transportation officers have asked for more uniformity in control-stand equipment and the AAR has adopted a standard for new power, UP's CMO is more concerned with standardization of electrical wiring: In the past, he will concede, UP itself has been a major offender in this respect—but that does not keep him from declaring that today "there are just too many different schematics to have to contend with."

Like mechanical-department officers everywhere, Acord chips in with a tart comment on product quality as it affects both locomotives and freight cars. But he is optimistic about quality-control improvements on power—and he puts a good share of the blame on the railroads themselves for whatever shortcomings there are on cars: "Railroads have a habit of trying to beat the price down—in effect, sacrificing quality for quantity. What we ought to want is a beefing-up of car material so the car will last, and so that a lot of maintenance problems can be designed-out."

As for basic car design, both Fox and Acord can come up with a number of proposals—involving such things as improved truck suspension for high-speed operation, air brake hose connections that won't part when long cars negotiate curves, and brake shoes that promise longer life.

Engineers plan for '72: On the engineering side of the operating department, a number of projects on tap for '72 will also be aimed at providing the plant that makes better service possible—projects that include extensive lengthening of sidings, easing of restrictive curves and improvement of signal systems, in addition to the normal, heavy UP programs in welded-rail installation, tie renewal and surfacing.

The ability to operate at higher speeds and with greater operating efficiency should be the result. Fox points, for example, to substantial operating benefits (in good weather and bad) stemming from installation of CTC on the heavy-traffic, double-track Salt Lake City/Ogden line. He notes that siding extensions in several areas are, in effect, creating long stretches of double-track. As for operating efficiency, both engineering and mechanical improvements are enabling UP to make a highly-effective showing with remote-controlled mid-train motive power. In one particular operation in the Northwest, this kind of powering has made it possible to handle with three trains traffic that used to require five—and handle it well. Thus far, UP's operating people have not used the mid-train units in coal or ore unit-train service—but Fox is looking forward to the opportunity. It will present, he feels, just one more way of moving business better.

Bob Brown, UP's chief engineer, says next year's rail, crosstie and surfacing programs will be comparable to last year's. Plans call for slightly more than 200 track miles of new rail, almost all of it in continuous welded rail. Another 36 miles of new rail will be laid in curves and approximately 140 miles of track will be relaid with heavier second-hand rail. Nearly 700,000 new crossties will be installed as replacements and 900 miles of out-of-face track surfacing and lining work is in the schedule.

Union Pacific will press forward on its long range curve elimination program concentrating on the hottest part of the railroad—the

Wyoming division. There, wherever possible, curves are being eliminated entirely, or realigned to a maximum of one degree, 20 minutes, complete with high-speed spirals. When the program is completed UP will be able to run its long, super-powered trains across Wyoming with the throttles wide open.

Brown's engineers are also tackling another challenge presented by UP's long trains on its heavy-traffic line leading from the Kansas City gateway to North Platte. Many existing sidings on the single track line are too short; delays result. Solution: Lengthen sidings to handle today's mile-and-a-half-long trains.

Brown also has some well-reasoned thoughts on the effects of recently announced FRA track standards. He doesn't like them, as he feels that many of these costly standards are more demanding than necessary for safety of operation.

UP engineers are now conducting a mile-by-mile system survey to determine the initial cost and additional annual maintenance cost to comply with the FRA standards. Under the preliminary standards proposed by the FRA last June, UP estimated their cost would be as high as $15 million to comply and $5 million annually to maintain.

Although the final FRA standards are not as rigid as those originally proposed, the cost involved to comply and maintain is still going to be extremely high. These are costs, Brown points out, for a railroad with a reputation for being one of the best, if not the best maintained in the industry. (UP has consistently ranked number one of the major roads in the nation in FRA's own records for the fewest derailments caused by track deficiencies.)

Hardest hit by the new standards will be switching terminals and secondary branch lines where tracks are now maintained for an operating speed of 15 mph. Under FRA's track classifications, the railroads must choose between upgrading all such tracks to 25 mph track standards or reduce the allowable operating speeds to 10 mph. The result, says Brown, will be either a greatly slowed operation in the face of increasing competition and reductions in the hours of service laws, or costs of upgrading which would turn many marginal branch lines from marginal to deficit operations.

Selling the service: How much business will UP be handling in 1972? Vice President Traffic R. F. Pettigrew and Vice President—Sales and Service W. P. Barrett are confident that traffic will be up—like most salesmen, they are optimistic—but they are also being careful not to go overboard on their forecasts.

At this point, several specific commodity areas seem to be strong. With three major producers planning to expand their operations in 1972, UP should have a significant increase in soda ash movements. Lumber looks good, as the housing market picks up. Canned goods traffic should show increases. Movements of automobiles and auto parts may be on the upside, as UP tries to improve its market penetration. And just about everybody at UP is looking for a boom in coal traffic. Coal reserves in UP territory can only be described as tremendous—and with the demand for low-sulphur coal growing stronger each year, all that is really needed is a quickening of the pace of mining operations.

In the past, UP traffic people have done a remarkable job with their revenue forecasts, usually coming within 1% of actual. And, while it may be hard to improve on that record, UP will be trying. For one thing, Pettigrew's department is developing a stronger commodity-oriented approach to traffic-building. For another, the sales organization has been revamped, with the appointment of eastern and western super-region general traffic managers to whom regional sales and service people report.

One other point of sales emphasis has been in the Pacific. The road opened an office in Japan in 1966, went into Taiwan the next year. Each year the effort was expanded and now UP has traffic representation in nine countries on the far side of the Pacific. An office in Alaska was opened in 1969. Within the U.S. there are nine international trade departments from coast to coast.

Improving management: Controlling a traffic operation the size of UP's is a major task in itself—with over 900 people in the department. But Bob Pettigrew and Walter Barrett are convinced that changes being made will result in improved traffic management and tighter control on revenue production and expenses.

Essentially, UP is moving toward a setup in which each region will have its own revenue and expense goals and budgets. Basic corporate goals on profitability are, of course, set at the top, and the traffic department develops its goals accordingly with three specific objectives—profit, growth and leadership in market penetration. Once these targets are set, then it becomes a matter of planning strategy as to how each region can hit them.

In looking at 1972, UP is cautious. Bob Pettigrew admits to certain reservations about the state of the economy. Some customers, he notes, "are just not overly optimistic."

Walter Barrett comes to similar conclusions: A number of economic indicators seem to be pointing to an upturn—but feedback from UP's far-flung sales force "doesn't give us as rosy a projection as the charts would lead us to expect. So far as the economy is concerned, there seems to be a difference between public utterances from the experts and private conversations with our customers."

A kind of basic conservatism shows through, too, in several other areas. On TOFC/COFC, for example, UP can afford to be enthusiastic. It is outperforming the national averages, it is still doing well in transcontinental Plan 1 piggyback, it maintains a substantial volume of forwarder traffic, and it has seen significant growth in import/export containerization. Studying UP's territory, an outsider might assume that there is good potential for Plan 5 operations.

But the UP looks at Plan 5 proposals very carefully—for economic reasons, of course, but also because UP is concerned about the over-all, long-range effects of such proposals.

Then, there is the matter of rate-making and regulation. With proposals being advanced, through DOT, to tinker with the established committee approach to rate-making and with other proposals calling for abolition of the ICC or its merger with other agencies, UP remains cool. Pettigrew, for one, can generate very little enthusiasm for a system that would turn each railroad loose to go its own way on rate-making. The committee format, he points out, provides for individual action if a railroad feels so inclined—but at the same time it helps to maintain stability in pricing practices. Barrett agrees—observing that "there's nothing to stop anybody from acting on his own, if he has the knowledge and the courage to do it." As Barrett sees it, the most important contribution of the rate-bureau setups may be that "it serves as a forum for the exchange of views on rate proposals." But he will also agree that "perhaps the bureaus have not been used as effectively as possible. Perhaps they haven't really lived up to their potential. And, while the failure of a committee to approve a proposal is not all that inhibiting, disapproval is probably sometimes used as a shield or as an excuse."

Still another area in which UP has been slowly building is that area called training—but this may change, and in a big way. UP has been working with Cambridge Research Institute on departmental studies, and the railroad's own personnel department is thinking in terms of a considerable setup in training programs with an emphasis on the traffic operation.

Target: Growth: Also getting a stepup is UP's marketing and costing function, the bailiwick of Dr. R. C. Pretti, vice president-marketing. With one element of his group concerned with market investgiation and another involved in broad costing programs, Reno Pretti runs a busy team—and his approach is both realistic and optimistic: "As a railroad, we're part of a mature industry, and there are certain relationships we're more-or-less locked into. So it's possible that we may not have growth much exceeding the growth in GNP. But we're sure going to try for it."

Neither the market work nor the cost work is markedly different from what a number of other roads are doing. On the market side, for instance, a dozen commodity areas have been set up to cover about 95% of the traffic most important to UP. The significant thing may be that there is follow-through. As Dr. Pretti puts it, "For the first time, we're getting a real grasp of alternatives. We're getting a cost/profit orientation into the sales effort. We're doing post-audit on descision-making. Too many decisions, you know, are made and then forgotten. But if we make a move, we want to know if volume and profitability are up to expectations—and we want a quick reading, so we can make whatever changes might be necessary."

In their work, Dr. Pretti's people are looking at everything from coal to TOFC/COFC, and from the rapidly changing import/export market to problem-traffic that does not yield an adequate return. They are also involved in equipment budgeting, studying data on utilization and profitability of specific types of equipment, making cash flow and yield analyses, and probing the future with market projections over the 15-to-20-year life of the equipment being considered.

UP's vice president-marketing tends to get just a bit impatient with some of the industry's traditions—including the one that says a railroad should wait for a market to develop and then see how, or if, it can be served. His instant case-in-point: The market in modular housing. "This could be big," Dr. Pretti argues, "and now's the time to be innovative in transportation service. The modular-home builders right now are debating how they're going to operate, whether they're going to go for centralized plants to maximize transportation. Sure, this is no big market today. But how about tomorrow? This is a situation in which railroad thinking has to be geared to what's not there—yet."

Moving ahead with MIS: If there is one job which has its finger in the whole pie at UP, it would have to be J. L. Jorgensen, director-managment information services. Jorgensen operates in a kind of solitary splendor, in the 12-story, $5.5-million modern architecture addition to the massive brick general office building that has served UP in Omaha since 1911. But while he and his staff may be physically removed from the rest of GHQ, while other departments are moving in, what the MIS department is doing will be touching just about every function on the railroad.

In the railroad management-information field, Jorgensen notes a couple of trends. The obvious one is that the old system of cyclical reports is giving way to a more management-oriented system in which the basic accounting requirements are satisfied while management is given a data base from which it can draw what it needs. The second trend may be less obvious—but Jorgensen's studies of other systems show a tendency to emphasize one aspect at a time, and it is this trend that UP is going against. On UP, three principal systems are being progressed simultaneously—COIN, for complete operating information; FICS, for financial

information and control; and a comprehensive traffic information system.

The whole development, however, is being advanced in phases. Implementation commitments are made on a six-to-12-month basis. Planners are looking down the line, years ahead, to determine what will be needed and how to get it. At the same time, an interim-results approach is being used in which each step has to show results before the next step is taken.

COIN, for example, incorporates the standard on-line data collection, tracing capability and message-switching capability of similar systems. It is being expanded, to provide for more field input with greater data integrity to satisfy the demands of the operating department for better information. Next summer, UP will be implementing a terminal information system. A joint effort with operating and accounting, the terminal system will integrate operating functions and the clerical functions of the yard and agent. Waybill preparation will also provide for the basic input data to the information system. PICL will be put on the computer too in the UP's Phases I and II.

FICS is also a multi-phase project being developed jointly with accounting and requiring participation from all levels of management. Data collection has been going on for a couple of years—but it is now being tailored more to management needs, as an ICC-accounting orientation is being changed to a management-accounting orientation. With FICS, a number of things will become possible. Answers that are hard to come by today will be made much more easily available. UP wants to be able, for just one example, to pin down unit costs, marry this with other operating data and come up with an exact output on the profitability of a certain train or the profitability of a certain customer's traffic.

NEEDED: BETTER COST DATA

Much the same story could be told about the traffic information system now being devised with the traffic department. UP's file covers five years of waybill data, and all kinds of route and patron and commodity information can be pulled. But, says Jorgensen, the weakness now is in the cost base: "It's not as precise as it should be." What UP hopes to develop is a far more reliable cost base interfaced with revenue accounting information and supported by an operating data base—which would provide almost unlimited data-retrieval capability for decision-making purposes.

Tow TOPS fits in: Like several other roads—including Burlington Northern and Missouri Pacific—Union Pacific has Southern Pacific's TOPS package and is building onto it. And, while Jorgensen has nothing but praise for the basic design logic of TOPS, he also has no qualms about making the adaptations which UP believes it needs. TOPS, he will note, was designed specifically for SP—and "while there are common functions, things get different down at the nitty-gritty level. On the application side, you do have to recognize problems created by different operating environments."

Is this going to be a handicap to the eventual development of comprehensive inter-road data exchange? Not at all, Jorgensen contends: "You can't prevent individual railroads from going their own way. Needs differ, and the state of the art is constantly changing. You also get involved with basic management policies—for instance, should or should not you set up to permit a shipper to have direct access to your computer? The important thing is that you maintain a common data base so that information can be exchanged without having to go through all kinds of complicated processes. We're going to maintain this common data base, and I think it's safe to say that all roads working with TOPS are trying to do the same thing."

Jorgensen will also point out that UP has a top-level steering committee working on the over-all goals of management-information systems—a committee consisting of Bill Fox, Bob Pettigrew, Controller J. P. Deasey and Jorgensen. "Rapport," Jorgensen says, "is the key. Without the support of these men and Mr. Kenefick, nothing we have discussed would be possible."

And rapport, these days, seems to be the key to a lot of things at Union Pacific. Most of the top-management people at Omaha today came into their present spots within the past several years—and it has been a happy blending, starting at the top with John Kenefick (who left UP in 1952 as an assistant trainmaster and returned 16 years later as vice president-operation) and extending through a veteran, career-UP management team.

Put this kind of cooperative effort to work, stir in UP's dedication to maintaining power and equipment and plant in Class A shape, add the vitality of UP territory—and you've got yourself quite a railroad.

A CHRISTMAS EDITORIAL BY VIRGINIA WELDON KELLY

Mr. ERVIN. Mr. President, on Christmas Eve the Long Beach, Calif., Press-Telegram carried a Christmas editorial entitled "Be Ye Kind One to Another, written by one of the Nation's most gifted journalists, Virginia Weldon Kelly, of Washington, D.C., who reports and comments on the national scene for some of the leading newspapers of the Nation.

The editorial expresses Mrs. Kelly's faith that man and the universe are not the haphazard products of blind atoms wandering aimlessly about in chaos, but, on the contrary, are the creations of God. As a consequence, the editorial merits the widest possible dissemination. I therefore ask that it be printed in the body of the RECORD.

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

BE YE KIND ONE TO ANOTHER

(By Virginia Weldon Kelly)

Christmas celebrates the birth of Jesus who understood the human heart. One evening when He crossed the Sea of Gallilee, there was a storm. He asked his friends, "Why are ye fearful, O ye of little faith?" The question and reproof revealed that faith is the cure for fear.

The Psalm affirmation "God is my light and salvation; whom shall I fear?" has been proved by oppressed Christians and Jews in our century.

French bio-chemist Jacques Monod, Nobel laureate, has no faith in God. In his best seller "Chance and Necessity" he states that man is an accident based on chance perpetuated by the necessity of chemical reactions.

He declares that religions and philosophies from Plato to Marx are based on mistaken assumptions. Monod asserts that the only correct philosophy is scientific objectivity, the condition of "true knowledge."

Einstein did not accept the quantum theory's "principle of uncertainty" as a necessary concept. Many modern physicists disagree with Monod.

He does not reveal why scientific objectivity is superior to faith in God or how the two can be equated.

St. Paul said "Faith is the substance of things hoped for, the evidence of things not seen."

No one can disprove the omnipotence of God, the "persistent energy of all things," who is still creating the universe, who reveals Himself as man is able to comprehend Him. For Christians, Jesus Christ is the mountain top of revelation.

If we love and praise God in good and sorrowful times, if we believe God is always in charge, if we see the Christ Spirit in all men, and struggle to express this radiance in our lives, if we believe God was with us at birth and will be with us when we enter a new life in eternity, we aspire to Christian faith.

Our Christmas wish is that all Christians will remember Jesus' words:

"God loved the world so much that He gave His only son, that everyone who has faith in Him may not die but have eternal life."

JAY RANDOLPH, SPORTS DIRECTOR AT KSD, ST. LOUIS, MO.

Mr. BEALL. Mr. President, all of us in this body are keenly aware of the superior oratorical ability possessed by the distinguished senior Senator from West Virginia (Mr. RANDOLPH). In his outstanding legislative career, he has articulately espoused countless causes that have contributed much to his State and the Nation.

Few of us realized, however, that his eloquence had been inherited in such fine fashion by his son. But such is the case. Jay Randolph, an announcer with National Broadcasting Co., has catapaulted into prominence with his fine analysis of the just-completed XI Winter Olympics held at Sapporo, Japan. Senator RANDOLPH's son, formerly the "voice of West Virginia University sports," and more recently sports director at KSD–TV and radio, was tapped by NBC for this prestigious event because of his excellent record behind the microphone in such sports as golf, basketball, soccer, hockey, baseball, and football. Jay more than lived up to his impressive credentials with this crisp, informative, and enjoyable description of the Olympic action.

I ask unanimous consent that the relevant section of J. Suter Kegg's fine column, "Tapping the Keg" which appeared in the February 13, 1972, Cumberland Sunday Times, be printed in the RECORD, so that Senators might read of the accomplishments of Jay Randolph, and share the pride of his illustrious father, Senator JENNINGS RANDOLPH.

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

TAPPING THE KEG: JENNINGS RANDOLPH, OLYMPIC TV FAN

(By J. Suter Kegg)

Jennings Randolph, West Virginia's senior senator, has long been interested in athletics but he has a special reason for not wanting to miss any of the winter Olympic action on TV. It's not that he's wrapped up in winter sports to the extent he knows everything about the contestants. He's more interested in hanging on every word uttered by one of the commentators.

Sen. Randolph not only likes the sound of this certain announcer's voice; he thinks he's the type of man he'd be proud to call his son. In fact, that's exactly what he calls him

Jay Randolph, who served as the Voice of West Virginia University sports for a couple of years in the 1960s, hit the big time after leaving Morgantown and was tapped for one of the Olympic announcing jobs in Japan by NBC. His cohorts are Curt Gowdy, Jim Simpson and Al Michaels, Former Olympians Peggy Fleming, Billy Kidd, Terry McDermott and Art Devlin are the color commentators.

Jay, who resembles his father, was scrubbed from two big golf tournaments by NBC in order to make the coveted trip to Sapporo. He had been scheduled to do the Dean Martin Open and Bob Hope Desert Classic.

Doing the golf telecasts is fun for Jay because he loves the game so much. In fact, he might have been on the tour as a player had not his father put the clamps on him as a 20-year-old and insisted on him finishing school. Jay got his degree at Salem College, the Senator's alma mater.

Jay was a scratch player and made the amateur tour. He was a collegiate conference champ and won the European Air Force title but it was in Cairo where he made his biggest splash, copping the Egyptian Amateur in 1956

Eddie Barrett, who was director of sports information at WVU when Randolph was doing the play-by-play of the Mountaineer football and basketball games, writes from Huntington, W. Va. to say, "We can enjoy Jay's success now." Barrett, one of the most capable collegiate sports publicists ever to come down the pike, is now general manager of the Pepsi-Cola Bottling Company in Huntington.

Randolph, now 37, did Southern Methodist basketball and Dallas Cowboy football before going to St. Louis in 1966 with WMOX. Two years later he moved to KSD radio and KSD-TV in St. Louis where he now serves as sports director.

Jay has also aired St. Louis University basketball, pro soccer, the St. Louis Blues in the National Hockey League and during the baseball season he travels to join the Cardinals for pre-game and post-game shows. In addition, he does major college basketball tournaments for NBC, plus weekly football in the American Conference of the NFL.

Jay's success behind the mike has pleased many people in this area where father's friends are legion. During his long service in Congress (House and Senate), Sen. Randolph has been a big help in legislation affecting Western Maryland The Senator's wife is the former Mary Kay Babb of Keyser.

FARMERS HOME ADMINISTRATION—ONE OF THE BEST

Mr. SPARKMAN. Mr. President, I consider the Farmers Home Administration to be one of the very best Government agencies. I have followed it and its work for the smaller and lower income farmers generally of the Nation with great interest from the time it was started as the Farm Security Administration on down through its years under the new name of Farmers Home Administration. I have had the opportunity to observe it closely, and I commend it for the tremendous job it has done and is doing.

A few days ago, the American Banker gave some interesting facts and statistics that I believe will be of interest to every Member of the Senate. Accordingly, 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:

FHA LOANED RECORD $2.58 BILLION IN 1971

WASHINGTON.—The Farmers Home Administration loaned a record $2.58 billion during 1971, the agency reported this week.

Its previous record, for the 1970 calendar year was $1.95 billion.

The agency estimates that its loans during 1971 served 3.7 million rural people, compared to 2.2 million during 1970.

Its rural housing loans, by far the biggest part of its program, totaled $1.45 billion in 1971, compared to $1.1 billion in 1970.

The Agriculture Department agency's farm loans totaled $754 million, up nearly 20% from the $630 million the FHA loaned to farmers in 1970.

Its loans and grants for rural community water and sewer systems were $376 million in 1971, up 70% from the $216 million in 1970.

FHA administrator James V. Smith reported that more than 75% of his agency's lending in 1971 was in insured loans rather than from Congressional appropriations.

Such loans are made from revolving funds, insured by the government, and sold to investors. During 1971 the FHA sold $750 million of insured loans through securities dealers and $1 million directly to investors.

The agency's housing loans to individual families of low-to-moderate income, which account for nearly all of the FHA's housing lending, totaled $1.41 billion, up 17.6% over the previous year. They provided new or improved housing for 111,097 rural families, the agency said.

The FHA made 41,300 farm operating loans totaling $287 million in 1971, compared to 45,500 loans for $281 million in 1970. It made 12,404 farm ownership loans totaling $317 million in 1971, compared to 9,946 loans for $238 million in 1970.

The agency made 19,486 emergency loans totaling $130 million to farmers hit by natural disasters in 1971, compared to 13,839 loans totaling $97 million in 1970.

According to the FHA, its water and sewer loans served 2.7 million people in 1970. Its farm loans served 245,000 and its housing loans 500,000.

During the year, Congress increased the top limit on FHA farm real estate loans from $60,000 to $100,000. The agency also was authorized to subordinate its interest in farm mortgages to commercial banks and other lenders, making joint loans possible.

It also received authority to make housing loans in towns of up to 10,000 population. The previous top limit, 5,500, still applies to the FHA's other lending.

SAVE OUR OCEAN MAMMALS

Mr. MATHIAS. Mr. President, I am happy to be a cosponsor of what I believe will be historic legislation protecting ocean mammals from many of the dangers which now threaten their existence.

The bill S. 2579, the Ocean Mammal Protection Act of 1971, is currently before the Oceans and Atmosphere Subcommittee of the Committee on Commerce. Recently the Senator from Oklahoma (Mr. HARRIS) testified eloquently before that subcommittee on the urgency of the proposed legislation.

I ask unanimous consent that the testimony of Senator HARRIS be printed in the RECORD.

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

TESTIMONY OF SENATOR FRED R. HARRIS, DEMOCRAT OF OKLAHOMA, ON S. 2579

Mr. Chairman, if I told you that our State Department, Commerce Department and Interior Department were running a hand-out program at taxpayers' expense for the superrich—the people with fleets of yachts and fancy cars—you and your Committee members would be incredulous. If I told you that these Departments were conspiring with commercial interests to destroy our natural heritage for the unnecessary pleasure of a very privileged few, we all would be outraged.

Yet this is precisely what I believe is happening. The policy of our Federal Government is to provide full support at taxpayers' expense to those special interests who are slaughtering our ocean mammals so that in generations to come the only way we can see them will be to visit the Smithsonian or some other museum. These agencies are doing this although the people who have the money to purchase a $1000 sealskin coat or to rent a helicopter to hunt down a helpless polar bear clearly do not need these pleasures at taxpayers' expense to lead the "good life."

People from this nation and other nations all over the world have come to realize this. And they have reacted with indignation in an unprecedented flow of letters, to legislators such as ourselves, numbering in the hundreds of thousands, all demanding an end to the killing. I personally have received over 15,000 pieces of correspondence, and I'm sure the members of this distinguished Committee recognize the public interest in this matter.

Mr. Chairman, last year the Subcommittee on Fisheries and Wildlife Conservation of the House Merchant Marine and Fisheries Committee held hearings on the subject of ocean mammal legislation, and reported out a bill euphemistically called the Marine Mammal Protection Act of 1971. I use the word "euphemistically", Mr. Chairman, because that bill is a marine mammal protection bill in name only. In reality, it simply puts the official stamp of government approval on the killing of ocean mammals by allowing the Secretaries of Interior and Commerce to issue permits for the "taking" of these animals. This is all to be done in the name of "management."

Mr. Chairman, we have been managing these animals for a long time. And you can see what kind of mess that has gotten us into. It's because of management that we're holding these hearings today. Let's look at where management has brought us.

Of all the mammals of the sea, perhaps the most gravely threatened are the great whales. Since the decade between 1930–40, blue whales, the largest and perhaps the most intelligent animals ever to inhabit the earth, have decreased by a factor of about 99 percent. Their worldwide population, which stood at 100,000 about 35 years ago, is now estimated to be between 600 and 3,000, and that's a very liberal estimate, Mr. Chairman. Many respected scientists now predict that these almost legendary animals are on the road to extinction because there simply aren't enough of them to find mates to keep breeding. Finback whales have gone from 400,000 to 100,000—a depletion of 75 percent. The humpback whale, whose magnificent song we are just now beginning to appreciate, has gone from 100,000 to 2,000. Gray whales now number at most 10,000; and the worldwide total of right and bowhead whales is between 20 and 250 each. All of this has been done under the "management" of the International Whaling Commission. And when legislation was before the House of Representatives this past summer to place a 10-year moratorium on all whaling, the U.S. State Department incredibly opposed this measure on the grounds that to do so would be a rejection of the Commission, that model of management.

Polar bears are also in imminent danger of extinction; the species may already, in fact, be doomed. With from 10,000–15,000 at most remaining worldwide, about 1,500 a year are being killed. U.S. trophy hunters are responsible for legally killing about 300 a year in Alaska, a state that prides itself on its excellent "management" of these animals. The illegal take may amount to a similar figure, although Alaska admits that no reliable statistics are available. What is certain, however, is that the bears killed in Alaska are each year found to be younger, and this is a reliable danger signal that a species is in

serious trouble. It's quite likely that the polar bear no longer dens in Alaska, that we have killed all of ours, and that the bears found and shot in Alaska are migrating from the Soviet Union, where they have been completely protected since 1957.

The world's seal population has also declined significantly. The Alaskan fur seal, killed by the tens of thousands each year by Native employees of the U.S. Commerce Department, has been reduced to 20 percent of its natural size of over 5 million. It is true that the herd has been brought back from the brink of extinction when, in 1911, it numbered only about 200,000. This is no reason, however, to continue the persecution of these animals and keep the herd at a size far smaller than its former numbers. I will return to the international treaty—often cited as a model of management and conservation—that governs the annual harvest of these seals at a later point in my testimony.

The harp seals that are killed by the hundreds of thousands each year off Canada have been reduced in the last 25 years by about 80 percent. This year's kill quota was 245,000 seals, most of which were babies killed in the presence of their helpless and terrified mothers. Eminent scientists, among them Judson Vandevere of Stanford fear that this overkill of the harp seal is leading toward their extinction. And although United States' nationals do not participate in this hunt, we are a party to the International Convention for the Northwest Atlantic Fisheries which provides for the "protection and conservation" of harp seals. Furthermore, our own Government defends the killings of these baby seals and resists any efforts to stop or reduce the slaughter. In official letters sent out in response to public inquiries, Philip Roedel, head of the Commerce Department's National Marine Fisheries Service, describes the Canadian hunt as efficient and humane. The State Department official responsible for oceanic matters, Ambassador Donald McKernan, also defends the killing as being under the strict and proper supervision of the International Convention on North Atlantic Fisheries. And John Larson, Assistant Secretary of the Interior Department, describes these defenseless baby seals as "a significant renewable resource" which must be "harvested" when necessary "to prevent overpopulation."

Yet a study just completed and made public by the Canadian Government states unequivocably that the herd is threatened with extinction and will shortly disappear if the killing continues.

Mr. Chairman, I have with me a brief film clip of this "efficient and humane" baby seal hunt which I'd like to show.

The sea otter, whose luxurious pelt is highly prized, nas been saved from extinction at the last moment, but it, too, is now becoming a victim of "management" concepts. Although it is still rare or nonexistent in most of its former range on the Pacific Coast, about 40,000 are found in the waters off Alaska. Under the guise of "population control," several hundred otters are killed each year and their valuable pelts sold. We must stop this sea otter "harvest" before commercial pressures build up and the sea otter fur industry is reinstated, and this animal too becomes a victim of "management" and commercial exploitation.

The walrus population in U.S. waters has been seriously depleted, despite the fact that these animals are being "managed" by the State of Alaska and the Interior Department under the Wildlife Act of 1956. Probably less than a hundred thousand remain, and they are continuing to be killed by commercial hunters, "sportsmen" seeking trophies, and natives of Alaska at the rate of almost 12,000 a year. It is estimated that half of those killed sink and are lost in the water.

Mr. Chairman, the above figures give some indication as to what state and federal "management" programs have done for ocean mammals until now. I've heard a lot of talk during the debate on this issue that ocean mammal protection is a subject for objective, scientific management experts; that the well-intentioned but overly emotional and therefore biased proponents of the Harris-Pryor bill don't know what they're talking about. Mr. Chairman, I'd like to submit that it's the wildlife "managers" that are too biased to see this issue clearly. What we're talking about is a "management complex" that includes the federal and state bureaucracies, the industries which profit from the killing of ocean mammals, and the hunting lobby.

The Federal Government now has three Departments—Commerce, Interior and State—which are intimately tied to groups with a vested interest in the killing of ocean mammals. Nowhere is this more evident than in the Commerce Department, which has always been interested in the exploitation of a resource, not its protection. Given the fact, for example, that 42 bureaucrats are employed year-round in Seattle and another 50 or so full or part-time in Washington, D.C., whose salaries are supposed to be paid from the sale of sealskins, it's not difficult to understand why the Department so assiduously pursues the Pribilof seal harvest. The Commerce Department does its job so well, in fact, Mr. Chairman, that it subsidizes the one processor of sealskins in this country, the Fouke Fur Company.

The Fouke Fur Company obviously doesn't want to see the killing of ocean mammals stopped, because it has a profitable arrangement with the Commerce Department and the United States taxpayer. We provide the labor to kill the seals, we store the skins, we pay for their transportation from Alaska to South Carolina, we pay for their advertising, and the Fouke Fur Company gets around 50% of the gross proceeds of their sale. According to Commerce Department figures, the Fouke Fur Company has taken in over $12 million in the last 11 years from this operation. I might add, Mr. Chairman, that the figures on page 280 of the House hearings on ocean mammal legislation appear to show almost a half million dollar loss to the United States in 1970 from this same program.

The National Oceanic and Atmospheric Administration of the Commerce Department runs the Pribilof fur seal harvest. When Mr. Howard W. Pollock, the Deputy Administrator of NOAA, was asked by Representative Dingell at the House hearings where the Department got the authority to advertise sealskins, he replied as follows:

"We think we have it under the general authority . . . to the extent that we increase the amount of money that we get into the fund from the sale proceeds . . ."

I quote from Mr. Pollock simply to demonstrate the commercial pressure for more and more sealskins which dominates Commerce Department policy toward the Alaskan fur seal. And with this commercial pressure you would think that it would be very difficult for the Commerce Department to exercise any "objective, scientific management" of the Alaskan fur seal. This is precisely what has happened, because the Commerce Department's thinking is anything but objective. The Department continuously emphasizes that the size of the Pribilof seal herd has risen from 200,000 seals in 1911 to approximately 1.3 million today. They also claim that a larger herd would result in overpopulation and death to many seals from disease and starvation. Our Government's own figures prove these claims to be false. According to an official account, the natural size of the herd is over 5 million (Encyclopedia American, Volume 24, pp. 480–85, article by Seton Thompson, Chief, Division of Alaska Fisheries, U.S. Fish and Wildlife). As late as 1948, it numbered about 4 million and was in a quite healthy state. Hence, the size of the herd has decreased—not increased—by a factor of almost 75 percent. "Management" of the Pribilof fur seal herd has been applied not to allow the herd to reach the greatest population its environment will support, but to keep them at, and I quote Secretary of Commerce Maurice Stans, "their maximum productive level." (*Commerce Today*, July 26, 1971) That's the maximum productive level for more sealskins, Mr. Chairman.

The need to defend the Pribilof fur seal harvest in the face of criticism has also led Commerce Secretary Stans to state, and I'm quoting from the same publication as above, that "Only surplus bachelor seals are harvested." That's simply not true. First of all, in this once vast herd, now reduced to a fraction of its former size, there are, of course, no "surplus" seals. Moreover, mother and baby seals are killed by the tens of thousands. According to Victor Scheffer, the Interior Department biologist who used to supervise the hunt (in his popular book *The Year Of The Seal*, p. 108) "In a recent decade, 250,000 females of breeding age were killed on the Pribilofs." Scheffer refers to this, by the way, as "intensive fur seal management." Moreover, in 1968, in order to fill the quotas, over 11,000 female seals were killed in the breeding rookeries. When a nursing mother seal is killed, its baby dies a death of slow starvation. Hence, in our own "model" seal hunt, both mother and baby seals are killed, contrary to anything you have heard in the past or will hear again in testimony before this Committee. Once again, the justification for this "scientific management" is not the protection of the fur seal but the protection of the fur industry's desire for "maximum sustainable yield."

I might also point out that in this seal hunt which the Commerce Department describes as a model of conservation, it is not the old and diseased seals that are killed, as nature allows for in its law of survival. Rather the largest, strongest, and healthiest seals are killed, those whose pelts will make the most attractive sealskin coats.

While I'm on the subject of the Pribilof seal harvest, I'd like to mention a "Marine Mammal Newsletter" that was sent out this month, obviously in time for these hearings. The newsletter was sent out by the Marine Mammal Program, Department of Vertebrate Zoology, Smithsonian's Museum of Natural History, headed by Dr. Carleton Ray who testified at the House hearings against my bill. Mr. Chairman, these men are supposed to be "objective, scientific management" experts. Yet this newsletter claims, in a gross falsification, that the Harris-Pryor bill would "terminate" the Alaska Fur Seal Treaty. Mr. Chairman, five months ago Congressman Pryor and I reintroduced our bill for the express purpose of meeting the criticism concerning this treaty. While it is true that under the terms of this treaty we are required to give 15 percent each of the annual kill to Japan and Canada, we could without abrogating the treaty, do as my bill proposes and forego the killing of the 70 percent which are killed for the U.S. fur market—specifically the Fouke Fur Company.

The Ocean Mammal Protection Act specifically states that the present treaty should not be allowed to expire unless a more protective international agreement can be negotiated.

I say that the Congress can strengthen the hand of our negotiators in the State Department by giving them the legislation I have introduced. They can then say to the world not, "if you will, I will . . . but we have quit killing ocean mammals, will you join us?"

Yet a publication sent out by supposedly eminent scientists states that the Harris-Pryor bill would terminate the treaty, suggesting that we must favor a return to pelagic sealing. I might also mention that the news-

letter incorrectly lists the Sierra Club and the Friends of the Earth with such "conservation" groups as the National Rifle Association that support the Anderson Marine Mammal Protection Act. In fact, the Sierra Club and Friends of the Earth do not support that bill. Mr. Chairman, I suspect that a lot of these "scientific management" experts favor the Marine Mammal Protection Act because that bill makes quite a few provisions for the "scientific managers." In fact, it creates an entire new bureaucracy of managers—The Marine Mammal Commission and a Committee of Scientific Advisers on Marine Mammals. I think quite a few of these gentlemen plan to sit on that Commission or that Committee. Mr. Chairman, we don't need a new corps of GS–18's to tell us that ocean mammals are in trouble, and to watch while that trouble gets worse. We simply need to stop the killing. What would make this new Commission or Committee any different from any other Commission, such as the International Whaling Commission, which seems to have a vested interest in continuing the killing of marine mammals?

Let me cite an example of how pure science, when it is in any way connected with commercial exploitation, becomes applied science subordinate to commercial interests. In 1966, the Scientific Committee of the International Whaling Commission recommended "that the taking of gray whales under special permit for scientific research be encouraged." Three hundred fourteen of these supposedly protected whales were taken under this permit by the Del Monte Company of Richmond, California. The Sperm Whale Committee of the Whaling Committee also recommended that permits be issued to take sperm whales, an endangered species. Between 1966 and 1969, permits were issued for 300 of these whales, 159 were taken. After "scientific information" had been obtained, the whales were processed by Del Monte into dog food.

The following is the Commerce Department's justification of this killing for scientific research:

"This dearth of biological data would have handicapped any efforts at rational regulation if the International Whaling Commission should permit a resumption of commercial exploitation."

In other words, the research was not done to increase our knowledge of the whales, but rather to determine if more whaling could take place. Mr. Chairman, that kind of scientific collusion with commercial interests is a national disgrace, and it ought not to be tolerated.

In California, the Department of Fish and Game is supported entirely by sport and commercial license revenues. The pressures on these men, when the purse strings are held by those who want to see ocean mammals killed, must be enormous. The International Association of Game, Fish, and Conservation Commissioners—share a common Washington lobbyist with the Fouke Fur Company! I don't think I've ever seen a worse case of leaving the fox to guard the chicken coop.

Mr. Chairman, I think the people of this country have the right to know that management is not always a conservation technique dedicated to protecting ocean mammals and often means assuring the commercial interests and the hunting lobby a constant source of animals for their purposes. People ought to know that.

One serious problem that I haven't touched on yet is the danger faced by dolphins, Mr. Chairman. It's estimated that over 250,000 of these magnificent animals are being killed each year in just one area of the East Pacific because of the U.S. tuna fleets use the purse seine net. An ocean mammal protection bill must provide no exemption for this "incidental" killing. The tuna lobby, including such giant corporations as Ralston-Purina, the canner of Chicken-of-the-Sea Tuna, has already won several such exemptions.

One example of this is the resolution calling for a ten year moratorium on the killing of all species of whales—including dolphins—which last year passed the Senate by a unanimous vote and was then badly crippled in the House. Ralston-Purina's lobbyists succeeded in convincing the House Foreign Affairs Committee to refer in its Concurrent Resolution only to the "intentional" killing of whales for commercial use.

Furthermore, the Marine Mammal "Protection" Act (H.R. 10420) reported out of the House Merchant Marine and Fisheries Committee contains provisions which allow and encourage the Secretary of Commerce to issue blanket permits to the tuna fleet for the unlimited "taking" of dolphins incidental to tuna netting operations.

We've got to stop this slaughter of the dolphin before it goes any further. According to scientists who are working on this problem some species of dolphins and porpoises may soon face the same danger of extinction as the larger whales, since they can be used as a substitute for traditional whale meet in dog and cat food instead of being thrown away after being caught and killed in tuna fishing nets. We've got to make it illegal right now for the tuna industry to kill dolphins before we allow them to establish an economic justification for the killing. The prospect for this isn't so remote, especially when you've got a giant corporation such as Ralston-Purina which not only is part of the tuna industry, but also produces massive amounts of cat and dog food.

For this can of pet food, Mr. Chairman, we've allowed the slaughter of the whale, one of the most intelligent animals ever to inhabit the earth. I hope we don't have the same fate in store for the dolphin.

Mr. Chairman, before I finish I'd like to refute two specific points made by the Commerce Department with respect to the Pribilof fur seal, not only because they are false, but also because they illustrate the distortion of language and reality on the part of those who favor the continued slaughter of these animals.

First, the Commerce Department claims that clubbing these seals to death is the most "humane" way of killing them. To use the word "humane" in this way is, as I said before, a distortion of language and reality, but I do not wish to argue now over how the seals are killed. The point is that there is no justification for killing these helpless but intelligent creatures—sealskin coats, advertised by the U.S. Government in Harper's and Vogue magazines for the wealthy ladies of high society—are hardly a necessity to our society.

Commerce also claims, and again I quote Secretary Stans (In *Commerce Today*, July 26, 1971) that to "deprive the Aleuts of the seal harvest would deprive them of the *dignity of gainful employment* and make them totally dependent upon the government." (emphasis added) Mr. Chairman, the use of the Native Aleuts to justify this seal harvest is a form of exploitation. We have been wrong to link their only means of survival to this inhumane seal harvest. It lasts only 6–9 weeks a year. These people need some other way to make a living, but the richest and most powerful nation in the world apparently hasn't been able to find anything better for them. Sections 406 and 407 of my bill provide that the Pribiloff Islands be changed from a place of killing to a nature preserve under the Department of Interior. The native Aleuts will be trained and employed for any jobs thus created, and an effort will be made to promote tourism, and develop an alternative economy on the Island.

Mr. Chairman, I would appreciate it if an analysis of my bill could be printed at the end of my statement. I am naturally open to suggestions on ways to improve S. 2579. But I strongly believe that we must have a bill which at a minimum incorporates these provisions of my bill: (1) a ban on the import of all products from ocean mammals so as to dry up the economic incentive for nations to continue killing; (2) a complete prohibition on our own citizens from the taking or killing of any of the ocean mammals except for nonwasteful Native hunting and treaty obligations; and (3) a directive to the State Department to begin negotiating immediately with foreign governments for international treaties which would completely protect these ocean mammals from slaughter and extinction.

Now is the time to act—before it is too late. I urge your approval of this historic piece of legislation.

STATEMENT OF ANDREW HEISKELL BEFORE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

Mr. ERVIN. Mr. President, in the course of the hearings on the state of freedom of the press conducted over the last 6 months by the Senate Subcommittee on Constitutional Rights, the subcommittee has heard many outstanding citizens discuss various problems concerning the relationship between Government and the press. Among these was Mr. Andrew Heiskell, chairman of the board of Time, Inc., publishers of Time, Life, Fortune, and Sports Illustrated magazines.

Mr. Heiskell called the subcommittee's attention to the first amendment implications of what he regards as the excessively-high postal rates recently adopted by the U.S. Postal Service. He pointed out that—

For magazines the only feasible means of distribution is the postal system. Magazines depend on government for the provision of their means of distribution as surely and as completely as the broadcast media depend on the government to provide a clear frequency or channel for their use. If the cost of this distribution system becomes prohibitive, their magazines will disappear.

Mr. Heiskell's testimony raises serious questions about the extent to which postal rate decisionmaking takes into account the important role of magazines and newspapers in a free society. I agree with Mr. Heiskell that:

Magazines contributing richness and diversity to the life of the average citizen are essential to the good health of our system.

In my opinion, neither the Congress nor the Postal Rate Service has given sufficient consideration to the first amendment implications of postal rate decisions. Mr. President, I ask unanimous consent that Mr. Heiskell's statement before the subcommittee be printed in the RECORD.

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

STATEMENT OF ANDREW HEISKELL

Mr. Chairman, Members of the Subcommittee:

My name is Andrew Heiskell. I am Chairman of the Board of Time Inc., publishers of Time, Life, Fortune, and Sports Illustrated magazines.

Let me first say that this Subcommittee and its Chairman are performing an important service to all Americans in examining the present state of the freedom of the press. One frequently hears that a free press is "guaranteed" by the First Amendment to our Constitution. However, the framers of

the Constitution and of the Bill of Rights were more realistic, for they recognized that no generation can guarantee freedom of the press for those which follow.

The Constitution had empowered Congress to levy and collect taxes, to regulate commerce, to establish post offices and post roads, and to promote the progress of science and useful arts. Congress was further empowered to make all laws which should be necessary and proper for carrying out these and other powers. The First Amendment restricted the exercise of these powers by providing that "Congress shall make no law . . . abridging the freedom . . . of the press. . . ."

The framers of the Constitution and of the Bill of Rights knew, as this Subcommittee is freshly reminding us, that a free press requires an environment of free inquiry and the encouragement of dissent; and this requires the affirmative commitment of our people and their government to an open society.

This, your Chairman properly identifies as the "more general and more serious issue" what he characterized as "the growing deterioration of the relationship between press and government." Given the complex society in which we live, an effective free press requires much more than the absence of government interference. It must have the active and continuing cooperation of government to function effectively. Similarly, a free government cannot endure without a strong and independent press.

One clear example of dependence of a free press upon government is illustrated today by the broadcast media—radio and television. Networks, news services, individual stations may collect news, analyze it, form opinion about it—but all this is futile unless they can transmit it to the public. This cannot occur without a license from government, but it also cannot occur without an extensive system of government regulation to allocate frequencies, prevent interference, control monopoly, and this ultimately to insure access and diversity.

My purpose in coming here is to remind the Committee of the role of magazines in a free press and to underline the extent to which they too are dependent upon wise public policy and constructive goverment support.

Of course, the American press today consists of four major elements—newspapers, magazines, radio, and television. An effective national press must be a composite of these media, for each performs a distinct service and no one of them could substitute for any other. Magazines and network broadcasting, particularly television, speak to a national audience, while both newspapers and radio tend to be more local in their coverage.

Although television journalism is national in scope, it cannot offer the detail, the depth of analysis, or the precision of reporting which are furnished by a good magazine. Only magazines and good newspapers offer an opportunity for their reader to study at his leisure, to compare, to review, and to retain information, analysis, and opinion. Moreover, the national magazines of general circulation provide continuing public education in areas as diverse as art, religion, geography, economics, and politics. Magazines also offer the best national outlet for investigative journalism, for photographic essays, for new arts and letters, for analysis of public issues, and for statements by public figures. If magazines as we know them today were to disappear, the variety and depth of reporting which are critical to a free society would be lost, and I know of no way to replace them. Our political and social structure would be seriously weakened, and our national objective of enlarging educational opportunity significantly more difficult to attain.

Like every other element of a free press, magazines must enjoy certain rights and protections to go about their job. They must be permitted to collect news, information, and opinion, and this is often dependent on the attitude of government. They must be free to develop and present news, information, and opinion free from harassment or retribution by government. Magazines must be free to publish, but they also must be able to marshall the financial resources which permit them to publish and to maintain the enormous manpower and facilities which are required to collect, to edit, and to print. Finally, they must have the ability to distribute their product.

Everyone would recognize that a free press could be destroyed if conditions are created or allowed to develop in which a free press cannot function—cannot collect, cannot edit, cannot publish, or cannot distribute its output. All would quickly condemn, as contrary to our Constitution and contrary to our national interest, the exercise of the licensing power to prohibit broadcasting, to limit the scope or content of its news coverage, or to force broadcasters to espouse a particular political philosophy. All of us would recognize the unconstitutionality of confiscatory taxation which levied prohibitive fees on publication. However, we have not yet recognized that magazines can be killed by government just as surely by denying them the revenues which they require to exist or by making it impossible for them to distribute their product.

For magazines the only feasible means of distribution is the postal system. Congress has traditionally set special rates for newspapers and magazines because it has recognized the importance of the post office in binding the nation together. The philosophy which underlies that historic tradition was perhaps best expressed by a special commission appointed by the Congress in 1844 to study the purpose and value of the post office. That commission reported:

"The United States postal service was created to render the citizen worthy, by proper knowledge and enlightenment, of his important privileges as a sovereign constituent of his government; to diffuse enlightenment and social improvement and national fellowship; elevating our people in the scale of civilization and bringing them together in patriotic affection."

Magazines depend on government for the provision of their means of distribution as surely and as completely as the broadcast media depend on government to provide a clear frequency or channel for their use. If the cost of this distribution system becomes prohibitive, then magazines will disappear.

The United States Postal Service has proposed a 142% increase in second-class mail rates for magazines over the next five years. At Time Inc., the proposed increase would raise our mailing costs by $27 million over the five-year period, based on 1970 circulation levels. The profits of our magazines before taxes in 1970, the last year for which figures are presently available, totaled $11 million—slightly more than a third of the proposed increase in rates. The financial situation of the magazine industry as a whole is even worse. Pre-tax earnings of all magazines last year were about $50 million. Under the present proposal magazine would pay $130 million more for mail service by 1976. One of the great national magazines, *Look*, has suspended publication, in large part because they saw no hope of economic survival in the face of such an enormous increase in postal rates.

Newspapers which depend on the mails would also be hard hit by the proposed increases. Those papers—mostly smaller weeklies—distributed within the county of publication and, therefore, eligible for the so-called in-county rates, face increases that could amount to as much as 500% over the next ten years. For most, the increase is likely to be somewhere between 100% and 200%—a substantial burden for any business large or small. Other papers, of course, are subject to the same rates and would be subject to the same increases as magazines.

The amounts which the government proposes to charge us to distribute the output of a free press—charges over which we have no control—will soon prevent the distribution of some national magazines. We face these rising costs at a time when advertising revenues are seriously imperiled. Not only does television command an increasing share of advertising expenditures, but advertising itself is under persistent and pervasive assault by government. The city of New York has proposed to tax it. The Federal Trade Commission is increasingly attempting to restrict it. Many have proposed that advertising of a wide variety of products be banned entirely. Regardless of the purpose of the government action, if it has the effect of reducing the amount of money spent on advertising it then has the further effect of worsening the financial plight of the nation's magazines.

I do not suggest and I do not believe that any of this is the result of a great conspiracy by government to destroy an essential element of a free press. I do suggest that no one has faced the basic questions of public policy: How much is a free press worth in a free society? Is a free press not one of the most important assets to the survival and growth of free institutions? What is more urgent than the creation of an environment in which a free and independent press is economically viable?

Some of our critics have suggested that national magazines have an easy out as costs rise, as postal rates triple, as advertising revenues decline—we can simply raise our price per copy or per subscription. They argue that the people who want magazines should pay for them—whatever the cost. The newsstands today are full of specialized magazines, appealing to a limited audience, and priced at $1.00 or $1.25 or $1.50 or $2.00 per copy. We publish one of the oldest and one of the most expensive. *Fortune* magazine, devoted to in-depth reporting on business, sells for $2.00 a copy and a subscription costs $16.00 per year. But *Fortune*, like other specialized magazines, reaches only 600,000 buyers, obviously of very high income.

Even if some subscribers would pay this kind of price for every magazine of general interest and national circulation—and experience shows that few will—the nature of a free press would be radically altered. At a time when it is critical that all of our people share more equally in the benefits of our society, nothing would be more tragic than to have our national journals speak to and be available to only the well-to-do. On what political or social theory does such a suggestion rest? It is assumed that only the well-to-do desire or deserve to be informed? Is it assumed that only the well-to-do desire or deserve to know what is happening in science, religion, art, literature, and politics in America and in the world? Is it assumed that only the well-off and the comfortable need to be involved in the political and social dialogues of our time?

Surely there is a compelling argument that magazines contributing richness and diversity to the life of the average citizen are essential to the good health of our system. It would be tragic if what remained of the industry were either just specialized magazines for the few or general magazines concerned with sex, scandal, and the sale of gadgets.

I would make one final observation as to the public stake in the survival of magazines and newspapers, as opposed to the regulated broadcast media. In their political role the printed media are largely proof against the manipulations of the demagogue. The magazine in particular is a vehicle for political sense, for the thoughtful discussion of public issues. This is because it depends on neither the whims of various governmental decisions

nor the support of a few advertisers. The broader the range of advertising support the more likely the press is to remain free. Of all of the times in the nation's history, we can now least afford to lose this quality of independence.

The Congress has effectively demonstrated its concern about the attrition rate among daily newspapers and the growth in the number of "one-newspaper cities." Through partial suspension of the antitrust laws, under the "Failing Newspaper Act," competing newspapers have been permitted to use joint printing facilities and to combine certain of their commercial operations. But despite this unprecedented aid, more and more communities are becoming dependent upon the views of a single newspaper for editorial comment and the selection and analysis of newsworthy events. For a large segment of the American public, national magazines provide the only other source of editorial views and analysis of national and international developments.

Without competition in the news field, the quality of the product will inevitably suffer as it does in any other field or enterprise. Giving the daily newspaper a virtual news monopoly can promote neither a free press nor an informed public. Yet this is the inevitable result if access to the United States mails, the sole means of distribution available to the national magazine, is priced beyond reach.

Clearly, freedom of the press is not a private right. On the contrary, it is a public right. In the final analysis what is at stake is the public's right to know, which depends, in turn, on a free press. As the Supreme Court put it in Time Inc. v. Hill: "Those guarantees are not for the benefit of the press so much as for the benefit of all of us. A broadly defined freedom of the press assures the maintenance of our political system and an open society."

My plea is that this Committee go beyond condemnation of government interference with a free press, and commit itself to the creation of an environment in which a free press can grow and flourish and expand. It is time that a major objective of public policy be to promote affirmatively the financial health, the multiplicity, the vigor, and the independence of every organ of opinion, of news, of analysis, and of continuing education which our people are capable of creating.

Benjamin Franklin no longer sits in the councils which guide our country's destiny; but his spirit needs to be revived. Government needs to return to that spirit. In its prosecution of crime, its regulation of commerce, its provision of a postal service, its every function—it should simultaneously weigh the consequences of its actions in terms of their impact on the viability of the press.

The intent of the First Amendment that "Congress shall make no law . . . abridging the freedom . . . of the press" needs once again to be forcefully brought to the attention of the many governmental entities of this nation.

THE GERMAN TREATIES

Mr. ALLOTT. Mr. President, on behalf of the distinguished Senator from Florida (Mr. GURNEY), I ask unanimous consent to have printed in the RECORD a statement by him relative to the German treaties.

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

STATEMENT BY SENATOR GURNEY

Next week, debate will begin in the West German Bundestag over the ratification of two important treaties, one between West Germany and the Soviet Union and the other between West Germany and Poland. Upon the outcome of the vote on these treaties hinges the fate of a third item—the quadripartite Berlin agreement negotiated last fall. Since the Berlin agreement directly involves the United States and since Russo-German diplomacy has made the ratification of this agreement dependent upon ratification of the West German-Soviet and the West German-Polish treaties, the result of the upcoming debate has important consequences for the United States.

Perhaps the most salient factor in post-World War II European history has been the Russian effort to expand communism into Western Europe. Much of this effort has focused upon Germany. However, standing in the way of Russian ambitions has been the NATO Alliance, created in the wake of the first major crisis over Berlin in 1948, and dependent to a large extent upon the active support of the people of West Germany. History shows that NATO has stood firm in the face of the Communist menace: that it has done so is due, in large measure, to the great amount of West German support given. The people of West Germany have been our firm friends and strong supporters for 25 years; their contribution to the peace and stability of Europe has been significant indeed.

Thus, it is only natural that, when treaties are discussed that relate to the future of West Germany and to its relationship to the Communist bloc, we feel a natural concern—a concern for the future of the freedom-loving peoples of Germany and a concern for the stability of all of Western Europe. It would seem to me that the treaties about to be debated bring all these crucial concerns into question: their passage would seem to have implications too far-reaching to be taken lightly.

By way of background, on August 12, 1970, West Germany and the Soviet Union agreed upon a treaty the stated purpose of which was to renounce the use of force in settling their disputes. Existing boundaries, including the Oder-Neisse line—between Poland and East Germany—and those delimiting present-day East Germany, were declared inviolate. A similar treaty with Poland was signed on November 20, 1970. However, German Chancellor Willy Brandt then told the Soviet Union that these treaties would not be submitted to the German Parliament until an agreement on Berlin was reached.

On September 3, 1971, the so-called Berlin agreement was initially signed by the United States, France, Great Britain, and the Soviet Union. As you know, this agreement ostensibly sought to relieve problems of access, visitation, traffic, and communication affecting the lives of West Berliners. It also provided for such things as: Consular representation for the Soviet Union in Berlin, implementation of the idea that Berlin is not an integral part of West Germany, consular rights for West Berliners, and official recognition, by the Soviet Union, of West Germany's right to represent West Berlin abroad. The agreement makes no mention of, and in no way applies to, East Berlin or the rights of East Berliners.

This agreement was originally signed with the understanding that representatives of East and West Germany would get together and work out the procedural details and, after these were resolved, the ambassadors of the four powers would then sign the final draft. But, before the East and West Germans reached agreement (which they did in late December, 1971), the Soviet Union announced it would not sign the Berlin agreement until the two 1970 draft treaties mentioned earlier were ratified by the German Parliament. Not surprisingly, the treaties, now up for ratification, are now a matter of great controversy and concern in West Germany.

The reasons for this concern are deep-rooted and should be understood by all Americans. First, the renunciation of force provisions included in the treaty with the Soviet Union are one-sided indeed. The treaty states that the U.N. charter shall be used as a guide in the peaceful settlement of disputes and it prohibits threats or use of force, but it does not render ineffective articles 53 and 107 of the U.N. charter which specifically give the Soviet Union the right to intervene by force in Germany. In essence, the West Germans are being asked to renounce the use of force while the U.S.S.R. retains its prerogative to use it against Germany when it sees fit.

Second, the aforementioned treaty mentions East Germany by its Communist name, the "German Democratic Republic"—the first time that name has ever been used in a treaty—and provides that the boundaries of East Germany shall be considered inviolate. This goes contrary to the allied goal of reunification of Germany within the context of a peace treaty which would apply to all of Germany. Britain, France, the United States, and West Germany have been pursuing such a reunification for almost thirty years; it has been the Soviet Union that has obstinately prevented it. Yet, under terms of this treaty, East Germany would, for all practical purposes, be recognized as a sovereign state. Its continuance as a separate Communist nation would be effectively insured and its prestige and bargaining position enhanced considerably.

Third, the Berlin agreement applies to only West Berlin. It does nothing to bridge the infamous Berlin wall; its travel, access, visitation, and communication privileges do not apply to East Berliners. In fact, the allies, by neglecting to mention their legal claims to partial jurisdiction over the status of East Berlin, may further weaken those claims.

Fourth, the Berlin agreement mentions East Germany by the name "German Democratic Republic" no less than seven times. Such frequent mention simply strengthens East Germany's claim to recognition. Since the 1970 treaties and the Berlin agreement are now interdependent, due to the diplomatic maneuvering, this factor takes on added significance.

Fifth, the concessions granted by the Soviet Union constitute, for the most part, official recognition of rights that West Germany and West Berlin are entitled to already. What the Soviets get in return—things such as consular privileges, the admission that West Berlin is not part of West Germany, and cessation of acts of official West German business within West Berlin—constitute net gains for them. In short, it appears that, for the most part, the West Germans gain concessions of form while the Soviets and the East German Communists get concessions of substance.

Cast alone, the Berlin agreement is questionable enough. Tied as it is to acceptance of the 1970 treaties, it takes on a much wider significance because it brings the whole policy of West German *Ostpolitik* into question.

We should know from previous experience that dealing with the Soviet Union is tricky business indeed. Past concessions to Communism in return for future promises of security and reduction of tensions have always turned out to be in the best interests of the communists. In this situation there is much that the communists can gain through negotiations. Most importantly, they hope to break up the emerging economic and political unity of Western Europe and, in so doing, reduce the influence of the United States in the area. History should indicate that the Soviet Union will never allow German reunification on any other terms but its own. That they should be so agreeable to signing treaties and agreements that affect the ultimate outcome of reunification is cause for suspicion. Any policy dedicated toward cultivating such negotiations is fraught with danger, not only to the freedom of West Germany but to the security of

Western Europe and the United States as well.

Due to these dangers, all parties involved should carefully weigh the risks against the possible advantages. Those of us in the United States should be particularly concerned about the implications of these treaties upon our relationship with West Germany, upon NATO, and upon the general stability of the area. As I have noted, West Germany has long been our strongest friend and ally in all of Western Europe. Over the last twenty years they have contributed more bases, more money, and more men to the struggle to contain communism than any other nation in the region. In addition, West Germany has contributed immensly to the political stability and economic growth of Western Europe. Such contributions in behalf of so many worthwhile causes are not soon to be forgotten.

Due to these ties of friendship and respect, I am especially concerned that treaties and agreements concerning German reunification not interfere with the goals that the United States and West Germany have for so long shared. If a treaty or agreement is to be fair to the signatories involved, it must include an equal amount of meaningful give and take on all sides. However, insofar as the two treaties coming up for discussion in the German Bundestag are concerned, careful analysis reveals a pattern of definite concessions of substance to the communists without reciprocal concessions of substance to West Germany. There is nothing in them to convince me that these treaties in any way depart from the normal pattern of Soviet treaty making—something useful for Russia but nothing for the other party.

The overriding interest of this Senator in these treaties is that they will have two direct effects upon the interests of the United States. The first effect involves the question of peace in Western Europe. The second concerns changes in the status of West Berlin. In both cases, the U.S. is concerned that the course of peace and freedom in these areas be upheld as it has been in the past.

It is my view that none of these treaties or agreements, which give concessions to the communists but return nothing of substance to the West Germans or her allies in West Berlin, enhance the cause of peace in Western Europe or offer adequate safeguards against future communist aggression. It is my belief that, if effective treaties or agreements are to be reached, they must contain elements of meaningful compromise on the part of the Soviet Union.

PROF. PAUL FREUND SAYS EQUAL RIGHTS AMENDMENT IS UNNECESSARY

Mr. ERVIN. Mr. President, this term the U.S. Supreme Court, in a unanimous decision, gave a strong indication that they would find all unreasonable sex-based classifications to be in violation of the equal protection clause of the 14th amendment. In the case of *Reed* v. *Reed*, 40 L.W. 4013 (1971), the Court found unconstitutional an Idaho statute requiring preference of male relatives over female relatives for appointment as administrators of an intestate's estate. The Court applied the conventional test of reasonableness and found an "arbitrary preference established in favor of males."

I firmly believe that the lack of Supreme Court activity in the area of women's rights can be ascribed primarily to the failure of women's groups to challenge forms of discrimination in the courts. I also believe that most of the goals which the advocates of the equal rights amendment would be accomplished if they would bring a series of selected test cases to challenge discrimination against them.

Of course, lawsuits will have to be brought to enforce the proposed equal rights amendment so why do not the women begin in earnest by instituting lawsuits under the 14th amendment now rather than wait to do the same thing under an ill-advised constitutional amendment.

Prof. Paul Freund of the Harvard Law School agrees with me on the significance of the Supreme Court decision in Reed against Reed. Professor Freund stated:

> The equal protection guarantee, together with the ample legislative powers of Congress, is the best avenue to achieve meaningful equality of the sexes under law.

Professor Freund also supports the substitute constitutional amendment which I have introduced as being preferable to the House-passed equal rights amendment because he says that the House-passed amendment "would force all the manifold legal relationships of men and women, from coverage under selective service to the obligation of family support, into a mold of mechanical unity."

Mr. President, I ask unanimous consent that a letter to me from Professor Freund of December 7, 1971, be printed in the RECORD.

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

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., December 7, 1971.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: Thank you for your letter inviting my views on your proposed amendment to H.J. Res. 208, and the significance of the Supreme Court's decision in Reed v. Reed.

Your amendment, containing the clause "unless such distinction is based on physiological or functional differences between them", seems to me the most appropriate language suggested so far if the Equal Rights Amendment is to be pursued. In view of the Reed decision, however, I believe more strongly than ever that the subject should be left to be worked out under the equal protection clause, as are other questions of group classification. The equal protection guarantee, together with the ample legislative powers of Congress, is the best avenue to achieve meaningful equality of the sexes under law. This approach is greatly to be preferred to one that would force all the manifold legal relationships of men and women, from coverage under selective service to the obligation of family support, into a mold of mechanical unity.

With kindest regards,
Sincerely yours,

PAUL A. FREUND.

LITHUANIAN INDEPENDENCE

Mr. MATHIAS. Mr. President, the month of February holds special meaning for Americans of Lithuanian and Estonian origin and their friends throughout the country, for February 16 and 24, respectively, mark the 54th anniversary of the establishment of the Republics of Lithuania and Estonia in 1918.

For 22 years, until 1940, the freedom-loving people of these proud Baltic States enjoyed an interval of independence which saw long-needed social and economic reforms. However, this hard-won progress was cruelly halted in 1940 when Lithuania and Estonia were forcibly brought under the domination of the Soviet Union.

Since that time, the courageous people of Lithuania and Estonia have clung to the memory of their brief period of freedom and have not given up the struggle for independence. I am pleased to join them today in recalling their proud history by commemorating the anniversary of their independence. I add my voice to their appeal for the right of self-determination for their homeland and extend my warmest wishes that they will again see the day when Lithuanians and Estonians are free men.

EQUAL RIGHTS AMENDMENT

Mr. JAVITS. Mr. President, I feel certain that Senators would want to be advised of the latest action of the association of the bar of the city of New York on the equal rights amendment.

On February 17, the association of the bar adopted the report of its civil rights committee and committee on sex and law, urging the adoption of the amendment as its official position. This is particularly important in light of the fact that 2 years ago the Federal legislation committee of the association issued a report favoring the elimination of discrimination on account of sex by means of Federal legislation under the 14th amendment rather than by the equal rights amendment. Opponents of the amendment have used this earlier and now outdated report as evidence of legal opinion against the proposal. The new joint committee report, which now represents the position of this prestigious bar association, therefore, should be of interest to all Senators.

I ask unanimous consent that the report be printed in the RECORD.

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

REPORT ON THE EQUAL RIGHTS AMENDMENT BY THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK BY ITS COMMITTEE ON CIVIL RIGHTS AND SPECIAL COMMITTEE ON SEX AND LAW

INTRODUCTION

The widespread and pervasive laws and practices which discriminate against women are not only irrational, but are also directly and seriously injurious to a substantial part of our society. Unsupported assumptions of inferiority, which are often expressed in terms of protecting women from onerous situations, are as difficult to eradicate as comparable assumptions based on religion or race. The question, therefore, is not whether women are equal but what means should be adopted to secure their rights.

A new amendment to the Constitution, which would establish a fundamental national commitment to elimination of discrimination based on sex, fulfills the crucial function of creating a presumption of invalidity as to all sex-based legislation. Proponents of such legislation would then be required to demonstrate its relation to characteristics which are present in all of one sex and none of the other, in order to justify the distinction.

The present form of the amendment, as approved by the House and submitted to the Senate, is as follows:

Sec. 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Sec. 2. Congress shall have the power to enforce by appropriate legislation the provisions of this Article.

Sec. 3. This Amendment shall take effect two years after the date of ratification.

Substantially the same Amendment has been introduced in every Congress since 1923, and was seriously considered and debated in 1946, 1950, 1953 and 1970.

We urge adoption of the Amendment as the best means of establishing equality before the law, and effecting a comprehensive and constant review of the whole body of legislation which treats men and women differently on the basis of their membership in a sexual class.

Judicial enforcement based upon the equal protection clause of the fourteenth amendment

The position has been advanced that a new amendment to the Constitution is unnecessary, because judicial interpretation of the Equal Protection Clause of the Fourteenth Amendment will be sufficient to eliminate sex discrimination. However, prior decisions under the Equal Protection Clause dealing with sex-based statutes and the present standards of review utilized by the Supreme Court in deciding equal protection challenges to such legislation, do not support this position.

Until the recent case of *Reed v. Reed*,[1] discussed below, the Supreme Court had never held a sex-based legislative classification to be violative of the equal protection clause and to date has never examined critically the stereotypes with respect to women which are embodied in such laws. Its approach has been characterized by two features: (1) a vague but strong belief that women necessarily occupy a separate place from men in society and therefore can be treated differently [2] and (2) an "extraordinary methodological casualness in reviewing state legislation based on stereotyped views of women." [3]

The landmark Fourteenth Amendment case of *Muller v. Oregon*,[4] where the Court approved laws which created maximum working hours for women only, based its holding on the inferior physical capabilities of woman and her social role as a procreator which place her "in a class by herself." The Court did not even consider the question of whether women have equal rights to employment. Its doctrine became an open-ended invitation to state legislators to begin carving out a body of laws which treated women as a separate class. Moreover, *Muller* has been the oftcited precedent for a myriad of lower court decisions which have upheld separate treatment for women.[5]

More than fifty years later, the Supreme Court depended on the assumptions prevailing in *Muller* in ruling in effect that a State may assert that it is an unnecessary burden to require a woman to take on the civic responsibility of occasional jury duty (*Hoyt v. Florida*),[6] and that women may be precluded from acting as bartenders unless they are wives or daughters of a male owner (*Goesaert v. Cleary*).[7]

The 1971 *Reed* case indicated no substantial charge in judicial attitude. The statute at issue directed that where both a man and a woman were equally entitled to be appointed administrator of the estate of an intestate, the man should in every case be appointed. The Court refused to consider plaintiff's argument that a presumption of illegality attaches to any sex-based classification. Instead, it ruled on the particular facts of the case, holding that the statute utilized an arbitrary method of achieving its goal, which was to eliminate hearings and thus conserve time for probate courts.

Thus, the Supreme Court's interpretations of the 14th Amendment in sex equality cases does not provide any realistic basis for reliance on existing constitutional provisions to effect any fundamental change in sex-role determinism.[8] Even where the Equal Protection Clause is utilized, the decision of the Court may be so narrow and the facts so unusual that the impact of the case is uncertain, resulting in no necessary revisions in existing laws and practices.

Passage of a new equal protection amendment

A new equal protection amendment specifically directed to women's rights has also been suggested. Its proponents concede that it would be construed in the same manner as the equal protection clause of the 14th Amendment, but argue that this is an advantage because it avoids "vagueness" and "inflexibility."

Analysis of the tests utilized in 14th Amendment cases demonstrates that far more vagueness and confusion would result from the equal protection route than from the Equal Rights Amendment. *Reed, Goesaert,* and *Hoyt* applied the "reasonable classification" standard which allows the states substantial discretion in their treatment of civil rights for women.[9] Even if the stricter tests of "fundamental interest" or "suspect classification" were applied, thereby placing a greater burden on legislatures to justify sex classifications, the Court has disagreed about what kinds of rights and interests come within the scope of "fundamental".[10] Therefore, the test might not be used in many situations where women are treated differently from men, e.g. access to certain types of employment, the right to work, overtime, access to all forms of education and the right to control one's body.

Similarly, the "suspect classification" test merely requires the state to propound a compelling interest in retaining a law; some sex-based classifications might therefore remain and a proliferation of inconsistent standards based upon judicial definitions of "compelling" could result.

The Equal Rights Amendment, however, would permit sex-based distinctions only when they are grounded upon physical characteristics unique to one sex. This provides a readily ascertainable, consistent and objective standard.

As to the "flexibility" of the equal protection approach, this argument appears to be based on the view that some laws which discriminate on grounds of sex should remain, even if these laws are unrelated to physical attributes present only in one sex. Thus, this approach fails to treat the complex scope and nature of sex discrimination.

The efficacy of Federal legislation

Section 5 of the Fourteenth Amendment, which empowers Congress to enforce the provisions of that Amendment "by appropriate legislation" would probably be the basis for federal legislation in the equal rights area, although civil rights enactments have also been based on the Commerce Clause.

It has been suggested that an Act of Congress pursuant to Section 5 would be preferable to the Equal Rights Amendment, because it would be more "specific" and therefore lead to less litigation. That such a statute might be more specific and therefore limited to particular areas (for example, employment), hardly recommends it as a vehicle for eliminating sex role determinism which pervades all areas.

Moreover, a federal statute would lead to more litigation than the Amendment, not less. First, it is indisputable that challenges to its constitutionality could be made. Second, passage of a statute would lead to the customary search for exceptions to the rule, which the breadth of a constitutional amendment avoids.

The Section 5 approach is less suitable than the Amendment for the further reason that sex-based laws involve many areas of traditional state concern, such as property and divorce laws. A state-based concurrence to the commitment to equal rights is therefore of particular importance to insure implementation.

Doubt as to the feasibility of the statutory route has also arisen because the Supreme Court has recently held in *Oregon* v. *Mitchell* [11] that Congress had no power under Section 5 of the 14th Amendment to pass legislation lowering the voting age in state elections to 18. This decision suggests that Section 5 may not authorize legislation in areas traditionally reserved to the states in their regulation of conduct, unless specifically directed to the elimination of racial discrimination. We note that the Federal Legislation Committee of this Association issued a report favoring the elimination of discrimination on account of sex by means of federal legislation under the Fourteenth Amendment. That report was issued prior to the Supreme Court's decisions in *Reed* and *Oregon* v. *Mitchell.*

Possible conflict with the 14th Amendment

A few critics have raised the theoretical problem of a potential conflict between the 14th Amendment and the Equal Rights Amendment. However, the legislative history of the Equal Rights Amendment can and should indicate that there is no Congressional intention to modify the application of the 14th Amendment to sex-based discrimination. Moreover, governmental acts, statutes and practices have been held to violate more than one constitutional provision at the same time.[12] The equal protection clause has not affected the "integrity" of the due process clause.

Breadth of the equal rights amendment

The permanence of constitutional doctrine and its application to future societal problems demands the broad language employed by the Equal Rights Amendment. It is unrealistic to expect that every problem be resolved in advance, although the enabling clause provided in the Amendment and the process of passing the Amendment itself can suggest solutions to particular problems within the overall constitutional premise.

The existence of the Amendment will not alone preclude the necessity of litigation, and supplementary federal and state legislation is desirable. Nevertheless, it establishes a solid and permanent constitutional basis, without which other efforts remain piecemeal and limited.

The time required to pass the Amendment and the two-year grace period presently provided in the Amendment will allow a coordinated and comprehensive review to occur which will substantially mitigate the problems involved in any transitional period. However, change will occur at a more desirable pace than if the process were left to legislatures and courts without the impetus of the Amendment. Moreover, the fact that all fifty States and the federal government will be engaged in conforming their laws at the same time will provide momentum and guidance to legislatures as they learn and profit from each other's actions.[13]

Sex as a prohibited classification under the amendment

The Amendment reflects the fundamental but obvious proposition that "women vary as individuals in their body structure, physical strength, intellectual and emotional capacities, aspirations and expectations just as men do." [14] The Amendment will require that

Footnotes at end of article.

legal classifications of persons where necessary for legislation be made on the basis of traits found in both sexes, such as intelligence, or on a functional basis related to types of activity (e.g., employment, jury service, driving a motor vehicle). Even though members of one sex may appear to perform a function not performed as frequently by the other sex, laws cannot be justified which fix legal rights on the basis of membership in one sex or the other. The law will have an obligation to treat people as individuals rather than as statistics.[15]

The only permissible sex-based distinctions under the Amendment are distinctions based upon a physical characteristic unique to one sex.[16] Thus, laws pertaining to sperm banks, for example, would necessarily apply only to men. Likewise, laws relating to childbearing would apply only to women. "Scientific" data relating to emotional or psychological differences between men and women may be unreliable, since it may reflect attitudes resulting from society's past and present disparate treatment of the sexes. Moreover, "inherent psychological differences," purport to describe an average man or woman. There are always individuals to whom the average does not apply, and it is these individuals the Amendment is designed to protect.[17]

We envision a society in which there may well be differences in the societal position of men and women, but in which these differences will reflect free choice rather than social compulsion or legal restraints based solely on sex.

Some particular effects of the amendment

The Equal Rights Amendment will provide a framework whereby laws presently discriminating against women will be struck down, and will establish as fundamental policy the desirability of equality between the sexes. Passage of the Amendment will therefore necessitate a review of the laws governing, among other areas: education, domestic relations, crime, jury duty, the military draft, labor, and property ownership and management. Some of these laws have been cited as conferring special privileges or benefits on women.[18] While it is not possible to make reference in a report to every anticipated effect of the Amendment, a few specific issues which have been the subject of particular public inquiry are discussed below.[19]

1. Labor laws

It has been suggested that the Equal Rights Amendment will adversely affect protective labor legislation which puts women in a special category. Such "special" legislation was, as previously shown, the subject of *Muller v. Oregon*. Basically, these labor laws may be grouped into three general types (1) those conferring supposed benefits such as rest periods; (2) those excluding women from certain jobs such as bartending or mining; or from employment before and after childbirth; (3) those restricting the conditions of employment, such as working at night or overtime.

However, it has become increasingly clear in recent years that these laws for women provide little genuine protection, and that in fact their impact has been to place women at a severe disadvantage in the labor market, in lower paying jobs, or out of the labor force altogether.[20] Moreover, any sex-based law necessarily has a discriminatory effect, because a large number of women do not fit the stereotypes on which the law is premised. And, to the extent that any of these provisions embody actual protections, men are discriminatorily denied benefits.

As to the first category above, laws such as those requiring a rest period have discriminated against women in that they have provided a justification for paying women less and limiting them to certain positions. They have also operated unfairly in depriving men of such rest periods. Most of such laws may be extended to both sexes without burden or disruption.

As to the second category, laws excluding women from certain occupations impose a burden on some women without aiding the others. Women who do not want to be bartenders would presumably not apply for such jobs, while those who wish to work in the cited occupations (some of which are very lucrative) are excluded solely because of their sex.

Compulsory maternity leave regulations, which require pregnant employees to go on leave for a specified period without providing job security or retention of accrued benefits, are similarly exclusionary. A sex-neutral rule, permitting any temporarily disabled worker and his or her doctor to determine the commencement and duration of leave, would provide a non-discriminatory and rational regulation.

The third category above particularly demonstrates the inappropriateness of using sex as a criterion in labor legislation. Night work is often better paid and more convenient for some women who go to school in the daytime, or whose husbands could care for children at night. On the other hand some employees, both women and men, would prefer exemption from night assignments. Overtime is also well-paid and desirable for many male and female workers; a sex-neutral rule would forbid employers to fire those who refuse over-time, but would permit over-time for those who wish it.

Thus, the effect of the Equal Rights Amendment on labor legislation would be to provide an incentive to the states to enact statutes which would genuinely protect workers of both sexes.

2. Interspousal Support

At present, all states make husbands primarily liable for the support of their wives. Only where a husband is incapacitated or indigent do many states make his wife liable for his support. The erroneous idea that the Equal Rights Amendment will summarily do away with a husband's duty to support his wife has caused many people, especially wives who are totally dependent upon men for support, to oppose the Amendment. On the other hand, many men, particularly those ex-husbands burdened with heavy alimony payments, find this aspect of the Amendment, as they perceive it, especially appealing.[21] However, there are judicial methods of reconciling existing support laws with the Amendment that would avoid drastic impact on this area. The duty of spousal support will, however, have to be apportioned in a more equitable manner between husband and wife.

It must first be noted that under present law in most jurisdictions, the husband's duty to support the wife while they are living together is enforced only to a minimal extent. In fact, most courts refuse to enter a support decree in favor of the wife where the marriage is an ongoing one. Thus, as long as a husband provides for his wife with the barest necessities, he is free to determine how much or how little of his property he wishes to bestow upon her.[22]

Only when the marriage is dissolved do non-support laws, both criminal and civil, come into play. Most states have criminal statutes which penalize a man's desertion of his wife. Courts, of course, can penalize a husband for contempt by imposing a jail sentence where he fails to pay alimony pursuant to a valid support decree. Such laws are entirely ineffective in providing needed support and under the Amendment, courts would probably strike down criminal non-support laws which apply only to men, rather than extending them to cover women.[23]

With regard to civil enforcement of support laws, courts could extend them to cover wives as well as husbands rather than striking them down. The Amendment would bar a state from imposing a greater liability on one spouse than on the other merely because of sex. It is clear that the Amendment would not require both a husband and wife to contribute identical amounts of money to a marriage. The support obligation of each spouse would be defined in functional terms based, for example, on each spouse's earning power, current resources and non-monetary contributions to the family welfare. Thus, if spouses have equal resources and earning capacities, each would be equally liable for the support of the other—or in practical effect, neither would be required to support the other. On the other hand, where one spouse is the primary wage earner and the other runs the home, the wage earner would have a duty to support the spouse who stays at home in compensation for the performance of her or his duties.

Although courts still probably would be reluctant to interfere in the allocation of support between husband and wife in an ongoing marriage, upon the dissolution of marriage, both husbands and wives would be entitled to fairer treatment on the basis of individual circumstances rather than sex. Thus, alimony laws could be drafted to take into consideration the spouse who had been out of the labor market for a period of years in order to make a non-compensated contribution to the family in the form of domestic tasks and/or child care.[24]

3. THE MILITARY

The Equal Rights Amendment will require that military institutions base their rules, benefits, and requirements on individual skills and capacity rather than sex.

At present, most women in the Army are members of Women's Army Corps (WAC) or the Army Nurse Corps. While women are assigned to the Nurse Corps on the basis of function, they are assigned to WAC—which is limited to two percent of the full strength of the services[25]—solely because they are female. Until recently, only unmarried women were generally allowed to serve, and when married women were permitted, their dependents received none of the benefits that men's families received.[26] Women take different intelligence tests for enlistment.[27]

All men who are drafted are eligible for combat duty, and receive four to six months of basic training. In each unit, those men who have a primary non-combat military operating specialty (for example, clerk, cook, supplies), still have a secondary specialty in the event of combat (such as infantry). This is true also of reserves and occupation forces; the only exception would be non-combat units such as medical or chaplain corps. The Amendment[28] would require that if these organizational principles continue to apply to men, they would also apply to women.

Objections to requiring women to be combat-ready have been two-fold: 1) the assumption that women lack the requisite physical capability 2) the possibility of disciplinary problems. As to the first point, there is no basis in fact to conclude that women lack the physical capabilities necessary to perform many jobs involved in combat, such as piloting an airplane, or driving a truck. In most ground combat, the effectiveness of the modern-day soldier is due to skills, training and equipment rather than physical strength.

It must be remembered that there are many men, too, who are incapable of performing the tasks required of a combat soldier. Thus, the Army would have to apply a test which would screen out those of both sexes who would be incapable of performing strenuous combat duties, just as it presently does with minimum height and weight requirements. At times, soldiers may be required to carry loads weighing from 40 to 50 pounds, and most American women meeting the minimum height and weight requirements are capable of doing so.[29]

Footnotes at end of article.

As to disciplinary problems, men and women have worked together in combat conditions in the army of the Soviet Union and under most military conditions in the army of Israel; their participation is evidence that no serious disciplinary difficulties need be expected in an integrated army. It should also be pointed out that there is no basis for the supposition that women are less responsible than men when faced with emergency or danger.

Separate quarters for men and women would be provided under the constitutional right of privacy,[30] even though this may involve building more toilet and sleeping facilities.

Under the Amendment, deferments and exemptions from military service would be sex neutral. Women ministers, conscientious objectors and state legislators would be treated as men in such categories now are. Hardship and "sole support" deferment categories [31] would also have to be extended to apply to both sexes.

Although some consider the present exemption of women from military service to be advantageous for women, others have pointed out that such an exemption deprives women of the training and benefits provided to men who serve in the armed forces. Such benefits include vocational training, medical care and benefits for dependents. In addition, veterans receive educational scholarships and loans, preference in government employment, pensions, insurance, and medical treatment. [32]

While some percentage of those who serve in the military risk loss of life, military assignments should be made on the basis of capacity rather than sex. Only those able to perform the necessary services will be required to do so.

Women's equal involvement in the military will also increase their interest in and knowledge of the political process. It also may be anticipated that elimination of the present discriminatory regulations against women volunteers will result in a greater number of enlisted women; thus, the proportion of the army consisting of volunteers will be larger, and the number of persons subject to involuntary draft would be reduced.

4. Compensatory Aid for Women

Many women, because of past discrimination, lack the necessary education, training and skills which would enable them to compete in the marketplace on an equal basis with men. The solution to this problem lies not, as one commentator has suggested, in opposing passage of the Amendment,[33] or in approving laws which ostensibly "protect" women as a group from the harsh realities of modern life. The solution instead lies in supporting the passage of the Amendment, which could allow compensatory treatment for women in much the same way that certain compensatory treatment has been allowed for blacks.

In the area of race relations two methods have been employed for taking affirmative steps to assure actual, and not merely theoretical, equality between blacks and whites. One is the "benign quota" used in the housing, education and employment fields; the other is compensatory aid in the form of special education or training assistance to help put blacks on an equal footing with whites. The Supreme Court has yet to pass upon the constitutionality of these devices, but if their constitutionality is upheld, there is no reason why such affirmative steps should not also be taken to assure that women enjoy actual equality with men.[34]

Another method to secure actual equality for women, and one which is not constitutionally uncertain, would be for courts, in deciding particular cases under the Amendment, to frame their decrees to embody affirmative relief.[35] As in racial desegregation cases, such decrees could provide remedies for past denial of equal rights which take into account sex factors and special treatment to the group discriminated against.[36]

On the federal level, Congress could enact legislation under the enforcement provision of the Amendment dealing with the various economic and social conditions which underlie our present system of sex inequality. States could enact similar legislation under their general police powers. Additionally, legislatures could make use of various functional classifications which generally include members of one sex (but which also would include disadvantaged members of the other sex), to enact statutes having the effect of undoing past discrimination, in much the same way that courts might judicially extend laws which presently confer a benefit exclusively upon one sex to include the other sex.[37]

5. Other Constitutional Rights Not Jeopardized

Opponents of the Amendment have attempted to block its passage by raising the "bathroom argument." [38] This criticism is dealt with here only because the idea that men and women might be required to use the same bathrooms has generated an entirely unwarranted concern. The constitutional right of privacy could be used to sanction separate male and female facilities for activities which involve disrobing, sleeping and personal bodily functions.[39]

CONCLUSION

The Equal Rights Amendment will result in a fundamental restructuring of the present treatment of women. This has caused some to criticize the Amendment as going too far. It is submitted that proponents of this view are not committed to the concept of equality between the sexes, and that their very assertion that vast changes will be made in American life as a result of the Amendment's passage constitutes an implicit admission that sex discrimination is widespread.[40]

Other critics argue that the Amendment does not go far enough because it does not reach private discrimination.[41] The same argument could of course have been used to oppose passage of the Fourteenth Amendment. Although the Equal Rights Amendment will not directly affect sex-based discrimination in the private sector, once the Amendment is ratified and states have adopted its broad policy of sex equality, they can enact their own legislation [42] pursuant to their police powers encompassing prohibitions in areas such as housing and public accommodations, for example. The concept of "state action," utilized under the First and Fourteenth Amendments, will apply here. The federal government will also be able to enact legislation, pursuant to other clauses of the Constitution, which would reach areas not governed directly by the Amendment.

This Amendment, as passed by the House, should be adopted by the Senate and presented to the States for ratification. As shown above, alternative methods such as passage of a federal statute alone, or reliance solely on judicial interpretation of the Equal Protection Clause of the Fourteenth Amendment, would at most commence a piecemeal and inadequate approach which would fail to accomplish the purposes of an effective Equal Rights Amendment.[43]

Committee on Civil Rights

Robert M. Kaufman, Chairman.
Bergoffen, Charles R.
Birkett, Eastman.
Calamaro, Raymond S.
Cardozo, Michael A.
Chandler, Porter R.*
David, Jack
Fernbach, John R.
Friedman, Stephen J.
Golar, Simeon.
Gordon, Murray A.
Greenawalt, William S.
Hirschhorn, Eric L.
Kirby, John J., Jr.
Law, Alfred J.
Marcus, Maria L.
Schwartz, Alan U.
Shack, Donald S.
Sullivan, Donald J.
Teich, Susan F.
Tractenberg, Paul L.
Williams, Milton L.

Committee on Sex and Law

Orville H. Schell, Jr., Chairman.
Carol Bellamy.
Christine Beshar.
Edward J. Bloustein.
Merrell E. Clark, Jr.
William A. Delano.
Frances Friedman.
Nina M. Galston.
Edward F. Greene.
Candace Krugman.
Eleanor Holmes Norton.
Theodore Pearson.
Barbara Scott Preiskel.
Doris L. Sassower.
Ruth Ellen Steinman.
Adam Yarmolinsky.

FOOTNOTES

*Mr. Chandler dissents. His dissenting views follow the report.

[1] The equal protection argument has only been ruled upon in *Reed* v. *Reed* — U.S. —, 30 L.Ed. 225, *Hoyt* v. *Florida*, 368 U.S. 57 (1961) and *Goesaert* v. *Cleary*, 335 U.S. 464 (1948). Further, the Court has never found sex-based legislation to be impermissible under other sections of the 14th Amendment; privileges and immunities—*In re Lockwood*, 154 U.S. 116 (1894); *inor* v. *Happersett*, 88 U.S. (21 Wall.) 162 (1874); *Bradwell* v. *Illinois*, 83 U.S. (16 Wall.) 130 (1872); due process: *West Coast Hotel* v. *Parrish*, 300 U.S. 379 (1937); *Radice* v. *New York*, 264 U.S. 292 (1924); *Muller* v. *Oregon*, 208 U.S. 412 (1908). All the above cases evidence the strong belief by the Supreme Court that women have a separate place in society. *Arguendo, Lockwood, Bradwell,* and *Minor* have now been effectively overturned. Yet the disastrous effects of these early decisions cannot be underestimated. Moreover, the 19th century cases are historical underpinnings to the attitudes about women expressed by the Court in later decisions: *Muller, Goesaert, Hoyt.*

[2] At the turn of the twentieth century, women were denied by the Court the Constitutional guarantee of certain basic rights—voting: *Minor* v. *Hapersett*, 88 U.S. (21 Wall.) 162 (1874); practicing law: *In re Lockwood*, 154 U.S. (16 Wall.) 116 (1894); *Bradwell* v. *Illinois*, 83 U.S. (16 Wall.) 130 (1872); jury service: *Strauder* v. *West Virginia*, 100 U.S. 303, 310 (1880) (dictum).

[3] The authors of this Report acknowledge their particular debt to Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 *Yale L. J.* 871 (1971) [hereinafter cited as Yale L.J.] See discussion of the Supreme Court's review of sex-based legislation at 876.

A good example of this "methodological casualness" is the statement of Justice Frankfurter in *Goesaert, supra* at n.1. He noted that as to the equal protection issue, "[b]eguiling as the subject is, it need not detain us long," and that "Michigan could *beyond all question*, forbid all women from working behind a bar" (emphasis added. 335 U.S. at 465.)

[4] 208 U.S. 412 (1908). *Muller* was dedicated only three years after *Lochner* v. *New York*, 198 U.S. 45 (1905) wherein the Court struck down as violative of due process state legislation which set maximum working hours for bakery workers. Thus, *Muller* squarely conflicted with the Court's holding in *Lochner*. Although *Muller* was hailed at the time as a breakthrough in development of the due process doctrine, the case now stands as

a paradigm of traditional judicial philosophy regarding the nature and role of women.

[5] There are over 90 cases reported in Shepard's Citations which cite *Muller* as a basis for taking judicial notice of "female physical characteristics" to support separate treatment for women.

Only recently have lower courts begun to discredit the verbiage in *Muller* about the innate differences and inferior characteristics which the Supreme Court found peculiar to women. See, e.g., *Sail'er Inn, Inc.* v. *Kirby*, 5 Cal. 3d 1, 485 P.2d 529 (1971); *Mengelkoch* v. *Industrial Welfare Commission*, 437 F. 2d 563 (9th Cir. 1971); *rev'g in part* 284 F. Supp. 950 (C.D. Cal. 1968).

[6] 368 U.S. 57 (1961). The assumption about woman's place in *Hoyt* is merely a restatement of the 19th century view expressed by the Court in *Bradwell*: "Man is, or should be, woman's protector and defender. *The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.* The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates *the domestic sphere as that which properly belongs to the domain and functions of womanhood.*" *Bradwell* v. *Illinois*, at 141 (emphasis added).

[7] 335 U.S. 464(1948). Unlike the *Muller* Court, the Supreme Court in *Goesaert* showed some awareness of the central issue, equal right to employment, but rejected its importance, noting that "we cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling." 335 U.S. at 467.

[8] *Goesaert* v. *Cleary, supra, Hoyt* v. *Florida, supra, U.S.* v. *Yazell*, 382 U.S. 341(1966) all contain dissenting opinions, yet none of the dissenting Justices focused upon the need for a new judicial approach to sex-based legislation, or on the need for reassessment of legal inequalities suffered by women. The only decision preceding *Reed* which could be considered a harbinger for equality was *United States* v. *Dege*, 364 U.S. 65 (1960) where Justice Frankfurter openly discarded the medieval view of women and overturned the common law doctrine of conspiracy (i.e., that a husband and wife, being one, are incapable of conspiracy). Yet, *Hoyt*, which followed the *Dege* decision, reinstated the traditional view of women. In *Williams* v. *McNair*, 401 U.S. 951 (1971) the Supreme Court affirmed without opinion and without hearing argument, a lower court's dismissal of a suit brought by three male plaintiffs who challenged a state school system which segregated the sexes.

As to judicial attitude, the transcript of oral argument of a 1970 Title VII employment discrimination case, *Phillips* v. *Martin Marietta Corporation*, 397 U.S. 960 (1970), is a stark and dismal portrayal of the facetious responses and derisive attitudes of the Justices when the issue of sex discrimination is presented. See Women's Rights L. Rep., Vol. 1 No. 1, pp. 11–20 (1971).

[9] The presumption of reasonableness of state legislation had already been discarded as to other groups in our society: see, e.g., *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Korematsu* v. *U.S.*, 323 U.S. 214 (1944); *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942).

[10] See e.g., *Wyman* v. *James*, 400 U.S. 309 (1971), *id* at 338 (Marshall, J., dissenting); *Dandridge* v. *Williams*, 397 U.S. 471 (1970), *id* at 508 (Marshall J., dissenting); *Kramer* v. *Union Freed School District*, 395 U.S. 621 (1969), *id.* at 634 (Stewart J., dissenting); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), *id*, at 655 (Harlan J., dissenting).

[11] *Oregon* v. *Mitchell*, 400 U.S. 112 (1970).

[12] *United States* v. *Wade*, 388 U.S. 218 (1966).

[13] Yale L. J. at 910. The authors note that all the states successfully carried out enactment of unemployment compensation statutes and establishment of complex administration systems in less than eighteen months, pursuant to the Social Security Act, Ch. 531, 49 Stat. 620 (codified in scattered sections of 42 U.S.C.) passed in 1935. Also, many states have revised their commercial laws through adoption of the Uniform Commercial Code. Such revision appears to have been accomplished without undue confusion.

[14] Murray, *The Negro Woman's Stake in the Equal Rights Amendment*, 6 *Harv. Civ. Rights Civ. Lib. L. Rev.* 253, 255 (1971).

[15] Yale L. J. at 889–90.

[16] *Id.* at 894–96. The authors suggest that courts should apply a "strict scrutiny" test and consider the following six factors:

(1) the proportion of one sex which actually possesses the characteristic;

(2) the relationship between the characteristic and the problem the legislation purports to solve;

(3) the proportion of the problem attributable to the unique physical characteristic;

(4) the proportion of the problem eliminated by the solution;

(5) the availability of less drastic alternatives; and

(6) the importance of the problem ostensibly being solved.

The authors use as an example a hypothetical regulation aimed at reducing absenteeism at policy-making levels by barring women from certain jobs. The regulation ostensibly would be based on the physical characteristic of potential pregnancy (which would be unique to women) and the consequent necessity for leaves of absence for childbearing. Judicial consideration of the six factors mentioned above would result in a court's striking down this regulation.

[17] *Id.* at 893–94.

[18] *Kurland, The Equal Rights Amendment: Some Problems of Construction*, 6 Harv. Civ. Lib. L. Rev. 243, 247 (1971) [hereinafter cited as Kurland]. See also Barrett & Lee, *Women's Rights*, 1971/72 Ann Survey Am. Law. (not yet published). The authors point out that laws, such as New York's statute (N.Y. Judiciary Law § 507(7) (McKinney 1968) which provide an automatic exemption from jury duty for women, in many cases turn out to have a punitive effect. Many working women, who might wish to serve on juries, feel that they must bow to employer pressure to claim their automatic exemption. For many non-working married women who may in fact have children to care for, the net economic loss to many families, especially those in lower income strata, is greater when their husbands must take time off from work to serve than it would be if they simply used part of the stipend received for jury service to pay for temporary child care. See also, Gold, S., "Female Juveniles" (unpublished), wherein the author points out that paternalistic state statutes governing female juveniles actually result in harsher treatment for girls than for boys for the commission of the same crimes and provide a greater range of non-criminal behavior for which girls may be punished than for boys.

[19] See *Yale* L. J. at 922 (protective labor legislation); *Id.* at 936 (domestic relations law); *Id.* at 954 (criminal law); Id at 967 (the military). See also, Dorsen & Ross, *The Necessity of a Constitutional Amendment*, 6 *Harv. Civ. Rights Civ. Lib. L. Rev.* 216, 221–23 (1971) [hereinafter cited as Dorsen & Ross].

[20] Yale L.J. at 922–936; Ross, *Sex Discrimination and "Protective" Labor Legislation*, 1970 Hearings before Senate Judiciary Committee on the Equal Rights Amendment at 210. See also *Cheatwood* v. *South Central Bell Tel. & Tel. Co.*, 303 F. Supp. 754 (M.D. Ala. 1969) and *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir 1969) (weight lifting restrictions); *Mengelkoch* v. *Industrial Welfare Commission*, 437 F. 563 (9th Cir. 1971), *rev'g in part* 284 F. Supp. 950 (C.D. Cal., 1968) (maximum hours legislation)

[21] Approximately two-thirds of the states permit divorce courts to grant alimony awards to the wife only. The remaining one third permit alimony awards to either spouse. *Yale L.J.* at 952–53 & n. 192.

[22] H. Clark. *Domestic Relations* 195–96 (1968).

[23] *See, e.g., Model Penal Code* § 230.5 (Proposed Official Draft, 1962).

[24] *See, e.g., Uniform Marriage and Divorce* Act §§ 308 (a) and (b).

[25] 10 U.S.C. § 3209(b) (Supp. IV., 1967); 32 C.F.R. § 580 (1971).

[26] Yale L. J. at 969.

[27] 32 C.F.R. § 888.2(f) (1970).

[28] However, in 1950 and 1953, the Equal Rights Amendment was passed by the Senate with a clause permitting reasonable classifications to protect women (which was intended to apply to the draft). In 1970, Senator Ervin proposed a specific draft exception and in July, 1971, the House Judiciary Committee reported out the Equal Rights Amendment with a similar provision.

[29] *See, e.g., Cheatwood* v. *South Central Bell Tel. & Co., op. cit. supra* at n. 20, at 758–59.

[30] See discussion in Yale L. J. at 900–02. The Supreme Court recognized the constitutional right of privacy in *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). See also *York* v. *Story*, 324 F. 2d 450 (9th Cir. 1963), *cert. denied*, 376 U.S. 939 (1964) wherein the Court applied the constitutional right of privacy to the situation where police conduct searches involving the removal of clothing.

[31] 50 U.S.C. App. § 456 (h) (2) Supp. V. (1969).

[32] Yale L. J. at 968 & n. 252.

[33] Kurland at 250.

[34] *Yale L.J.* at 903–04. See also, Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 *Harv. L. Rev.* 564 (1965); Kaplan, *Equal Justice in an Unequal World: Equality for the Negro—The Problem of Equal Treatment*, 61 *Nw. U.L. Rev.* 363 (1966); *Developments in the Law—Equal Protection*, 82 *Harv. L. Rev.* 1065, 1105–20 (1969).

[35] *See Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, __ U.S. __, 91 S. Ct. 1267 (1971).

[36] *Yale L.J.* at 904.

[37] *Id.* at 904–05.

[38] Freund, *The Equal Rights Amendment is Not the Way*, 6 Harv. Civ. Rights Civ. L.b.L. Rev. 234, 240 (1971), [hereinafter cited as Freund]. The number of times that bathroom facilities have been used to justify sex-based discrimination is very surprising. To cite only a few examples: Last year one Senator opposed confirmation of the appointments of female pages to the Senate because they would not be able to deliver messages to Senators in the men's rest room. The EEOC guideline explicitly state that the lack of restroom facilities for female employees is no excuse not to hire them; thus presumably the argument has been raised many times by employers. See, *e.g., Cheatwood, supra.* Female high school students have been barred from competition in varsity sports such as tennis and swimming because the teams are all male and no locker room facilities were provided for females.

[39] See footnote 30.

[40] Emerson, *In Support of the Equal Rights Amendment*, 6 *Harv. Civ. Rights Civ. Lib. L. Rev.* 225, 232 (1971).

[41] Freund at 234.

[42] Doren & Ross at 220. *See, e.g., United States* v. *Guest*, 383 U.S. 747, 761, 774 (1966) (opinions of Clark and Brennan, J. J.); 18 U.S.C. § 241 (1964); 42 U.S.C. § 1985 (1964).

[43] The undue burden of mathematical precision which proponents of women's rights must shoulder each time legislation is pending is eliminated once a national moral com-

mitment to sex equality is unequivocally stated. With a national expression of equality it will not be necessary to prove again and again, in each state, that women are, for example, as intelligent or as "business-minded" as men.

DISSENTING VIEWS OF PORTER R. CHANDLER

The first sentence of the Committee report says:

"The widespread and pervasive laws and practices which discriminate against women are not only irrational. but also directly and seriously injurious to a substantial part of our society."

This might have been true in 1772. It might have been partially true in 1872. But as of 1972 it seems to me to be a wild exaggeration. Many of the examples given in the report (e.g. laws forbidding women in a few states to work in mines or as bartenders, or exluding them from the dubious honor of being drafted into the armed forces) seem rather far-fetched, if not ridiculous.

Nor as I convinced that the far-reaching and shot-gun type of remedy proposed—a Constitutional amendment—is either necessary or appropriate. Such abuses as may exist are susceptible to correction either through legislative channels or through the existing Equal Protection Clause of the Fourteenth Amendment. The report dismisses these alternatives by saying in effect that they would take too long.

The broad reach of the proposed Constitutional amendment, as interpreted by the authors of the Committee report, can best be realized by a careful reading of the section of the report headed "The Military." The report unequivocally states that one of its purposes is to ensure that women be not only permitted but required to be treated on an exact parity with men for all purposes of military service. If men are drafted for combat duty in the infantry, or as truck drivers, women must be similarly drafted. If men are assignable to the boiler room of a destroyer, women must be similarly assignable. Somewhat grudgingly, the report concedes that "separate quarters for men and women would be provided under the constitutional right of privacy, even though this may involve building more toilet and sleeping facilities." How this is to be accomplished without rebuilding all our destroyers, or whether segregated pup tents and foxholes for the infantry will be constitutionally mandated, are not elucidated in the report.

I respectfully dissent and recommend that the Committee report be rejected. In this connection I note that the Committee on Federal Legislation of this Association has submitted a report adverse to the proposed Constitutional Amendment.

SOVIET STRATEGIC WEAPONS BUILDUP

Mr. FULBRIGHT. Mr. President, each year about this time, for as long as I can remember, the Senate along with the rest of the country has been afflicted with disclosures about new strategic threats which have, or will soon have materialized. This year the situation is both similar and different. It is similar in that we hear the traditional refrain of Soviet strategic weapons buildup. We are told as always that the buildup has exceeded all expectations. We are told that we are falling behind.

These statements are, of course, questionable. Just to give one example, the defense posture statement shows that U.S. "total offensive force loadings" have gone—or will go—up from 4,700 to 5,700 from November 1, 1971, to mid-1972. Meanwhile, Soviet force loadings have risen only from 2,100 to 2,500. Thus, as the posture statement itself indicates, we are adding 1,000 weapons and they only 400.

At this time of year it may be appropriate to stop and see what became of some old threats. I wonder if my colleagues remember the Soviet multiple warheads, the threat which was used to frighten us into approving the ABM? On page 56 of the defense posture statement we learn that the Soviet Union has not even had a test of an MRV warhead—that is, multiple warheads without independent guidance since late 1970—more than a year ago. We began to flight test independently guided reentry vehicles in August 1968, and deployed them about 2 years later. In other words, we now find that we are more than 3 years ahead in MIRV technology.

The new aspect of this year's posture statement is that we are being asked to invent new weapons systems for international political purposes. This is, of course, a logical extension of the bargaining chip argument, and it represents a dangerous and expensive trend in defense planning. The initial billion dollar installment proposed for a ULMS submarine system which could ultimately cost $30 billion is a good illustration.

The posture statement does not make a serious case that our Polaris submarines are threatened. The case for a new sea-based missile force is based simply on the need to show the Soviet Union that we too can spend money on sea-based systems, if they are unwilling to halt building submarines. The defense posture statement explains ULMS this way:

> 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.

Secretary Laird went on to say that he had "carefully reviewed all alternatives for new strategic initiative" and had chosen ULMS since it had the "best long-term prospect" for survivability.

This is an unusual approach to military analysis. We decide that we need to signal the Soviet Union politically with some strategic initiative. So we look around for some weapon systems that seem likely to survive. While I am no expert on such matters, I would have thought that our military planners first looked to find some military vulnerability in our defenses and then proposed military systems to protect them.

This kind of "political signaling" with strategic military systems does not seem to make sense militarily, and it is certainly inconsistent with our stated objectives at SALT and with our supposed entry into an era of negotiations rather than confrontations. So many of our actions are at variance with the objective of coming to a political settlement with the U.S.S.R.—we increase ULMS, we go ahead with a B–1 bomber, we stall entering into MBFR negotiations, we expand U.S. bases in Greece, we take the first step toward arms races in the Indian Ocean and the Persian Gulf, and Radio Free Europe continues undisturbed.

Even more startling is the Secretary of Defense's attitude toward China, which is hardly consistent with normalization of relations. The flimsy anti-Chinese rationalizations for continuing deployment of Safeguard is repeated, and the irrational fear of a Chinese strategic "threat" to this country is raised, entirely oblivious of the political realities of the relations between the two countries.

America should buy military weapons for military purposes. If weapons are to be built for political purposes, perhaps they should be reviewed by the Foreign Relations Committee, as well as the Armed Services Committee.

The ABM bargaining chip has already cost several billion dollars—for what? The time has come to buy only what we need. Our problem is to keep our own deterrent strong and to meet the needs of our own people here at home, not to match the waste of the Soviets in whatever ways they choose to waste. We will always be ahead in some ways, and they in others. We ought not let the traditional alarums of the appropriations season cloud our perception of these basic considerations.

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. Under the previous order the Chair lays before the Senate for its consideration the unfinished business which will be stated.

The assistant legislative clerk read as follows:

> Calendar No. 412, 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 second assistant legislative clerk proceeded to call the roll.

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

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

The question before the Senate is amendment No. 809 to S. 2515.

CLOTURE MOTION

Mr. WILLIAMS. Mr. President, on behalf of myself and 50 other Senators I will in a moment offer a motion pursuant to rule XXII to invoke cloture on S. 2515 that is presently the pending business in this body. The leadership on both sides supports this motion. A constitutional majority of the Senate signed the motion.

We are now in the fifth week of debate on this measure. We have had more than

30 rollcall votes on amendments to this bill. We debated the enforcement procedure for 4 weeks and finally resolved that issue on Tuesday last.

I think that it is clear from the desultory tone of the debates since last Tuesday that the Senate is merely marking time until we can bring an end to debate on this bill. I know that a large majority of the Senate wants this bill passed.

This motion for cloture will be voted on next Tuesday afternoon. I believe that it is incumbent upon each and every one of the Members of the Senate who believes in the cause of equal employment opportunity to be present and to vote on this measure. It will be, I hope, a historic demonstration to our minorities and women that effective assistance can be provided to end job discrimination in our society.

Mr. President, this issue has been fully and completely debated. I urge all of my colleagues to join with me on Tuesday to end this debate and pass S. 2515.

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

Mr. WILLIAMS. I am happy to yield.

Mr. JAVITS. Mr. President, the Senator from New Jersey (Mr. WILLIAMS) and I are presenting this cloture motion to the Senate with the feeling that every conceivable area in respect of this measure has now been explored. The amendments have been dealt with in substance, not once but more than once in most instances, and the time has now come to vote. If our constitutional system cannot under these circumstances gear itself up to acting instead of talking further then, indeed, we are in some constitutional crisis.

Also, Mr. President, we have gone very far in the number of Senators who have signed the cloture motion. Only 16 Senators are required for a cloture motion. Designedly the Senator from New Jersey and I set out to get 51 signatures of Senators, a constitutional majority.

I know I express our joint gratitude to all who joined with us because we wanted to demonstrate how conclusively is this sentiment on the part of the Senate, the constitutional majority, that the time has come to vote.

Even now no amendment will be cut off. Any amendment at the desk would be qualified by a suitable unanimous consent up to the vote, and thereafter Members will have an opportunity to have amendments voted on, every Member having an hour.

I regret the form the bill has now, but nonetheless it is the will of the Senate and if we wish the will of the Senate to be expressed in voting on this matter we must be willing to accept it after full and fair debate, as it is. I am fully cognizant of that and on other occasions I have defended vigorously the will of the Senate in conference, even though I might have voted the other way. I have no doubt that the Senator from New Jersey (Mr. WILLIAMS) feels the same way I do.

I do not use this expression in any invidious sense, but I wish to say that we accept the watering down of the enforcement power. We did it in the broader interest of getting a bill to deal with the worst of all discrimination, denial of jobs or the opportunity for jobs on the grounds of race, religion, color, national origin, or sex.

We are satisfied there is a measurable improvement over what we have had up to now and that it will result in materially cutting down the backlog of equal employment opportunity cases and giving a much better opportunity to protect constitutional guarantees.

This cloture motion contains the highest number of signers in any civil rights bill. There was a measure in 1926 that had more signers that involved a branch banking bill, but this is the largest number of signers on a bill involving civil rights.

I join the Senator from New Jersey in expressing great satisfaction in working with him in an extremely difficult debate. I doubt any more difficult matter has been carried out in this Chamber.

Mr. WILLIAMS. The feeling is certainly mutual in that respect.

Mr. President, I submit the cloture motion under rule XXII of the Standing Rules of the Senate to bring to a close debate on S. 2515.

The PRESIDING OFFICER (Mr. CHILES). The cloture motion having been requested under rule XXII, the Chair, without objection, directs the clerk to state the motion.

The assistant legislative clerk read the cloture motion, as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

1. Mike Mansfield
2. Robert Griffin
3. Robert C. Byrd
4. Abraham Ribicoff.
5. Thomas J. McIntyre
6. Jennings Randolph
7. Harold E. Hughes
8. Gaylord Nelson
9. Thomas F. Eagleton
10. Adlai Stevenson
11. Walter F. Mondale
12. Lee Metcalf
13. Frank E. Moss
14. Len B. Jordan
15. John O. Pastore
16. Robert T. Stafford
17. Mark O. Hatfield
18. Robert Taft, Jr.
19. Harrison Williams
20. Richard S. Schweiker
21. Hugh Scott
22. Jacob K. Javits
23. J. Caleb Boggs
24. Charles H. Percy
25. James B. Pearson
26. Edward W. Brooke.
27. Gordon Allott
28. Lowell P. Weicker
29. Clifford P. Case
30. Marlow W. Cook
31. Charles McC. Mathias, Jr.
32. Robert Dole.
33. Henry Bellmon
34. Bob Packwood
35. Ted Stevens
36. J. Glenn Beall
37. Vance Hartke
38. George McGovern
39. Frank Church
40. Alan Cranston
41. Claiborne Pell
42. Daniel K. Inouye
43. John V. Tunney
44. Gale W. McGee
45. Joseph M. Montoya
46. Philip A. Hart
47. Stuart Symington
48. Lloyd Bentsen
49. William Proxmire
50. Birch Bayh
51. Fred R. Harris

Subsequently, by unanimous consent, the names of the following Senators were added to the cloture motion.

52. Lawton Chiles
53. Warren G. Magnuson

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. WILLIAMS. I am happy to yield.

Mr. BYRD of West Virginia. Mr. President, I want to take this occasion to commend the distinguished manager of the bill (Mr. WILLIAMS), the distinguished ranking minority member (Mr. JAVITS), as well as the distinguished senior Senator from North Carolina (Mr. ERVIN), and the distinguished junior Senator from Alabama (Mr. ALLEN) on the diligence with which they have all given their talents and their strength to the debate and to the improvement of this major piece of legislation. I think it is a tremendous credit to those on both sides of this question and on both sides of the aisle, who have been here hour after hour, day after day, and week after week in the pursuit of a piece of legislation which would be feasible and workable, and I believe that their efforts will, at last, have been fruitful to this end.

I have marveled at the stamina and skill of the manager of the bill, as I told him yesterday in private. He has stood on this floor day after day to defend the bill and he has done a tremendously effective job. I have marveled just as much at the same kind of diligence and display of great ability on the part of the ranking minority member, the distinguished Senator from New York (Mr. JAVITS). These men have displayed the attributes of the finest kind of legislative team as they have worked on this legislation and fought for it, and are now on the threshold of victory, I believe, next Tuesday when the vote to invoke cloture will be had.

The manager of the bill has, at all times during the debate, displayed a thorough knowledge and easy command of the subject matter of the legislation, and his floor work has been superb and worthy of admiration and commendation.

By the same token I can say with just as great enthusiasm and sincerity that I have admired the tenacity, the persistence, the determination, and the equally great ability and dedication on the part of the Senator from North Carolina (Mr. ERVIN) and the Senator from Alabama (Mr. ALLEN). I think that through their efforts this bill has been made a much better bill. Of course, I am speaking subjectively in this regard, and as I personally view the bill. I believe their efforts have not been dilatory or delaying tactics but have been in the interest, rather, of improving, refining, and bringing about a much improved bill—if any bill is to be enacted into law—than in their view this bill was in the beginning. Speaking for the leadership, I commend

and thank all sides for their courtesy, their patience, and their fine cooperation.

I believe cloture will be invoked next Tuesday. For the first time, I have signed a cloture motion on a bill of this kind, and it is only the second time I have ever signed a cloture motion. I was the first Senator to sign this particular cloture motion, although not on the first line of the petition. I thought that the commendable efforts on the part of those who wanted to refine and improve this bill had been largely accomplished, and that the time had come to get onto other business.

While there may be some aspects of the bill that I would still like personally to see changed, I think the time has come to pass the bill and get it eventually into conference, where, if other refinements are to be worked out, it can be done there.

I think that on the whole this is a good piece of legislation. I want, therefore, once again to compliment those Members on both sides of the question through whose efforts and through whose talents the Senate will soon be able to pass a landmark piece of legislation.

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

Mr. BYRD of West Virginia. I yield.

Mr. WILLIAMS. Certainly I personally want to express my gratitude for the most generous statement of the distinguished assistant majority leader which dealt with this Senator. I will say that the debate that has occupied this time in the Senate without disharmony, in a spirit of earnest cooperation on all sides, in large part was made possible by the Senator from West Virginia, whose full cooperation we have felt day in and day out. I am most grateful to him.

Before I yield to the Senator from New York, I ask unanimous consent that the distinguished present Presiding Officer of the Senate, the Senator from Florida (Mr. CHILES), be added as a cosponsor of the cloture motion.

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

Mr. WILLIAMS. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, first, I, too, would like to express gratitude to the Senator for his management on the floor during this arduous debate and to thank the Senator for supporting the cloture motion. I note that this is a major policy decision for him. I thank him for his gracious references to me.

I know he would want to include in the nice things he has said—because I feel as a proponent we must be generous to those who oppose us—the Senator from Colorado (Mr. DOMINICK), even though we do not agree, who fought very hard for his amendment. I thoroughly disagree with it. We fought it just as hard as we could, but he finally prevailed in a different version. I think in giving thanks to those who have put in a lot of time and effort, he should be mentioned.

Mr. BYRD of West Virginia. Mr. President, if the Senator will yield, I want to thank the distinguished Senator for calling my attention to an inexcusable inadvertence on my part. The amendment by the Senator from Colorado (Mr. DOMINICK), I think in very great measure, improved the bill to the point of acceptability, at least from my standpoint, and certainly the Senator from Colorado should be highly commended for his perspicacity and determination and efforts which went a long way toward insuring a favorable vote on the motion to invoke cloture next Tuesday. Without that amendment's having been adopted, I personally doubt that cloture would ever have been invoked.

Mr. JAVITS. Whatever the answer may be to that, the Senator from Colorado should certainly be included among those who worked hard on this bill.

Mr. BYRD of West Virginia. Mr. President, may I ask the distinguished Senator from North Carolina if he intends to talk about the pending amendment?

Mr. ERVIN. Mr. President, I think, in view of the remarks that have been made, I can speak on the pending amendment. Then I would like to talk about the nongermane matter, simply owing to the limitation of time there will be, on the antibusing amendment. I would like to have an opportunity to present my views with respect to that.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, if ever the freedoms of American citizens are finally totally destroyed, it will be by the tyranny of a majority over a minority.

Rule XXII was undoubtedly adopted by the Senate to make it certain that a minority should have an opportunity to present, if not to the Senate, then to the Nation, its views and to suggest changes in a pending legislative proposal.

When this bill was originally presented to the Senate, it represented the most monstrous grab for power on the part of a nonelected Federal agency that this country has witnessed since George Washington took his first oath of office as President of the United States.

As the majority leader has stated on a number of occasions, the Senate, during the session thus far, has been plagued by the problem of the absenteeism of Senators. The Senator from North Carolina would like to have been absent on several occasions since the Senate reconvened to fulfill speaking engagements, but the Senator from North Carolina has the view that his primary obligation is to the Senate, and the Senator from North Carolina has canceled speaking engagements when they would tend to prevent his attendance in the Senate.

It is very difficult to present the views of a minority in respect to legislation which is backed by a pressure group. This legislation is backed by a pressure group which has tremendous political power in the Congress of the United States and, unfortunately—I say this without intending to be critical—all too many Members of Congress will listen to the requests of a pressure group for the support of legislation and fail to avail themselves of an opportunity to ascertain whether the proposed legislation contains iniquitous provisions.

If it had not been for rule XXII, this bill would undoubtedly have passed in its original form. As the Senator from West Virginia has so well stated, the bill has been, I would not say improved, but rendered much less obnoxious. For example, for years we have had an agency of the Federal Government, elected by nobody, and virtually responsible to nobody—the Office of Federal Contract Compliance in the Department of Labor—which has been practicing economic tyranny in the highest degree over American industry. This office has no jurisdiction except to see that its own concepts of fair employment practices are incorporated in contracts which have already been made subject to that condition by the departments and agencies of the Federal Government having original jurisdiction in the field covered by the contract.

I have been informed time and time again by American businessmen who sought Federal contracts that the Office of Federal Contract Compliance would not inform them in writing what it required of them in respect to employment practices; that they would have an oral conversation with the officials of the Office of Federal Contract Compliance and would then undertake to incorporate provisions in the proposed contract conforming to the views expressed to them orally by the Office of Federal Contract Compliance who would not put in writing what they required.

Mr. President, in ancient days in Rome there was an emperor named Caligula, and Caligula wrote his laws in small letters and hung them up so high on the wall that people could not read them and know what the laws were.

But as compared with the practices of the Office of Federal Contract Compliance, Caligula was a most enlightened legislator and administrator, because if a person got a ladder long enough and a magnifying glass big enough, he could have climbed up and read Caligula's laws. But one cannot read the constantly changing minds of the officials of the Office of Federal Contract Compliance in the Department of Labor. I have been told time and time again by businessmen, who had had contracts made with the respective agencies and departments having jurisdiction, that they would file what they thought were proposals conforming to the ideas of the officials of the Office of Federal Contract Compliance, based on oral conversations they had had with those officials, and that the Office of Federal Contract Compliance would never rule on the matter.

As a result of the fact that some of us were willing to stand up here and fight to protect American business from economic tyranny at the hands of nonelective officials, we did get an amendment in this bill that provides some protection to businessmen who seek contracts with the Government. Under that amendment, they have the right to go into court, for the first time, and vindicate the fact that they have offered to do all that the law requires, and their efforts to get legal protection will not be denied on the theory that they have no standing to sue, because they have no contract.

We also have in that amendment a

provision that requires the Office of Federal Contract Compliance to accept or reject within a reasonable time the proposal of a businessman seeking a contract with the Government, and depriving it of the power to reject or annul proposals dealing with employment practices, which it had previously made a habit of annulling.

So as a result of our fight, we have an amendment that, to a limited degree, will prevent the rampant economic tyranny which the Office of Federal Contract Compliance of the Department of Labor has been practicing upon American industries which are dependent for their success upon Government contracts.

When this bill originally came before this body, it constituted a rank prostitution of the judicial process. It provided expressly that the EEOC should investigate complaints, should prefer charges, should prosecute charges, and should have the judicial duty to pass on the validity of the charges which it itself made and prosecuted. To be perfectly frank, that is bastardizing due process of law, and flies right in the face of the ancient principle of the common law that no man shall be a judge in his own case. It took about five rollcall votes to take that awesome and tyrannous power away from the EEOC, but we did it.

Mr. President, I ask unanimous consent that I may yield briefly to the distinguished Senator from Washington (Mr. MAGNUSON), with the understanding that I shall not lose my right to the floor by so doing, and with the further understanding that any remarks he may make will be printed in the RECORD immediately after I cease to talk.

The PRESIDING OFFICER. Without objection, it is ordered.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that my signature may be added to the cloture motion.

The PRESIDING OFFICER. Without objection, the Senator will be permitted to sign the motion.

Mr. MAGNUSON. I thank the Chair.

Mr. ERVIN. So, Mr. President, there was another rank prostitution of the judicial process removed from this bill as a result of our fight. The bill as reported not only combined the powers of investigator, prosecutor, and judge in the agency, but it also made it impossible for anyone to go into court to seek redress for injustices perpetrated by the agency, to obtain relief in the courts. I say that because it provided, in its original form, that the findings of fact of the Commission would be binding upon the courts if they were supported by what is called "substantial evidence," which the courts have defined as anything more than a scintilla of evidence, and which is far less than the measure of evidence required for a factual finding in any of the courts of law or equity.

In other words, what that meant, in plain English, was that the findings of fact of the Commission would have to be accepted by the judges in the Federal courts, even though the judges in the Federal courts believed that the findings of fact of the Commission were probably not true on the basis of the evidence taken before the Commission.

As a result of about five separate rollcall votes and many days of debate, some Senators, who on the first votes apparently had no concept of what a rank prostitution of the judicial process this bill was, joined those of us who were opposed to making the agency a judge in its own case, and we adopted the Dominick amendment, which frees Americans involved in controversies with the EEOC from having the EEOC be the prosecutor, the judge, and I might add the executioner. Now they are assured of being able to get a hearing according to the rules of procedure and evidence by which the rights of all other persons are judged in the courts of our land, and before impartial judges rather than biased crusaders.

We have been impliedly criticized for taking advantage of the Senate rules giving us the right to debate. But it was only yesterday that we were able to secure the adoption of an amendment which makes it certain that the elected officials of States and political subdivisions of States could not be denied their offices, to which they were chosen by the people, by the EEOC. I assert, without fear of successful contradiction, that this bill in its original form would have empowered the EEOC to have denied public office to men and women, elected by the people, on account of the subjective judgment—not the objective judgment—of the EEOC; people who have been elected by the electorate, because they prefer a person of the race, religion, national origin, or sex of the people who have been chosen for public office. I know of no measure that would have come nearer to destroying the federal system of government.

We still have an amendment, which has not yet been voted upon, which would take the political hands of Caesar off religious institutions and permit those religious institutions to hire people of their own religious persuasion rather than to have people selected by the EEOC. To my mind, no more tyrannous proposal has ever been made in the Senate than the proposal that the EEOC could compel a Christian denomination to employ an atheist or an agnostic in preference to a Christian. I hope that that amendment will be adopted on Monday.

Mr. President, the American people are very solicitous about the rights of minorities. They are so solicitous about the rights of minorities that they have come to the conclusion that the rights of the minorities should be made superior to the rights of majorities and that the rights of majorities should be subordinated to the rights of the minorities. That is precisely what underlies this bill.

I happen to believe that in a free society, any individual has an inherent right—and should have a legal right—when he invests his resources or his talents in a private business enterprise, to select for himself the employees whom he deems are most likely to enable him to make his private enterprise a success rather than a failure. This bill in its original form conferred upon the EEOC jurisdiction over all the educational institutions of the country in respect to their hiring practices and gave the EEOC the power to determine who is competent to teach such abstruse subjects as anthropology, philosophy, chemistry, and physics. There never has been a man on the EEOC and never will be a man on the EEOC who has sufficient competency to pass upon these questions. Yet, we subject the right of institutions of learning to select the persons they think most capable of instructing the youth of our Nation to the nomination of EEOC.

I have no apology to make to anyone for resisting this bill. I am proud of the fact that, as a result of the amendments thus far made, the American people are going to be a little freer for at least a reasonable time in the future than they would have been if this bill in its original form had been foisted upon them by Congress.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. Mr. President, not only does the Senator need have no apologies; he also can take great pride in the fact that he has stood steadfast and supported the Constitution, as he reads it and so well understands it.

There are those in this country who are so blinded by their own preachments with respect to intolerance that they are not tolerant themselves. There are those who in their zeal to fight age-old prejudices have eyes which cannot see and ears which cannot hear. Yet, the Senator from North Carolina, in his supreme dedication to the Constitution of the United States, is always willing to stand in the midst of the storm and speak out against the passions of the moment which threaten to sweep over all opposition to the maintenance of constitutional principles dedicated to the preservation of liberty for the majority as well as the minority.

The Senator is to be commended. I need not say that he is highly respected by every Member of the Senate. Whether Senators agree or disagree with the distinguished senior Senator from North Carolina on a given issue and at a given time, every Member of this body accords to the Senator from North Carolina the highest respect, in the knowledge that the Senator from North Carolina deserves that respect and has proved himself worthy of the high regard that his colleagues hold for him.

The Senator from North Carolina has rendered great service to his country; to the Constitution of the United States in the way he always reveres it and seeks to uphold and defend it; and to the Senate. He has made me all the more proud of the Senate as an institution where controversial matters can be discussed and where they can be molded and shaped on the anvil of argument and debate.

I am all the more thankful that we do have rules in the Senate, developed through decades of experience, which assure that even a minority in the Senate can speak its viewpoint and can be

effective in improving the legislation we enact into law.

I salute the able Senator for his ability, his dedication, and his courage.

Mr. ERVIN. Mr. President, I express my deep gratitude to the distinguished Senator from West Virginia for his most generous remarks. There is no one in the Senate for whom I entertain more affection and more admiration than the Senator from West Virginia.

ORDER OF BUSINESS

Mr. ERVIN. Mr. President, I wish to talk on a nongermane matter briefly because I fear that, owing to a limitation agreement with respect to the higher education bill, I may not have an adequate opportunity to present my views at that time.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, under the circumstances, the Pastore rule with respect to germaneness be considered as having run its course for today and that there be a resumption of the period for the transaction of routine morning business, with statements therein limited to 15 minutes, with the exception of the statement which the distinguished Senator from North Carolina (Mr. ERVIN) is about to make; and I ask unanimous consent further that there be a limitation on that statement of 30 minutes.

The PRESIDING OFFICER (Mr. CHILES). Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. ERVIN. I thank the distinguished Senator from West Virginia.

HIGHER EDUCATION

Mr. ERVIN. Mr. President, on behalf of Mr. BAKER, Mr. BENNETT, Mr. BROCK, Mr. BYRD of Virginia, Mr. EASTLAND, Mr. ELLENDER, Mr. GAMBRELL, Mr. GURNEY, Mr. HOLLINGS, Mr. JORDAN of North Carolina, Mr. LONG, Mr. MCCLELLAN, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, and myself, I have sent to the desk today for printing an amendment which we will propose at the appropriate time to the committee amendment offered as a substitute for the House amendment to S. 659, a bill to amend the Higher Education Act of 1965 and the Vocational Act of 1963 and related acts, and for other purposes.

This amendment, if adopted, would add a new title to the committee amendment prohibiting the transportation of students for purposes of racial integration and protecting the rights of students to attend their neighborhood schools.

It consists of three sections:

The first section provides that no court, department, agency, or office of the United States shall have jurisdiction or power to alter or require by any means whatever the authorities controlling or operating any public or private school in any State, district, territory, commonwealth, or possession of the United States, to transport any student from one school to another school, or from one school district to another school district, or from one place to another place, to alter the racial composition of the student body at any school.

The second section of the amendment, if adopted, would provide that no court, department, agency, or office of the United States shall have jurisdiction or power to order or require by any means whatever the authorities controlling or operating any public or private school in any State, district, territory, commonwealth, or possession of the United States, to deny any student admission to a public or private school nearest his home which is operated by such authorities for the education of students of his age and ability.

The first section would provide, if the amendment is adopted, that if any provision of this title or application thereof to any person or circumstances is held invalid, the remaining provisions of this title or application of such provisions to other persons or circumstances shall not be affected thereby.

The third section is the standard separability clause.

Mr. President, this bill is perfectly constitutional. Congress has complete power, under article III of the Constitution, to regulate the appellate jurisdiction of the Supreme Court and to regulate all of the jurisdictions of all courts inferior to the Supreme Court—that is, the U.S. courts of appeal and the U.S. district courts.

The men who drafted our Constitution recognized that all human beings are fallible and that no man or set of men can be safely trusted with unlimited governmental power, so they put checks and balances into the Constitution to guard the people of this Nation against improper and unconstitutional conduct or unwise conduct on the part of any of their officials whether those officials are Members of Congress, the President of the United States, or members of the courts.

For example, the Constitution makes the President the Commander in Chief of the Armed Forces, but to keep him from using that power to establish a dictatorship, it gives Congress the power of the purse and even limits the power of Congress to provide appropriations for the support of the Armed Forces to a limited period of time.

The Constitution gives Congress all the legislative powers of the Federal Government, but to keep Congress from abusing its legislative power, it gives the President the power to veto an act of Congress. Unless that veto is overridden by two-thirds majority of both Houses of Congress, that act will not become law.

The men who wrote the Constitution knew that Supreme Court Justices are no more angels than Members of Congress or Presidents, so they wrote the third article of the Constitution in such a way as to give Congress the power to prevent the courts, including the Supreme Court and courts inferior to the Supreme Court, from going on a constitutional binge.

Mr. President, I invite the attention of the Senate to the third article of the Constitution. It is fortunate that the men who drew up the Constitution wrote this third article in such a way, because otherwise we would be under the autocratic power of Federal judges.

Federal judges are nearer to monarchs than any other officials in this Nation. They are given office for life. They are given a compensation which cannot be decreased during their continuance in office. There is no power on earth which can keep them within the limits of their constitutional power except Congress, by regulating their jurisdiction.

Section 1 of article 3 of the Constitution states in part:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Section 2 of article 3 states in part:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Under the first provision which I have just read, Congress was given the discretionary power to establish Federal courts inferior to the Supreme Court. It could have refused to have done so and left everyone to seek his legal remedies in the courts of the States. But it had been held in multitudes of cases that under this provision of the Constitution, Congress can limit the jurisdiction of all of the Federal courts inferior to the Supreme Court which it has established.

Mr. President, this is a power that Congress has not been niggardly in establishing. This very bill contained a provision in its original form that the EEOC could make a decision in respect to certain matters and that that decision could not be reviewable anywhere. This was nothing but a curtailment of the jurisdiction of the Federal court.

Every Member of the Congress has voted for bills to deny jurisdiction to Federal courts. When they passed the Civil Rights Act of 1965, Congress provided that certain certificates of the Bureau of the Census and of the Attorney General would be binding on everyone in this country and could not be subject to judicial review. Also, when they passed that law, Congress nailed shut the door of every courthouse in this Nation except one—the courthouse here in the District of Columbia.

We have a provision in the Constitution that Congress can give the Federal courts jurisdiction of cases where a diversity of citizenship exists between the litigants. And Congress could have provided that the courts have jurisdiction in those cases and in cases arising under the Constitution and laws of the United States generally, no matter how small the value of the matter in dispute might be. However, Congress passed a law that ordinarily said the courts will not have jurisdiction in these cases unless the matter in dispute exceeds the value of $10,000. That is nothing more or less than limiting the jurisdiction of the Federal courts.

A few years ago we had in this country what was called government by injunction in the field of labor controversies. Federal judges issued injunctions on all kinds of labor controversies and then placed in jail, under the contempt power, men who violated the provisions of those injunctions, which were nothing more or less than manmade law.

Congress passed the Norris-LaGuardia Act to prevent this kind of abuse of judicial authority by the Federal courts in providing under that act that Federal courts would not ordinarily have the power to issue any injunction whatever in a labor controversy.

Mr. President, that stripped the Federal courts of the major part of their equitable jurisdiction in those cases, because the most outstanding power that a court of equity has is to issue injunctions.

Congress did that because the Federal courts, by the injunctive process, were practicing tyranny upon the Americans who labor for their livelihood in American industries.

There is another group of Americans who are now entitled to protection against the abuses of Federal power, and they are the little children of America of all races. And I respectfully submit that no greater tyranny has ever been practiced upon any segment of the American population than the tyranny practiced upon the Chinese children of San Francisco who were denied the right to attend their neighborhood schools and were ordered to be bused to schools elsewhere for the peculiar purpose of integrating the bodies of the children of different races rather than enlightening their minds.

Within the last few weeks we have seen an exhibition of an unmitigated and intemperate kind of judicial tyranny. Judge Robert Merhige of the Federal district court in Richmond, Va., issued an order which struck down, for the purposes of school administration, the boundaries of three independent, political subdivisions of the State of Virginia—which had been legally, constitutionally created by the State of Virginia—and denied, according to some reports, as many as 87,000 schoolchildren residing in those three political subdivisions the right to attend their neighborhood schools and ordered them to be bused to and fro over that area for the purpose of integrating their bodies rather than enlightening their minds.

If press reports be true, the judge who visited this unspeakable judicial tyranny upon approximately 87,000 black and white schoolchildren had taken particular pains to make certain that his own children would not be subjected to any such judicial tyranny by sending his own children to private schools. Thus, he added the vice of judicial hypocrisy to the sin of judicial tyranny.

Those children are entitled to protection against such arbitrary judicial action.

All of these judicial tyrannies are being practiced on the basis—so their authors say—of the equal protection clause of the 14th amendment. The equal protection clause is very short. It says in substance that no State shall deny to any person within its jurisdiction the equal protection of the laws.

I read press reports where a Federal judge wrote an opinion 300 pages long to explain what these few words meant. I think that any judge that would take 300 pages to explain what these few words mean does not understand what these few words mean.

The meaning of these words is very simple. These words forbid a State to treat in a different manner persons similarly situated. And I say that oceans of judicial sophistry cannot wash out the plain truth that when a Federal court compels a school board to deny schoolchildren the right to attend their neighborhood schools and compels the transportation of children to integrated schools, it requires a school board to violate the equal protection clause. This is true for two reasons. When a Federal judge enters an order of that kind he compels the school board to divide the children in a geographic zone or district into two classes. He says that the school board may permit one of those classes to attend the neighborhood schools, but must deny the other class of children the right to attend their neighborhood schools. That is a clear violation of the equal protection clause because the order of the district judge in a case of that kind requires the school board to treat in a different manner children similarly situated.

Then, such an order of a Federal district judge violates the equal protection clause in a second way. When he denied the right to attend neighborhood schools and compelled them to be bused elsewhere in order to either decrease the number of children of their race in the neighborhood schools or increase the number of children of their race in the schools elsewhere, he denied the children who are bused the right to attend their neighborhood schools on account of their race.

That constitutes a direct violation of the equal protection clause as interpreted in Brown against Board of Education of Topeka, where the court declared that the equal protection clause forbids a school board from denying any child admission to any school on account of the child's race. Yet we have decisions which sustain this violation of the equal protection clause and which lay down the principle that where a school board violates the equal protection clause by failing to ignore race in assigning students to schools, a Federal judge can compel it by decree to continue to violate the equal protection clause in a more massive manner by assigning virtually all the children within its jurisdiction to schools solely on the basis of race.

Mr. President, I wish to read again the first part of section 2 of article III. This section states the kinds of cases that Congress can place within the jurisdiction of the Federal courts. Section 2 of article III states:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Mr. President, that makes it as plain as the noonday sun in a cloudless sky that the Congress of the United States can regulate and except from appellate jurisdiction of the Supreme Court any of the cases enumerated, except those falling within the original jurisdiction of the court. There is no question about that.

Some people try to pretend, because they do not like that provision, that it does not mean what it states, but the Supreme Court has held many times that it does mean what it says.

During Reconstruction days, while the Reconstruction Act was in effect, all of the Southern States except Tennessee were garrisoned by Federal troops. The acts provided that the military commander could have civilians tried by military commissions rather than by civilian courts. That was attempted in a State outside the South, Indiana, where a civilian who had no connection with the Army was tried, convicted, and sentenced to death by a military commission.

Fortunately, that man had one of the greatest lawyers this Nation has ever known as his counsel, Jeremiah Black, who carried his case to the Supreme Court. The case was Ex parte Milligan. The Supreme Court held in that case that the Constitution did not permit a military commission to try a civilian, and that the civilian was entitled to his constitutional right to be indicated by a grand jury if he was to be tried for a felony, before being placed on trial, and his constitutional right to be tried by a petit jury before he could be convicted. That decision is the most courageous and most intelligent decision the Supreme Court has ever handed down.

A few years later, when Mississippi was under military occupation, they had a courageous editor of a newspaper named McCardle. McCardle simply exercised the right to freedom of the press as guaranteed to him by the first amendment. He criticized the military occupation of his State. He was arrested by the military authorities and the military authorities undertook to try him before a military commission rather than in a civilian court, despite the decision that had been handed just a year or so prior in Ex parte Milligan. So there was a statute that gave the Supreme Court appellate jurisdiction, for application for writs of habeas corpus where the writ was denied.

McCardle applied to the local Federal court in Mississippi for a writ of habeas corpus alleging, and alleging quite correctly, that he was being prosecuted for exercising the right of freedom of the press guaranteed to him by the first amendment and also for being held by authorities that had no power to hold him; that is. military authorities, for trial before a commission that had no power to try him, that is, a military commission.

The local Federal court sitting in Mississippi conducted a hearing and denied McCardle his freedom and McCardle appealed to the Supreme Court.

The intemperate—and I use that word

advisedly—radicals who then dominated the Congress suffered what we in North Carolina call a "conniption fit" when McCardle proceeded under the rights which Ex parte Milligan gave him. So the first thing they had the Department of Justice do was to go into the Supreme Court and make a motion to dismiss the appeal from the circuit court from the District of Mississippi which had denied McCardle his freedom. McCardle was also represented in this case by the same Jeremiah Black who had represented Milligan. Well, the Supreme Court, quite rightly, denied the Government's motion.

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

Mr. ERVIN. Mr. President, I ask unanimous consent that I may have 10 minutes more.

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

Mr. ERVIN. Mr. President, I shall not read this opinion on the motion to dismiss the appeal from the circuit court from the District of Mississippi because the ruling is well stated in the headnote, which says "Under the Act of February 5, 1867 (14 Stat. at Large, 385), to amend the Judiciary Act of 1789, an appeal lies to this court on judgments in habeas corpus cases rendered by Circuit Courts in the exercise of original jurisdiction." So the court refused to grant the motion of the Government dismissing the appeal. They only had power under the Act of Congress to entertain the appeal.

I ask unanimous consent that a copy of the ruling of the Supreme Court on the motion to dismiss McCardle's appeal be printed at this point in the body of the RECORD.

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

EX PARTE MCCARDLE.

(MOTION).

Under the act of February 5th, 1867 (14 Stat. at Large, 385), to amend the Judiciary Act of 1789, an appeal lies to this court on judgments in *habeas corpus* cases rendered by Circuit Courts in the exercise of original jurisdiction.

MOTION to dismiss an appeal from the Circuit Court for the District of Mississippi; the case being thus:

Statement of the case

The Judiciary Act of 1789,[1] enacts:

"That either of the justices of the Supreme Court as well as judges of the District Courts, shall have power to grant writs of *habeas corpus*, for the purpose of an inquiry into the cause of commitment; *Provided*, That writs of *habeas corpus*, shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."

A subsequent act, one of February 5th, 1867,[2] to amend the Judiciary Act of 1789, enacts:

"SEC. 1. That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdiction, *in addition to the authority already conferred by law*, shall have power to grant writs of *habeas corpus* in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any treaty or law of the United States."

After providing for the awarding, direction, serving and return of the writ, and for the hearing, &c., the act proceeds:

"From the final decision of any judge, justice, or court *inferior to the Circuit Court*, appeal may be taken *to the Circuit Court* of the United States for the district in which said cause is heard, and *from the judgment of said Circuit Court to the Supreme Court of the United States.*"

"And pending such proceedings or appeal, and until final judgment be rendered therein, and after final judgment of discharge in the same, any proceeding against such person so alleged to be restrained of his or her liberty in any *State* court, or under the authority of any *State*, for any matter or thing so heard and determined, or in process of being heard and determined, under and by virtue of such writ of *habeas corpus*, shall be deemed null and void."

The act further declares:

"SEC. 2. . . . This act shall not apply to any person who is or may be held in the custody of the military authorities of the United States, charged with any military offense."

In this state of statutory law, a writ of *habeas corpus* was issued from the Circuit Court of the United States for the District of Mississippi, on the 12th of November, 1867, upon the petition of William H. McCardle, directed to Alvin C. Gillem and E. O. C. Ord, requiring them to produce the body of the petitioner, together with the cause of his imprisonment, and to abide the order of the court in respect to the legality of such imprisonment.

At the time of issuing the writ, E. O. C. Ord was brevet Major-General commanding the Fourth Military District, and Alvin C. Gillem was brevet Major-General commanding the sub-district of Mississippi, under the Reconstruction Acts of Congress.

In obedience to the writ, Major-General Gillem, on the 21st of November, made a return of the cause of imprisonment, from which it appeared that McCardle had been arrested, and was held in custody for trial by a military commission, under the alleged authority of the Reconstruction Acts, for charges, (1) of disturbance of the public peace; (2) of inciting to insurrection, disorder, and violence; (3) of libel; and (4) of impeding reconstruction.

On making this return Major-General Gillem surrendered McCardle to the court, and he was ordered into custody of the marshal.

Subsequently, on the 25th of November, 1867, the Circuit Court adjudged that the petitioner be remanded to the custody of Major-General Gillem, from which judgment the petitioner prayed an appeal to this court, which was allowed, and a bond for costs given according to the order of the court.

On the same 25th of November, on the motion of the petitioner, he was admitted to bail on his own recognizance, with sufficient sureties, in the sum of one thousand dollars, conditioned for his appearance to abide by and perform the final judgment of this court.

The legal consequence of this admission to bail was the discharge of the prisoner, both from the custody of the marshal and of Major-General Gillem, with a continuing liability, however, under the recognizance, to be returned, first to the civil court, and then to military custody, in case of affirmance by this court of the judgment of the Circuit Court.

The ground assigned for the motion to dismiss the appeal was a want of jurisdiction in this court to take cognizance of it.

Argument in support of the motion

Mr. Trumbull (with whom was Mr. Hughes), in support of the motion:

1. Unless Congress have given appellate jurisdiction to this court, it will be conceded that none can exist.[3] Under the Judiciary Act of 1789 assuredly no appeal lies, for none was given then or since.[4] Until now, eighty years since the government was formed, no such thing as an *appeal* or writ of error in a case like this has been known.

To determine whether the appeal lies, it is first necessary to ascertain whether the Circuit Court of Mississippi took jurisdiction of the case under the act of 1789, or 1867; if under the former, then, as we have said, and as will be admitted, no appeal lies.

Under the act of 1789, power was given to issue writs of *habeas corpus* for the relief of persons in custody "under or by color of the authority of the United States." McCardle was in prison exactly under such authority. Here, then, is a case coming within the very terms of the act of 1789, authorizing the issuing of the writ of *habeas corpus*, and not expected from its provisions by the proviso. Had the act of February 5th, 1867, never been passed, the Circuit Court of Mississippi had authority to issue the writ of *habeas corpus* in this case.

On the other hand the act of 1867 does not properly apply to this case. What was the purpose of that act? We all know. It is a matter of legislative, nay, of public history. It was to relieve persons from a deprivation of their liberty under State laws; to protect loyal men in the rebel States from oppression under color of State laws administered by rebel officers; to protect especially those who had formerly been slaves, and who, under color of vagrant and apprentice laws in some of the States, were being reduced to a bondage more intolerable than that from which they had been recently delivered. It was to protect such persons and for such a purpose that the law of 1867 was passed, and not to relieve any one from imprisonment under laws of the United States, a matter which had already been provided for by the act of 1789.

This is apparent from the terms of the act of 1867 itself. Observe the opening part of its first section. The sole object, as declared, is to confer *additional authority* on the United States courts and judges to issue writs of *habeas corpus;* and it would be absurd to say that a grant to the courts of what they already possessed was giving them something additional.

The concluding part of the same section is equally expressive. It is all aimed at *State* action.

2. That the Circuit Court of Mississippi had no jurisdiction of this case under the act of February 5th, 1867, is futher apparent from the second paragraph of the act.

That McCardle was in the custody of the military authorities of the United States his petition admits, and the record shows that he was charged with disturbance of the public peace, with inciting insurrection, disorder, and violence, in violation of the laws of Congress, known as the Reconstruction Acts.

The State of Mississippi, where McCardle was arrested, was at the time under military control; General Ord, was, as appears by the record, in *command* of the military district embracing Mississippi, and McCardle was arrested by him, charged with being a disturber of the public peace, and with inciting "insurrection, disorder, and violence," which was clearly a military offence. If so, this court has no jurisdiction of this case, because it gets its jurisdiction, if at all, by appeal under the act of February 5th, 1867, and that act expressly exempts from its operation persons in the custody of the military authority charged with a military offence.

3. But if it were admitted that the Circuit Court properly took jurisdiction of this case under the act of February 5th, 1867, still no appeal from its decision would be to this court, for the reason that it was an original proceeding in the Circuit Court, and no appeal is given in such cases. The jurisdiction

Footnotes at end of article.

exists only when an appeal comes from the Circuit Court, itself acting as an appellate court, and from the decision of any judge, justice, or court, *"inferior"* to it.

The language of the statute is plain. Of Course, this being an original case in the Circuit Court, and not one taken to that court by appeal from an inferior tribunal, is not within the statute. A rule for appeals "being provided, this court cannot depart from it."

Argument in favor of jurisdiction

Messrs. Black and Sharkey, contra, contended that the statute of 1867 was a remedial one, and should therefore receive a liberal construction; that the clause which gave an appeal from the District Court to the Circuit Court, and from the Circuit Court to the Supreme Court of the United States, did not intend to confine the appeal to the Supreme Court to cases which merely commenced in the District Court, but to give the appeal to cases which commenced originally in the District or Circuit Court; that the language of the opening part of the first section was most comprehensive; that there was no reason for Congress to make the distinction between the two cases. The exception in the second section, as to persons charged with military offences, did not apply to the case, for no military offence was charged against the party. The offences charged were all civil offences. By putting the district under military rule they did not become military offences any more than they would have been ecclesiastical offences if the same district had been put under the government of a body of clergy. The offences had a specific well-known nature; and so tested, they were civil offences.

Opinion of the court

The Chief Justice delivered the opinion of the court.

The motion to dismiss the appeal has been thoroughly argued, and we are now to dispose of it.

The ground assigned for the motion is want of jurisdiction, in this court, of appeals from the judgments of inferior courts in cases of *habeas corpus.*

Whether this objection is sound or otherwise depends upon the construction of the act of 1867.

Prior to the passage of that act this court exercised appellate jurisdiction over the action of inferior courts by *habeas corpus.* In the case of *Burford* [5] this court, by *habeas corpus,* aided by a writ of *certiorari,* reviewed and reversed the judgment of the Circuit Court of the District of Columbia. In that case a prisoner brought before the Circuit Court by the writ had been remanded, but was discharged upon the *habeas corpus* issued out of this court.

By the writ of *habeas corpus* also, aided by a *certiorari,* this court, in the case of *Bollman and Swartwout,* [6] again revised a commitment of the Circuit Court of the District. The prisoners had been committed on a charge of treason by order of the Circuit Court, and on their petition this court issued the two writs, and, the prisoners having been produced, it was ordered that they should be discharged on the ground that the commitment of the Circuit Court was not warranted in law.

But, though the exercise of appellate jurisdiction over judgments of inferior tribunals was not known to the practice of this court before the act of 1867, it was attended by some inconvenience and embarrassment. It was necessary to use the writ of *certiorari* in addition to the writ of *habeas corpus,* and there was no regulated and established practice for the guidance of parties invoking the jurisdiction.

This inconvenience and embarrassment was remedied in a small class of cases arising from commitments for acts done or omitted under alleged authority of foreign governments, by the act of August 29th, 1842 [7] which authorized a direct appeal from any judgment upon *habeas corpus* of a justice of this court or judge of a District Court to the Circuit Court of the proper district, and from the judgment of the Circuit Court to this court.

This provision for appeal was transferred, with some modification, from the act of 1842 to the act of 1867; and the first question we are to consider, upon the construction of that act, is whether this right of appeal extends to all cases of *habeas corpus,* or only to a particular class.

It was insisted on argument that appeals to this court are given by the act only from the judgments of the Circuit Court rendered upon appeals to that court from decisions of a single judge, or of a District Court.

The words of the act are these: "From the final decision of any judge, justice, or court inferior to the Circuit Court, an appeal may be taken to the Circuit Courts of the United States for the district in which said cause is heard, and from the judgment of said Circuit Court to the Supreme Court of the United States."

These words, considered without reference to the other provisions of the act, are not unsusceptible of the construction put upon them at the bar; but that construction can hardly be reconciled with other parts of the act.

The first section gives to the several courts of the United States, and the several justices and judges of such courts within their respective jurisdictions, in additon to the authority already conferred by law, power to grant writs of *habeas corpus* in all cases where any person may be restrained of liberty in violation of the Constitution, or of any treaty or law of the United States.

This legislation is of the most comprehensive character. It brings within the *habeas corpus* jurisdiction of every court and of every judge every possible case of privation of liberty contrary to the National Constitution, treaties, or laws. It is impossible to widen this jurisdiction.

And it is to this jurisdiction that the system of appeals is applied. From decisions of a judge or of a District Court appeals lie to the Circuit Court, and from the judgment of the Circuit Court to this court. But each Circuit Court, as well as each District Court, and each judge, may exercise the original jurisdiction; and no satisfactory reason can be assigned for giving appeals to this court from the judgments of the Circuit Court rendered on appeal, and not giving like appeals from judgments of Circuit Courts rendered in the exercise of original jurisdiction. If any class of cases was to be excluded from the right of appeal, the exclusion would naturally apply to cases brought into the Circuit Court by appeal rather than to cases originating there. In the former description of cases the petitioner for the writ, without appeal to this court, would have the advantage of at least two hearings, while in the latter, upon the hypothesis of no appeal, the petitioner could have but one.

These considerations seem to require the construction that the right of appeal attaches equally to all judgments of the Circuit Court, unless there be something in the clause defining the appellate jurisdiction which demands the restricted interpretation. The mere words of that clause may admit either, but the spirit and purpose of the law can only be satisfied by the former.

We entertain no doubt, therefore, that an appeal lies to this court from the judgment of the Circuit Court in the case before us.

Another objection to the jurisdiction of this court on appeal was drawn from the clause of the first section, which declares that the jurisdiction defined by it is "in addition to the authority already conferred by law."

This objection seems to be an objection to the jurisdiction of the Circuit Court over the cause rather than to the jurisdiction of this court on appeal.

The latter jurisdiction, as has just been shown, is coextensive with the former. Every question of substance which the Circuit Court could decide upon the return of the *habeas corpus,* including the question of its own jurisdiction, may be revised here on appeal from its final judgment.

But an inquiry on this motion into the jurisdiction of the Circuit Court would be premature. It would extend to the merits of the cause in that court; while the question before us upon this motion to dismiss must be necessarily limited to our jurisdiction on appeal.

The same observations apply to the argument of counsel that the acts of McCardle constituted a military offense, for which he might be tried under the Reconstruction Acts by military commission. This argument, if intended to convince us that the Circuit Court had no jurisdiction of the cause, applies to the main question which might arise upon the hearing of the appeal. If intended to convince us that this court has no appellate jurisdiction of the cause, it is only necessary to refer to the considerations already adduced on this point.

We are satisfied, as we have already said, that we have such jurisdiction under the act of 1867, and the motion to dismiss must therefore be

DENIED.

FOOTNOTES

[1] § 14; 1 Stat. at Large, 82.

[2] 14 Id. 385.

[3] Wiscart *v.* Dauchy, 3 Dallas, 321; Ex parte Kearney, 7 Wheaton 38.

[4] In the matter of Metzger, 5 Howard, 188.

[5] 3 Cranch, 440, 453. See also Ex parte Dugan, 2 Wallace 134.

[6] Cranch, 75.

[7] 5 Stat. at Large, 539.

Mr. ERVIN. Having denied the motion to dismiss the appeal, the Supreme Court proceeded to hear the appeal on its merits. The appeal was argued before the Supreme Court by counsel for the Government and by counsel for McCardle, and the Supreme Court took the appeal under advisement with a view to rendering a decision in respect to the constitutional rights invoked by McCardle.

Thereupon, the radicals that controlled the Congress rushed through an act repealing the statute which the Supreme Court had held gave McCardle a right to have his appeal heard before it, and then this repealing statute was passed after the Supreme Court had heard arguments in the case and had taken the case under advisement for the purpose of writing an opinion, and before the opinion was written.

Then the Supreme Court handed down the decision in its December 1868 term, holding it could no longer pass upon the merits of McCardles' appeal because its jurisdiction to do so had been repealed by Act of Congress, and that Congress had undoubted power to define the appellate jurisdiction of the Supreme Court.

I am going to read extracts from the opinion of Chief Justice Chase in that case.

The first question necessarily is that of jurisdiction; for, if the act of March, 1868, takes away the jurisdiction defined by the act of February, 1867, it is useless, if not improper, to enter into any discussion of other questions.

It is quite true, as was argued by the counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred "with such exceptions and under such regulations as Congress shall make."

The Chief Justice then pointed out that the exception to the appellate jurisdiction in the case before it is not an inference from the affirmation of other appellate jurisdiction.

He said this:

It is made in terms. The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of habeas corpus is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.

Several cases were cited by the counsel for the petitioner in support of the position that jurisdiction of this case is not affected by the repealing act. But none of them, in our judgment, afford any support to it. They are all cases of the exercise of judicial power by the legislature, or of legislative interference with courts in the exercising of continuing jurisdiction.

On the other hand, the general rule, supported by the best elementary writers, is, that "when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed." And the effect of repealing acts upon suits under acts repealed, has been determined by the adjudications of this court. The subject was fully considered in *Norris* v. *Crocker*, and more recently in *Insurance Company* v. *Ritchie*. In both of these cases it was held that no judgment could be rendered in a suit after the repeal of the act under which it was brought and prosecuted.

It is quite clear, therefore, that this court cannot proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

Mr. President, I ask unanimous consent that the entire opinion in this case be printed at this point in the body of the RECORD.

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

EX PARTE MCCARDLE

STATEMENT OF THE CASE

1. The appellate jurisdiction of this court is conferred by the Constitution, and not derived from acts of Congress; but is conferred "with such exceptions, and under such regulations, as Congress may make"; and, therefore, acts of Congress affirming such jurisdiction, have always been construed as excepting from it all cases not expressly described and provided for.

2. When, therefore, Congress enacts that this court shall have appellate jurisdiction over final decisions of the Circuit Courts, in certain cases, the act operates as a negation or exception of such jurisdiction in other cases; and the repeal of the act necessarily negatives jurisdiction under it of these cases also.

3. The repeal of such an act, pending an appeal provided for by it, is not an exercise of judicial power by the legislature, no matter whether the repeal takes effect before or after argument of the appeal.

4. The act of 27th of March, 1868, repealing that provision of the act of 5th of February, 1867, to amend the Judicial Act of 1789, which authorized appeals to this court from the decisions of the Circuit Courts, in cases of *habeas corpus*, does not except from the appellate jurisdiction of this court any cases but appeals under the act of 1867. It does not affect the appellate jurisdiction which was previously exercised in cases of *habeas corpus*.

APPEAL from the Circuit Court for the Southern District of Mississippi.

The case was this:

The Constitution of the United States ordains as follows:

"§ 1. The judicial power of the United States shall be vested *in one Supreme Court*, and in such inferior courts as the Congress may from time to time ordain and establish."

"§ 2. The judicial power shall extend to all cases in law or equity arising *under this Constitution, the laws of the United States*," &c.

And in these last cases the Constitution ordains that,

"The Supreme Court shall have appellate jurisdiction, both as to law and fact, *with such exceptions, and under such regulations, as the Congress shall make*."

With these constitutional provisions in existence, Congress, on the 5th February, 1867, by "An act to amend an act to establish the judicial courts of the United States, approved September 24, 1789," provided that the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdiction, in addition to the authority already conferred by law, should have power to grant writs of *habeas corpus* in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any treaty or law of the United States. And that, from the final decision of any judge, justice, or court inferior to the Circuit Court, appeal might be taken to the Circuit Court of the United States for the district in which the cause was heard, and *from the judgment of the said Circuit Court to the Supreme Court of the United States*.

This statute being in force, one McCardle, alleging unlawful restraint by military force, preferred a petition in the court below, for the writ of *habeas corpus*.

The writ was issued, and a return was made by the military commander, admitting the restraint, but denying that it was unlawful.

It appeared that the petitioner was not in the military service of the United States, but was held in custody by military authority for trial before a military commission, upon charges founded upon the libellous, in a newspaper of which he was editor. The custody was alleged to be under the authority of certain acts of Congress.

Upon the hearing, the petitioner was remanded to the military custody; but, upon his prayer, an appeal was allowed him to this court, and upon filing the usual appeal-bond, for costs, he was admitted to bail upon recognizance, with sureties, conditioned for his future appearance in the Circuit Court, to abide by and perform the final judgment of this court. The appeal was taken under the above-mentioned act of February 5, 1867.

A motion to dismiss this appeal was made at the last term, and, after argument, was denied.[1]

Subsequently, on the 2d, 3d, 4th, and 9th of March, the case was argued very thoroughly and ably upon the merits, and was taken under advisement. While it was thus held, and before conference in regard to the decision proper to be made, an act was passed by Congress,[2] returned with objections by the President, and, on the 27th March, repassed by the constitutional majority, the second section of which was as follows:

"And be it further enacted, That so much of the act approved February 5, 1867, entitled 'An act to amend an act to establish the judicial courts of the United States, approved September 24, 1789,' as authorized an appeal from the judgment of the Circuit Court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court, on appeals which have been, or may hereafter be taken, be, and the same is hereby repealed."

The attention of the court was directed to this statute at the last term, but counsel having expressed a desire to be heard in argument upon its effect, and the Chief Justice being detained from his place here, by his duties in the Court of Impeachment, the cause was continued under advisement. Argument was now heard upon the effect of the repealing act.

Mr. Sharkey, for the appellant:

The prisoner alleged an illegal imprisonment. The imprisonment was justified under certain acts of Congress. The question then presents a case arising under "the laws of the United States;" and by the very words of the Constitution the judicial power of the United States extends to it. By words of the Constitution, equally plain, that judicial power is vested in one Supreme Court. This court, then, has its jurisdiction directly from the Constitution, not from Congress. The jurisdiction being vested by the Constitution alone, Congress cannot abridge or take it away. The argument which would look to Congressional legislation as a necessity to enable this court to exercise "the judicial power" (any and every judicial power), "of the United States," renders a power, expressly given by the Constitution, liable to be made of no effect by the inaction of Congress. Suppose that Congress never made any exceptions or any regulations in the matter. What, under a supposition that Congress must define when, and where, and how, the Supreme Court shall exercise it, becomes of this "judicial power of the United States," so expressly, by the Constitution, given to this court? It would cease to exist. But this court is coexistent and co-ordinate with Congress, and must be able to exercise the whole judicial power of the United States, though Congress passed no act on the subject. The Judiciary Act of 1789 has been frequently changed. Suppose it were repealed. Would the court lose, wholly or at all, the power to pass on every case to which the judicial power of the United States extended? This act of March 27th, 1868, does take away the whole appellate power of this court in cases of *habeas corpus*. Can such results be produced? We submit that they cannot, and this court, then, we further submit, may still go on and pronounce judgment on the merits, as it would have done, had not the act of 27th March been passed.

But however these general positions may be, the case may be rested on more special grounds. This case had been argued in this court, fully. Passing then from the domain of the bar, it was delivered into the sacred hands of the judges; and was in the custody of the court. For aught that was known by Congress, it was passed upon and decided by them. Then comes, on the 27th of March, this act of Congress. Its language is general, but, as was universally known, its purpose was specific. If Congress had specifically enacted 'that the Supreme Court of the United States shall never publicly give judgment in the case of McCardle, already argued, and on which we

Footnotes at end of article.

anticipate that it will soon deliver judgment, contrary to the views of the majority in Congress, of what it ought to decide,' its purpose to interfere specifically with and prevent the judgment in this very case would not have been more real or, as a fact, more universally known.

Now, can Congress thus interfere with cases on which this high tribunal has passed, or is passing, judgment? Is not legislation like this an exercise by the Congress of judicial power? *Lanier* v. *Gallatas*[3] is much in point. There a motion was made to dismiss an appeal, because by law the return day was the 4th Monday in February, while in the case before the court the transcript had been filed before that time. On the 15th of March, and *while the case was under advisement*, the legislature passed an act making the 20th of March a return day for the case; and a motion was now made to reinstate the case and hear it. The court say:

"The case had been submitted to us before the passage of that act, and was beyond the legislative control. Our respect for the General Assembly and Executive forbids the inference that they intended to instruct this court what to do or not to do whilst passing on the legal rights of parties in a special case already under advisement. The utmost that we can suppose is," &c.

In *De Chastellux* v. *Fairchild*,[4] the legislature of Pennsylvania directed that a new trial should be granted in a case already decided. Gibson, C. J., in behalf of the court, resented the interference strongly. He said:

"It has become the duty of the court to temporize no longer. The power to order new trials is judicial. But the power of the legislature is not judicial."

In *The State* v. *Fleming*,[5] where the legislature of Tennessee directed two persons under indictment to be discharged, the Supreme Court of the State, declaring that "the legislature has no power to interfere with the administration of justice in the courts," treated the direction as void. In *Lewis* v. *Webb*,[6] the Supreme Court of Maine declare that the legislature cannot dispense with any general law in favor of a particular case.

Messrs. L. Trumbull and M. H. Carpenter, contra:

1. The Constitution gives to this court appellate jurisdiction in any case like the present one was, only with such exceptions and under such regulations as Congress makes.

2. It is clear, then, that this court had no jurisdiction of this proceeding—*an appeal from the Circuit Court*—except under the act of February 5th, 1867; and so this court held on the motion to dismiss made by us at the last term.[7]

3. The act conferring the jurisdiction having been repealed, the jurisdiction ceased; and the court had thereafter no authority to pronounce any opinion or render any judgment in this cause. No court can do any act in any case, without jurisdiction of the subject-matter. It can make no difference at what point, in the progress of a cause, the jurisdiction ceases. After it has ceased, no judicial act can be performed. In *Insurance Company* v. *Ritchie*,[8] the Chief Justice, delivering the opinion of the court, says:

"It is clear, that when the jurisdiction of a cause depends upon the statute, the repeal of the statute takes away the jurisdiction."

And in that case the repealing statute, which was passed during the pendency of the cause, was held to deprive the court of all further jurisdiction. The causes which were pending in this court against States, were all dismissed by the amendment of the Constitution denying the jurisdiction; and no further proceedings were had in those causes.[9] In *Norris* v. *Crocker*,[10] this court affirmed and acted upon the same principle; and the exhaustive argument of the present Chief Justice, then at the bar, reported in that case, and the numerous authorities there cited, render any further argument or citation of cases unnecessary.[11]

4. The assumption that the act of March, 1868, was aimed specially at this case, is gratuitous and unwarrantable. Certainly the language of the act embraces all cases in all time; and its effect is just as broad as its language.

The question of merits cannot now, therefore, be passed upon. The case must fall.

The Chief Justice delivered the opinion of the court.

The first question necessarily is that of jurisdiction; for, if the act of March, 1868, takes away the jurisdiction defined by the act of February, 1867, it is useless, if not improper, to enter into any discussion of other questions.

It is quite true, as was argued by the counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred "with such exceptions and under such regulations as Congress shall make."

It is unnecessary to consider whether, if Congress had made no exceptions and no regulations, this court might not have exercised generally appellate jurisdiction under rules prescribed by itself. For among the earliest acts of the first Congress, at its first session, was the act of September 24th, 1789, to establish the judicial courts of the United States. That act provided for the organization of this court, and prescribed regulations for the exercise of its jurisdiction.

The source of that jurisdiction, and the limitations of it by the Constitution and by statute, have been on several occasions subjects of consideration here. In the case of *Durousseau* v. *The United States*,[12] particularly, the whole matter was carefully examined, and the court held, that while "the appellate powers of this court are not given by the judicial act, but are given by the Constitution," they are, nevertheless, "limited and regulated by that act, and by such other acts as have been passed on the subject." The court said, further, that the judicial act was an exercise of the power given by the Constitution to Congress "of making exceptions to the appellate jurisdiction of the Supreme Court." "They have described affirmatively," said the court, "its jurisdiction, and this affirmative description has been understood to imply a negation of the exercise of such appellate power as is not comprehended within it."

The principle that the affirmation of appellate jurisdiction implies the negation of all such jurisdiction not affirmed having been thus established, it was an almost necessary consequence that acts of Congress, providing for the exercise of jurisdiction, should come to be spoken of as acts granting jurisdiction, and not as acts making exceptions to the constitutional grant of it.

The exception to appellate jurisdiction in the case before us, however, is not an inference from the affirmation of other appellate jurisdiction. It is made in terms. The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of *habeas corpus* is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.

Several cases were cited by the counsel for the petitioner in support of the position that jurisdiction of this case is not affected by the repealing act. But none of them, in our judgment, afford any support to it. They are all cases of the exercise of judicial power by the legislature, or of legislative interference with courts in the exercising of continuing jurisdiction.[13]

On the other hand, the general rule, supported by the best elementary writers,[14] is, that "when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed." And the effect of repealing acts upon suits under acts repealed, has been determined by the adjudications of this court. The subject was fully considered in *Norris* v. *Crocker*,[15] and more recently in *Insurance Company* v. *Ritchie*.[16] In both of these cases it was held that no judgment could be rendered in a suit after the repeal of the act under which it was brought and prosecuted.

It is quite clear, therefore, that this court cannot proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

Counsel seem to have supported, if effect be given to the repealing act in question, that the whole appellate power of the court, in cases of *habeas corpus*, is denied. But this is an error. The act of 1868 does not except from that jurisdiction any cases but appeals from Circuit Courts under the act of 1867. It does not affect the jurisdiction which was previously evercised.[17]

The appeal of the petitioner in this case must be dismissed for want of jurisdtion.

FOOTNOTES

[1] See Ex parte McCardle, 6 Wallace, 318.

[2] Act of March 27, 1868, 15 Stat. at Large, 44.

[3] 13 Louisiana Annual, 175.

[4] 15 Pennsylvania State, 18.

[5] 7 Humphreys, 152.

[6] 3 Greenleaf, 326.

[7] 6 Wallace, 318.

[8] 5 Wallace, 544.

[9] Hollingsworth *v.* Virginia, 3 Dallas, 378.

[10] 13 Howard, 429.

[11] Rex. *v.* Justices of London, 3 Burrow, 1456; Yeaton *v.* United States, 5 Cranch, 281; Schooner Rachel *v.* United States, 6 Id. 329; United States *v.* Preston, 3 Peters, 57; Conn. *v.* Marshall, 11 Pickering, 350.

[12] 6 Cranch, 312; Wiscart *v.* Dauchy, 3 Dallas, 321. Vol. VII.

[13] Lanier *v.* Gallatas, 13 Louisiana Annual, 175; De Chastellux *v.* Fairchild, 15 Pennsylvania State, 18; The State *v.* Fleming, 7 Humphreys, 152; Lewis *v.* Webb, 3 Greenleaf, 326.

[14] Dwarris on Statutes, 538.

[15] 13 Howard, 429.

[16] 5 Wallace, 541.

[17] Ex parte McCardle, 6 Wallace, 324.

Mr. ERVIN. Mr. President, every Member of the Senate has in his possession a book on the Constitution of the United States, which was most recently revised, if my recollection is right, in 1963. This book annotates the Constitution and discloses the interpretation which has been placed by the Supreme Court upon the various provisions of the Constitution. It was compiled and edited by one of the greatest constitutional scholars America has ever known, Edward S. Corwin, of Princeton University, and it discusses this question beginning on page 696 and ending on page 705. I would commend to every Senator the reading of those pages from the book.

Professor Corwin states quite correctly that under section 1 of article 3 of the Constitution, Congress has complete power over the jurisdiction of the Federal courts inferior to the Supreme Court, can abolish those courts if it sees fit, and can curtail the jurisdiction of those courts as it pleases. He also makes it clear that Congress has plenary power to control the appellate jurisdiction of the Supreme Court.

There are multitudes of cases which sustain both of these propositions. I shall not detain the Senate to read what Professor Corwin says on this subject or to cite the innumerable cases which sustain the proposition that Congress has absolute control over the jurisdiction of all Federal courts inferior to the Supreme Court, and has complete jurisdiction to prescribe exceptions and regulations governing the appellate jurisdiction of the Supreme Court itself. Consequently, Congress can take away appellate jurisdiction from the Supreme Court, as it did in the McCardle case.

Mr. President, I ask unanimous consent that the pages from the book on the Constitution which I have mentioned be printed in the RECORD at htis point.

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

* * * * *

THE ORIGINAL JURISDICTION OF THE SUPREME COURT

An autonomous jurisdiction

Acting on the assumption that its existence is derived directly from the Constitution, the Supreme Court has held since 1792 that its original jurisdiction flows directly from the Constitution and is therefore self-executing without further action by the Congress. In the famous case of Chisholm *v.* Georgia,[16] the Supreme Court entertained an action of assumpsit against Georgia by a citizen of another State. Although the 13th section of the Judiciary Act of 1789 invested the Supreme Court with original jurisdiction in suits between a State and citizens of another State, it did not authorize actions of assumpsit in such cases, nor did it prescribe forms of process for the Court in the exercise of original jurisdiction. Over the dissent of Justice Iredell, the Court in opinions by Chief Justice Jay and Justices Blair, Wilson, and Cushing, sustained its jurisdiction and its power, in the absence of congressional enactments, to provide forms of process and rules of procedure. So strong were the States' rights sentiments of the times that Georgia refused to appear as a party litigant, and other States were so disturbed that the Eleventh Amendment was proposed forthwith and ratified. This amendment, however, did not affect the direct flow of original jurisdiction to the Court, which continued to take jurisdiction of cases to which a State was party plaintiff and of suits between States without specific provision by Congress for forms of process. By 1861 Chief Justice Taney could enunciate with confidence, after review of the precedents, that in all cases where original jurisdiction is given by the Constitution, the Supreme Court has authority "to exercise it without further act of Congress to regulate its powers or confer jurisdiction, and that the Court may regulate and mould the process it uses in such manner as in its judgment will best promote the purposes of justice." [17]

Cannot be enlarged: Marbury v. Madison

Since the original jurisdiction is derived directly from the Constitution, it follows logically that Congress can neither restrict it nor, as was held in the great case of Marbury *v.* Madison,[18] enlarge it. In holding void the 13th section of the Judiciary Act of 1789, which was interpreted as giving the Court power to issue a writ of mandamus in an original proceeding, Chief Justice Marshall declared that "a negative or exclusive sense" had to be given to the affirmative enunciation of the cases to which original jurisdiction extends.[19] While the rule that the Supreme Court is vested with original jurisdiction by the Constitution and that this jurisdiction cannot be extended or restricted deprives Congress of any power to define it, it allows a considerable latitude of interpretation to the Court itself. In some cases, as in Missouri *v.* Holland,[20] the Court has manifested a tendency toward a liberal construction of original jurisdiction; in others, as in Massachusetts *v.* Mellon,[21] it has placed a narrow construction upon the grant through the device of a restrictive interpretation of cases and controversies; and in still other cases, as in California *v.* Southern Pacific Co.,[22] it has stated that its original jurisdiction "is limited and manifestly to be sparingly exercised, and should not be expanded by construction."

Concurrent jurisdiction of the lower federal courts.—Although Congress can neither enlarge nor restrict the original jurisdiction of the Supreme Court, it may vest concurrent jurisdiction in the lower federal courts in cases over which the Supreme Court has original jurisdiction.[23] Thus among the grounds given for the decision in Wisconsin *v.* Pelican Ins. Co.,[24] that the Court had no original jurisdiction of an action by a State to enforce a judgment for a pecuniary penalty awarded by one of its own courts, was the provision of the 13th section of the Judiciary Act of 1789 [25] that "the Supreme Court shall have exclusive jurisdiction of controversies of a civil nature, where a State is a party, except between a State and its citizens; and except also between a State and citizens of other States, or aliens, in which latter case it shall have original but not exclusive jurisdiction." Speaking of that act with particular reference to this section, Justice Gray declared that it "was passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning." [26] In cases affecting consuls, moreover, the original jurisdiction of the Supreme Court is shared concurrently with State courts unless Congress by positive action makes such jurisdiction exclusive.[27]

THE APPELLATE JURISDICTION OF THE SUPREME COURT

Subject to limitation by Congress

Unlike its original jurisdiction, the appellate jurisdiction of the Supreme Court is subject to control by Congress in the exercise of the broadest discretion. Although the provisions of Article III seem, superficially at least, to imply that its appellate jurisdiction would flow directly from the Constitution until Congress should by positive enactment make exceptions to it, rulings of the Court since 1796 establish the contrary rule. Consequently, before the Supreme Court can exercise appellate jurisdiction, an act of Congress must have bestowed it, and affirmative bestowals of jurisdiction are interpreted as exclusive in nature so as to constitute an exception to all other cases. This rule was first applied in Wiscart *v.* Dauchy [28] where the Court held that in the absence of a statute prescribing a rule for appellate proceedings, the Court lacked jurisdiction. It was further stated that if a rule were prescribed, the Court could not depart from it. Fourteen years later Chief Justice Marshall observed for the Court that its appellate jurisdiction is derived from the Constitution, but proceeded nevertheless to hold that an affirmative bestowal of appellate jurisdiction by Congress, which made no express exceptions to it, implied a denial of all others.[29]

The McCardle case.—The power of Congress to make exceptions to the court's appellate jurisdiction has thus become, in effect, a plenary power to bestow, withhold, and withdraw appellate jurisdiction, even to the point of its abolition. And this power extends to the withdrawal of appellate jurisdiction even in pending cases. In the notable case of Ex parte McCardle,[30] a Mississippi newspaper editor who was being held in custody by the military authorities acting under the authority of the Reconstruction Acts filed a petition for a writ of *habeas corpus* in the Circuit Court for Southern Mississippi. He alleged unlawful restraint and challenged the validity of the Reconstruction statutes. The writ was issued, but after a hearing the prisoner was remanded to the custody of the military authorities. McCardle then appealed to the Supreme Court which denied a motion to dismiss the appeal, heard arguments on the merits of the case, and took it under advisement. Before a conference could be held, Congress, fearful of a test of the Reconstruction Acts, enacted a statute withdrawing appellate jurisdiction from the Court in certain *habeas corpus proceedings.*[31] The Court then proceeded to dismiss the appeal for want of jurisdiction. Chief Justice Chase, speaking for the Court said: "Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is the power to declare the law and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause." [32]

Although the McCardle case goes to the ultimate in sustaining congressional power over the Court's appellate jurisdiction and although it was born of the stresses and tensions of the Reconstruction period, it has been frequently reaffirmed and approved.[33] The result is to vest an unrestrained discretion in Congress to curtail and even abolish the appellate jurisdiction of the Supreme Court, and to prescribe the manner and forms in which it may be exercised. This principle is well expressed in The "Francis Wright" [34] where the Court sustained the validity of an act of Congress which limited the Court's review in admiralty cases to questions of law appearing on the record. A portion of the opinion is worthy of quotation: "Authority to limit the jurisdiction necessarily carries with it authority to limit the use of the jurisdiction. Not only may whole classes of cases be kept out of the jurisdiction altogether, but particular classes of questions may be subjected to reexamination and review, while others are not. To our minds it is no more unconstitutional to provide that issues of fact shall not be retried in any case, than that neither issues of law nor fact shall be retried in cases where the value of the matter in dispute is less than $5,000. The general power to regulate implies the power to regulate in all things. The whole of a civil appeal may be given, or a part. The constitutional requirements are all satisfied if one opportunity is had for the trial of all parts of a case. Everything beyond that is a matter of legislative discretion." [35]

THE POWER OF CONGRESS TO REGULATE THE JURISDICTION OF THE LOWER FEDERAL COURTS

Martin v. Hunter's lessee

The power of Congress to vest, withdraw, and regulate the judisdiction of the lower federal courts is derived from the power to create tribunals under Article I, the necessary and proper clause, and the clause in Article III, vesting the judicial power in the Supreme Court and such inferior courts as "the Congress may from time to time ordain and establish." Balancing these provisions, however, are the phrases in Article III to the effect that the judicial power "shall be vested" in courts and "shall extend" to nine classes of cases and controversies and the question of what is the force of the word "shall." In Martin *v.* Hunter's Lessee,[36] Jus-

Footnotes at end of article.

tice Story declared obiter that it was imperative upon Congress to create inferior federal courts and vest in them all the jurisdiction they were capable of receiving. This dictum was criticized by Justice Johnson in his dissent, in which he contended that the word "shall" was used "in the future sense," and had "nothing imperative in it." [37] And for that matter, in another portion of his opinion, Justice Story expressly recognized that Congress may create inferior courts and "parcel out such jurisdiction among such courts, from time to time at their own pleasure"; [38] and in his *Commentaries* he took a broad view of the power of Congress to regulate jurisdiction.[39]

Plenary power of Congress over jurisdiction

Neither legislative construction nor judicial interpretation has sustained Justice Story's position in Martin *v.* Hunter's Lessee. The Judiciary Act of 1789, which was a contemporaneous interpretation of the Constitution by the Congress, rests on the assumption of a broad discretion on the part of Congress to create courts and to grant jurisdiction to and withhold it from them. This act conferred original jurisdiction upon the district and circuit courts in certain cases, but by no means all they were capable of receiving. Thus suits at the common law to which the United States was a party were limited by the amount in controversy. Except for offenses against the United States, seizures and forfeitures made under the imposts, navigation, or trade laws of the United States, and suits by aliens under International Law or treaties, that whole group of cases involving the Constitution, laws, and treaties of the United States was withheld from the jurisdiction of the district and circuit courts,[40] with the result that original jurisdiction in these cases was exercised by the State courts subject to appeal to the Supreme Court under section 25. Jurisdiction was vested in the district courts over admiralty and maritime matters and in the circuit courts over suits between citizens of different States where the amount exceeded $500, or suits to which an alien was a party.[41] The act of 1789 empowered the courts to issue writs, to require parties to produce testimony to punish contempts, to make rules, and to grant stays of execution.[42] Finally, equity jurisdiction was limited to those cases where a "plain, adequate, and complete remedy" could not be had at law.[43]

This care for detail in conferring jurisdiction upon the inferior courts and vesting them with ancillary powers in order to render such jurisdiction effective is of the utmost significance in the later development of the law pertaining to congressional regulation of jurisdiction, inasmuch as it demonstrates conclusively that a majority of the members of the first Congress regarded positive action on the part of Congress to be necessary before jurisdiction and judicial powers could be exercised by courts of its own creation. Ten years later this practical construction of Article III was accepted by the Supreme Court in Turner *v.* Bank of North America.[44] The case involved an attempt to recover on a promissory note in a diversity case contrary to § 11 of the act of 1789 which forbade diversity suits involving assignments unless the suit was brought before the assignment was made. Counsel for the bank argued that the circuit courts were not inferior courts and that the grant of judicial power by the Constitution was a direct grant of jurisdiction. This argument evoked questions from Chief Justice Ellsworth and the following statement from Justice Chase: "The notion has been frequently entertained, that the federal courts derive their power immediately from the Constitution; but the political truth is, that the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise; and if Congress has not given the power to us, or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound, and it would, perhaps, be inexpedient, to enlarge the jurisdiction of the federal courts, to every subject, in every form, which the Constitution might warrant." [45] The Court applied § 11 of the Judiciary Act and ruled that the circuit court lacked jurisdiction.

Eight years later Chief Justice Marshall in distinguishing between common law and statutory courts declared that "courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction."[46] This rule was reaffirmed in the famous case of U. States *v.* Hudson & Goodwin [47] on the assumption that the power of Congress to create inferior courts necessarily implies "the power to limit the jurisdiction of those Courts to particular objects." [48] After pointing to the original jurisdiction which flows immediately from the Constitution, Justice Johnson asserted: "All other Courts created by the Government possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general Government will authorize them to confer." [49] To the same affect is Rhode Island *v.* Massachusetts,[50] where Justice Baldwin declared that "the distribution and appropriate exercise of the judicial power must therefore be made by laws passed by Congress and cannot be assumed by any other department * * *."

A more sweeping assertion of congressional power over jurisdiction was made by the Supreme Court in Cary *v.* Curtis,[51] which bears more directly upon the issue than some of the earlier cases. Here counsel had argued that a statute which made final the decisions of the Secretary of the Treasury in tax disputes was unconstitutional in that it deprived the federal courts of the judicial power vested in them by the Constitution. In reply to this argument the Court speaking through Justice Daniel declared: "The judicial power of the United States * * * is (except in enumerated instances, applicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) * * * and of investing them with jurisdiction, either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good." Continuing, Justice Daniel said: "It follows then that courts created by statute, must look to the statute as the warrant for their authority; certainly they cannot go beyond the statute, and assert an authority with which they may not be invested by it, or which may clearly be denied to them."[52]

The principles of Cary *v.* Curtis were reiterated five years later in Sheldon *v.* Sill [53] where the validity of § 11 of the Judiciary Act of 1789 was directly questioned. The assignee of a negotiable instrument filed a suit in a circuit court even though no diversity of citizenship existed as between the original parties to the mortgage. The circuit court entertained jurisdiction in spite of the prohibition against such suits in § 11 and ordered a sale of the property in question. On appeal to the Supreme Court, counsel for the assignee contended that § 11 was void because the right of a citizen of any State to sue citizens of another in the federal courts flowed directly from Article III and Congress could not restrict that right. The Supreme Court unanimously rejected these contentions and held that since the Constitution had not established the inferior courts or distributed to them their respective powers, and since Congress had the authority to establish such courts, it could define their jurisdiction and withhold from any court of its own creation jurisdiction of any of the enumerated cases and controversies in Atricle III [54] Sheldon *v.* Sill has been cited, quoted, and reaffirmed many times.[55] Its effect and that of the cases following it is that as regards the jurisdiction of the lower federal courts two elements are necessary to confer jurisdiction: first, the Constitution must have given the courts the capacity to receive it, and second, an act of Congress must have conferred it. The manner in which the inferior federal courts acquire jurisdiction, its character, the mode of its exercise, and the objects of its operation are remitted without check or limitation to the wisdom of the legislature.[56]

Footnotes at end of article.

FOOTNOTES

[16] 2 Dall. 419 (1793). For an earlier case where the point of jurisdiction was not raised, *see* Georgia *v.* Brailsford, 2 Dall. 402 (1792). For subsequent cases prior to 1861, *see* Rhode Island *v.* Massachusetts, 12 Pet. 657 (1838); Florida *v.* Georgia, 17 How. 478 (1855).

[17] Kentucky *v.* Dennison, 24 How. 66, 98 (1861).

[18] 1 Cr. 137 (1803).

[19] Ibid. 174. *See also* Wiscart *v.* Dauchy, 3 Dall. 321 (1796). This exclusive interpretation of Article III posed temporary difficulties for Marshall in Cohens *v.* Virginia, 6 Wheat. 264 (1821), where he gave a contrary interpretation to other provisions of the Article. The exclusive interpretation as applied to original jurisdiction of the Supreme Court has been followed in Ex parte Bollman, 4 Cr. 75 (1807); New Jersey *v.* New York, 5 Pet. 284 (1831); Ex parte Barry, 2 How 65 (1844); Ex parte Vallandigham, 1 Wall. 243, 252 (1864); and Ex parte Yerger, 8 Wall. 85, 98 (1869). In the curious case of Ex parte Levitt, 302 U.S. 633 (1937), the Court was asked to purge itself of Justice Black on the ground that his appointment to it violated the second clause of section 6 of Article I. Although it rejected petitioner's application, it refrained from pointing out that it was being asked to assume original jurisdiction contrary to the holding in Marbury *v.* Madison.

[20] 252 U.S. 416 (1920).

[21] 262 U.S. 447 (1923).

[22] 157 U.S. 229, 261 (1895). Here the Court refused to take jurisdiction on the ground that the City of Oakland and the Oakland Water Company, a citizen of California, were so situated that they would have to be brought into the case, which would make it then a suit between a State and citizens of another State and its own citizens. The same rule was followed in New Mexico *v.* Lane, 243 U.S. 52, 58 (1917); and in Louisiana *v.* Cummins, 314 U.S. 577 (1941). *See also* Texas *v.* Interstate Com. Comm., 258 U.S. 158, 163 (1922); New Jersey *v.* New York, 345 U.S. 369, 372–373 (1953). For the original jurisdiction of the Supreme Court in specific classes of cases, *see* the discussion of suits affecting ambassadors and suits between States, *supra*, pp. 571, 591–593.

[23] Ames *v.* Kansas, 111 U.S. 449 (1884).

[24] 127 U.S. 265 (1888).

[25] 1 Stat. 73, 80. The current statutory provision, 28 U.S.C. 1251(b)(2), reconciles the content thereof with Amendment 11.

[26] 127 U.S. 265, 297. *Note also* the dictum in Cohens *v.* Virginia, 6 Wheat. 264, 398–399 (1821) to the effect that "* * * the original jurisdiction of the Supreme Court, in cases where a State is a party, refers to those cases in which, according to the grant of power made in the preceding clause, jurisdiction might be exercised in consequence of the character of the party, and an original suit might be instituted in any of the federal courts; not to those cases in which an original suit might not be instituted in a federal court. Of the last description, is every case between a State and its citizens, and, perhaps every case in which a State is enforcing its penal laws. In such cases, therefore, the Supreme Court cannot take original jurisdiction."

[27] Popovici *v.* Agler, 280 U.S. 379 (1930).

[28] 3 Dall. 321 (1796). Justice Wilson dissented from this holding and contended that the appellate jurisdiction, as being derived from the Constitution, could be exercised without an act of Congress or until Congress made exceptions to it.

[29] Durousseau *v.* United States, 6 Cr. 307 (1810).

[30] 6 Wall. 318 (1868); 7 Wall. 506 (1869).

[31] 15 Stat. 44 (1968).

[32] 7 Wall. 506, 514. The Court also took occasion to reiterate the rule that an affirmation of appellate jurisdiction is a negative of all other and stated that as a result acts of Congress providing for the exercise of jurisdiction had "come to be spoken of as acts granting jurisdiction, and not as acts making exceptions to * * * it." It continued grandly: * * * judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer." Ibid 513, 515.

[33] *See* especially the parallel case of Ex parte Yerger, 8 Wall. 85 (1869). For cases following Ex parte McCardle, *see* Railroad Co. *v.* Grant, 98 U.S. 398, 401 (1878); Kurtz *v.* Moffitt, 115 U.S. 487, 497 (1885); Cross *v.* Burke, 146 U.S. 82, 86 (1892); Missouri *v.* Pac. Ry. Co., 292 U.S. 13, 15 (1934); Stephan v United States, 319 U.S. 423, 426 (1943). *See also* United States *v.* Bitty, 208 U.S. 393, 399–400 (1908), where it was held that there is no right to appeal to the Supreme Court except as an act of Congress confers it.

[34] 105 U.S. 381 (1882).

[35] Ibid. 386. *See also* Barry *v.* Mercein, 5 How. 103, 119 (1847); National Bank of Baltimore v. Peters, 144 U.S. 570 (1892); Amer. Const. Co. *v.* Jacksonville Railway Co., 148 U.S. 372 (1893); Colorado Central Mining Co. *v.* Turck, 150 U.S. 138 (1893); St. Louis & Iron Mountain Ry. *v.* Taylor, 210 U.S. 281 (1908); Luckenbach S.S. Co. *v.* United States, 272 U.S. 533 (1926).

[36] 1 Wheat, 304 (1816).

[37] Ibid. 374.

[38] Ibid. 331. This recognition, however, is followed by the statement that "the whole judicial power of the United States should be at all times, vested either in an original or appellate form, in some courts created under its authority."

[39] 2 *Commentaries*, §§ 1590–1595.

[40] 1 Stat. 73, §§ 9–11.

[41] Ibid.

[42] Ibid. §§ 14, 15, 17, 18.

[43] Ibid. § 16.

[44] 4 Dall. 8 (1799).

[45] Ibid. 9.

[46] Ex parte Bollman, 4 Cr. 75, 93 (1807). Two years later Chief Justice Marshall in Bank of the United States *v.* Deveaux, 5 Cr. 61 (1809), held for the Court that the right to sue does not imply a right to sue in a federal court unless conferred expressly by an act of Congress.

[47] 7 Cr. 32 (1812).

[48] Ibid. 33.

[49] Ibid.

[50] 12 Pet. 657, 721–722 (1838).

[51] 3 How. 236 (1845).

[52] Ibid. 244–245. To these sweeping assertions of legislative supremacy Justices Story and McLean took vigorous exception. They denied the authority of Congress to deprive the courts of power and vest it in an executive official because "the right to construe the laws in all matters of controversy is of the very essence of judicial power." In their view the act as interpreted violated the principle of the separation of powers, impaired the independence of the judiciary, and merged the executive and judicial department. Dissent of Justice McLean, pp. 264 and following.

[53] 8 How. 441 (1850).

[54] Ibid. 449.

[55] Rice *v.* Railroad Company, 1 Bl. 358, 374 (1862); The Mayor *v.* Cooper, 6 Wall. 247, 251–252 (1868); United States *v.* Eckford, 6 Wall. 484, 488 (1868); Ex parte Yerger, 8 Wall. 85, 104 (1869); Case of The Sewing Machine Companies, 18 Wall. 553, 557–558 (1874); Morgan *v.* Gay, 19 Wall. 81, 83 (1874); Gaines *v.* Fuentes, 92 U.S. 10, 18 (1876); Jones *v.* United States, 137 U.S. 202, 211 (1890); Holmes *v.* Goldsmith, 147 U.S. 150, 158 (1893); Johnson Company *v.* Wharton, 152 U.S. 252, 260 (1894). Plaquemines Fruit Company *v.* Henderson, 170 U.S. 511, 513–521 (1898); Stevenson *v.* Fain, 195 U.S. 165, 167 (1904); Kentucky *v.* Powers, 201 U.S. 1, 24 (1906); Venner *v.* Great Northern Railway, 209 U.S. 24, 35 (1908); Ladew *v.* Tennessee Copper Co., 218 U.S. 357, 358 (1910); Kline *v.* Burke Constr. Co., 260 U.S. 226, 233, 234 (1922). *See also* Lauf *v.* E. G. Shinner & Co., 303 U.S. 323 (1938); Fed. Power Comm'n. *v.* Pacific Co., 307 U.S. 156 (1939).

[56] The Mayor *v.* Cooper, 6 Wall. 247, 251–252 (1868). The rule of Cary *v.* Curtis and Sheldon *v.* Sill was restated with emphasis many years later in Kline *v.* Burke Constr. Co., 260 U.S. 226, 233–234 (1922), where Justice Sutherland, speaking for the Court, proceeded to say as to Article III, §§ 1 and 2: "The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it creates. Only the original jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. * * * The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it. * * * And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part; and if withdrawn without a saving clause all pending cases though cogniadble hen commenced must fall."

See also Carroll *v.* United States, 354 U.S. 394, 406 (1957), wherein it was held that inasmuch as clear statutory mandate, as distinguished from colorable authority, is the basis for appellate jurisdiction in a given case, the Court of Appeals for the District of Columbia lacked jurisdiction, either under nationwide jurisdictional statutes or under statutory provisions peculiar to the District of Columbia, to review an interlocutory appeal by the Government from an order granting suppression of evidence in a pending criminal case. "* * * [I]n a limited sense, form is substance with respect to ascertaining the existence of appellate jurisdiction."

Mr. ERVIN. The reason the Founding Fathers put these provisions in the Constitution giving Congress control over the jurisdiction of all Federal courts inferior to the Supreme Court and giv- Congress control over the appellate jurisdiction of the Supreme Court itself seem plain to me. As I stated earlier, the founders recognized that Supreme Court Justices and Federal judges are human beings like the rest of us, and that some human beings hunger and thirst for more power than the Constitution and the laws give them. I suggest, with complete confidence in the soundness of my suggestion, that the founders put the words that I have discussed in article III of the Constitution so that Congress could prevent the Federal courts from usurping and exercising powers denied to them by the Constitution itself. It is the only restrictive method which is created by the Constitution to prevent Federal judges from straying far beyond the bounds of their constitutional powers.

Mr. President, it is high time that Congress show that it has as much respect for the rights of little children as it had for the right of labor when it passed the Norris-La Guardia Act giving the Federal courts power to issue injunctions in labor controversies. It is high time that Congress put an end to the unspeakable tyrannies which in recent years have been practiced upon the little children of this country—white, black, yellow, and brown.

So, at the proper time, I shall appeal to Congress to adopt these amendments, which I propose on behalf of a number of other Senators and myself, to the Higher Education Act.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

THE IMPORTED MEAT THREAT

Mr. CURTIS. Mr. President, I have been greatly chagrined for two reasons with regard to recent news media reports that an increase in meat imports is under consideration because of the recent rise in domestic livestock prices.

As the representative of one of the Nation's largest livestock producing States, I am well aware of the economics of meat production and of the fact that our farmers and ranchers are entitled to every cent they receive for their livestock.

Second, every consumer is assured that all the domestically produced meat he buys will be wholesome and safe to eat. Unfortunately, the same cannot be said for all imported meats.

There is reason to believe that Australia is trying to take advantage of our present situation in order to increase its meat exports to the United States.

Australians are our friends, but in this case they are wrong. It may be the American investors in Australia who are applying the pressure for a greater share of our market here.

Increased meat imports would be detrimental to our entire economy. They would be detrimental to ranchers and livestock feeders, and also to grain farmers. Every time there is a pound of meat placed on our tables, it represents 16 or 17 pounds or more of grain consumption. We have many problems in the farm program. The taxpayers are called upon to provide considerable sums to carry out the program. We can ill afford to turn any more of our agricultural production over to a foreign country.

Too much has been said about the present price of cattle. This price is better than it has been, but it has only reached the price level of 20 years ago. Not many segments of our economy would be satisfied with a price level of 20 years ago.

It must also be borne in mind that American consumers are getting the best food in the world for a very small portion of their income. The average American industrial worker can provide his family with high quality and nutritious food for about 16½ percent of his disposable income. No place else in the world can this be done. In an underdeveloped country it takes almost all that someone

can earn to buy food for himself and his family. Even in the other highly developed nations of the world it takes nearly twice as great a percentage of the worker's income to buy food as it does in the United States.

The consumers of America have reason to be very concerned over the wholesomeness of the foreign meat coming into this country. The sanitation requirements and the meat inspection programs that are actually carried out in Australia and other important suppliers of foreign meat would be quite shocking to the American housewives. This situation is so serious that one of the subcommittees of the Committee on Agriculture and Forestry of the U.S. Senate held some hearings on it in the summer of 1970.

I call attention to a portion of that testimony wherein the distinguished Senator from Oklahoma (Mr. BELLMON) asked certain questions of Mr. John G. Mohay, executive vice president of the National Independent Meat Packers Association:

Senator BELLMON. Mr. Chairman, I would like to thank Mr. Mohay for his statement and his support of the Concurrent Resolution 73 which is under consideration.

I have a couple of questions I would like to ask him.

Mr. Mohay, you perhaps heard me read this section from the Australian Meat Regulations, section 53 on page 20. I will read it again:

"When an officer considers that vermin are likely to come into contact with meat at an export establishment, the officer 'may'—and I emphasize the word 'may'—by notice in writing served on the occupier of the establishment require the occupier to cause to be taken effective measure for the purpose of destroying the vermin."

How does that regulation compare with the regulation under which your plants operate?

Mr. MOHAY. Well, there is no comparison, Senator. There is no such thing as "may" in Federal regulations, to begin with. If there is the possibility of vermin coming in contact with meat in a Federal or State-inspected plant, there is no written notification made; the area in which the potential contamination can happen is immediately tagged. This has been our experience, to my knowledge, for the last several years.

Senator BELLMON. When you say "tagged," what is the effect of that?

Mr. MOHAY. They seal off that area. You cannot move a product in or out of that area. And if the plant itself is in an area where there is a potential contamination, the plant is closed until they clean up the area surrounding the plant and the plant itself.

Senator BELLMON. What about meat that comes in contact with vermin; what would happen to meat in one of your plants?

Mr. MOHAY. It is condemned, denaturized, and destroyed. It is not permitted for human consumption, in essence.

Senator BELLMON. So there would appear to be a rather double standard here in these plants in Australia where vermin are likely to come into contact, they continue to operate and the officer may tell them to put out some poison; but in your plants they would immediately be closed down.

Mr. MOHAY. It is quite a double standard. And to carry that point further, you mentioned about putting out poison. That is not permitted under Federal regulations, to the best of my knowledge, because there is a possibility the poison may get picked up, too. You have to use other sources there for elimination.

Senator BELLMON. Also in this same book of regulations, paragraph 51 says: When an officer has examined a carcass and is of the opinion that the carcass is not fit for export but is fit for human consumption, the officer shall mark the carcass as unfit for export with a knife or by an approved method, but in so marking the carcass, shall not mutilate it, the carcass.

How does that compare with the regulation under which you operate in case you find a carcass which is of questionable quality?

Mr. MOHAY. Well, sir, we have inspection for human consumption or not for human consumption. We do not have such things as "It is good enough for export but not good enough for domestic," or vice versa. Either it is adequate for human consumption or else it is condemned.

Senator BELLMON. There are many others of these that are interesting. I think perhaps I should ask you, are you allowed to slaughter horses in your plant here?

Mr. MOHAY. No, sir. Such an operation would have to be physically separated. But that not only includes horses, but deer, wildlife of any kind. It has to be completely physically separated from products destined for human consumption through the marketplace.

The statement of Senator BELLMON which was submitted in those hearings is so important that I think that it merits a place in this discussion. Here is what Senator BELLMON said:

The assurance that consumers in the United States may purchase wholesome meat and meat products is a matter of great concern to me. They must have this assurance regardless of where the meat comes from or the state of preparation in which it reaches the consumer.

It was for this reason that I recently participated in a visit to a meat processing plant near Canberra, Australia, where I obtained a copy of the export meat regulations used by the Commonwealth of Australia. There appear to be many differences between these regulations and regulations enforced by the U.S. Department of Agriculture in federally and state-inspected meat plants in the United States.

For instance, the definition of meat in the Australian regulations is "the flesh of cattle (including buffaloes), horses, calves, sheep, lambs, pigs, goats, rabbits, hares or poultry intended for human consumption."

Another example is this regulation:

"Where an officer considers that vermin are likely to come into contact with meat at an export establishment the officer may, by notice in writing served on the occupier of the establishment, require that occupier to cause to be taken effective measures for the purpose of destroying the vermin."

I particularly emphasize the phrase "the officer may." It is obvious this is a considerably less stringent regulation than that enforced in domestic meat plants. I question whether American consumers' health is properly safeguarded under this tax regulation. There are many other apparently less restrictive regulations in the Australian system as compared to the American system.

There are at least five significant differences between the Australian regulations and those applied to state and federally-inspected meat plants in the United States:

1. Australia permits "domestic meat" to be in the same establishment with export meat, which domestic meat would not be considered as being on a par with meat plants in this country.

2. Australia permits the passage, for food, of some conditions such as parasites and tuberculosis for domestic meat, although they do not permit the existence of such conditions in export meat.

3. Australia requires that all meat animals for export must receive anti-mortem and post-portem inspection, but by the way the regulations are written inspectors are not required to be present when domestic meat is produced.

4. Australia permits wild rabbits destroyed on ranches to be brought to their meat establishments to be prepared for export without inspection. In this country rabbits would not be allowed within the establishment.

5. Australia only eliminates vermin if they feel they are contaminating the meat and if the inspector so desires to control them. In this country, we feel that vermin is a serious health factor since they may transmit such diseases as rat bubonic plague, and vermin eradication practices are followed at all times.

A study of these regulations offers evidence that Australia meat inspection is not equal to state and federal inspection requirements in the United States, yet Australia has the same privilege of exporting meat to the United States and the meat is then transported intrastate with the same privilege as that granted to meat inspected under our Federal meat inspection system. Australia meat may enter any federally-inspected establishment for use in that establishment, but meat produced in a state in this country is not permitted entry into any federally inspected house in that state and would be treated as uninspected meat.

I wish to make it abundantly clear that my comments relate to Australia only because of my recent visit to that country. It is highly probable that Australian regulations are far superior to those of any other country that exports to the United States. This fact only further emphasizes the need for a thorough-on-the-spot check by members of Congress into the regulations and administration of sanitary rules in foreign plants which slaughter for export to the United States.

Mr. Chairman, Senate Concurrent Resolution 73 provides for the establishment of a committee composed of three members of the Senate and three members of the House of Representatives. The committee would be charged with the responsibility for personally visiting plants in foreign countries which prepare meat for export to the United States and with making recommendations following such inspections to Congress as to a method of assuring the wholesomeness of imported meat.

The committee would further be charged with the responsibility of visiting domestic meat packing and processing plants to determine the effectiveness of federal and state inspection systems and the wholesomeness of meat from these plants.

There are some who favor the purpose of S. 3942 and S. 3987, but I question whether the simple directive by Congress to the Secretary of Agriculture to establish a system of thorough examination of meat is adequate at this time. Until Congress knows of the deficiencies in the meat inspection system used in foreign countries. I question our ability to require appropriate action by the Secretary of Agriculture to provide the required funding for an adequate federal meat inspection service to assure wholesome meat for American consumers and to judge whether or not needed and expected improvements are made.

In testimony before a subcommittee of the Senate Committee on Agriculture and Forestry last year, Senator JAMES PEARSON of Kansas noted:

Federal controls over the the manufacture, distribution, and use of agricultural chemicals and drugs should protect consumers of farm products grown and processed in the United States. If regulations are issued after full consideration of the farmer's requirements, I am confident American agriculture will continue to produce more efficiently than any overseas competitor.

Nevertheless, it is important to protect American consumers of foreign meat from the hazards of harmful residues. More than

1.7 billion pounds of foreign meat and meat products are imported for distribution and sale within the United States each year. These products originate in 42 foreign nations and are processed in more than 1,100 certified foreign slaughterhouses.

The Consumer and Marketing Service of the U.S. Department of Agriculture has implemented a sampling program to monitor biological residue levels, including drug and pesticide residue levels, in imported meat products. The program conducted on imported meat is comparable to the sampling program to which domestic meat is subjected. During calendar year 1968, the Service took 1,269 samples of foreign meat for chemical analysis and discovered 178 violations of FDA established tolerance levels. In 1969, there were 30 violations; in 1970 there were 10 violations; and during the first 6 months of this year the sampling program revealed 12 violations of standards imposed to protect human health.

The sampling program is necessarily fragmentary. Approximately 4 million pounds of foreign meat enters the U.S. market for each sample taken for chemical analysis. Clearly, no comprehensive or adequate program of consumer protection against harmful residues can depend solely upon random-sampling, especially when the product flows into commerce from more than 40 countries with widely varying local conditions and methods of production and processing.

Senator PEARSON was testifying on his bill which would apply the same criteria for foreign meats as for domestic meats with regard to the exposure of livestock to economic poisons or drugs which might leave a residue which would be harmful to any one consuming the meat.

The Senator pointed out in his testimony that 1 month after the introduction of his bill, a cable went to all American Embassies in countries from which the U.S. imports meat or meat products. This cable enumerated those criteria for determining the adequacy of foreign biological residue programs.

It is interesting to note that no criteria were established regarding the use of certain economic poisons and drugs in exporting countries, when the use of those chemicals is banned or restricted in the United States.

Senator PEARSON went on to point out:

If controls on U.S. producers are necessary to protect human health and safety, then comparable controls on the use of economic poisons and drugs in raising and processing foreign meat for U.S. consumption should be equally necessary. There is evidence to suggest that foreign producers of beef are not, in fact, subjected to comparable controls. The Queensland County Life, for example, publishes advertisements for pesticides which are banned or restricted in the United States.

At that subcommittee hearing last September, Mr. Don Magdanz, executive secretary-treasurer of the National Livestock Feeders Association, made a very cogent statement:

It is entirely reasonable to prohibit the importation of any carcass, part of a carcass, or meat or meat food product of any animal capable of use as human food from countries where the unrestricted use of economic poisons would likely pose a threat to the public health, safety, or welfare of the people of the United States.

In fact, to do less constitutes a dereliction of duty to the U.S. consumer who, rightfully, takes for granted that any meat or meat food product offered for sale in legitimate sales channels—and, particularly, bearing U.S. Meat Inspection Stamp ("U.S. Inspected and Passed")—is indeed safe and wholesome.

Mr. Magdanz added further in his testimony:

The U.S. Department of Agriculture has contended that the proposed legislation is unnecessary because the current spot inspection of the products being imported and the periodic reviews of the inspection programs in foreign countries are adequate to guard against the possibility of residues or contaminants in the meat which is imported.

If this is true, then similar procedures should be adequate, likewise for domestically produced meat and meat products. Yet, such limited inspection and control procedures have been ruled out in the U.S. as being inadequate to assure contamination-free and residue-free domestically produced products.

Not only are domestically-produced, Federally-Inspected meat and meat products subject to rigid inspection (including ante mortem, post mortem, product inspection and reinspection, and residue monitoring) but, also, U.S. producers are faced with pesticide registration and use controls (state and federal), and rigid restrictions on the use of certain feed additives and drugs. Since such regulation is being enforced in the name of essential consumer protection, it is equally as essential with respect to products of foreign oirgin which are offered to U.S. consumers.

I might point out that the Department of Agriculture recommended against enactment of this legislation for the following reasons:

Regulations made under the Federal Meat Inspection Act require foreign countries which export meat into the United States to maintain meat inspection systems in their exporting plants equal to those of American packing and processing plants.

Continuing monitoring of inspection systems in foreign countries is carried on to make sure that these systems maintain equivalent programs to protect the health, safety, and welfare of consumers in the United States. This includes inspection for cleanliness, disease, adulteration, injurious additives, and illegal biological residues.

In addition, meat and meat products coming into the United States from abroad are again inspected at ports of entry. Statistically selected samples are subjected to laboratory analysis, which includes tests for pesticides and drug residues.

The Department also noted the international problem in trying to get foreign countries to ban the same poisons and drugs as we do. A fear was expressed that enactment of this legislation would result in the elimination of some of our exports of beef and other agricultural commodities.

The president of the American National Cattlemen's Association noted, however, that once beef clears the U.S. port of entry, it losses its identity as having been produced in a foreign country.

We can have the most stringent regulations affecting all chemical use in the United States on domestically produced products to protect the wholesomeness of our food supply. There could be residues of an unauthorized chemical in foreign-produced beef, even after having passed all of the presently required U.S. inspection. It is considered "U.S. inspected" beef yet it could be unwholesome by U S. standards.

Random sampling of retail food items by Government agencies might show unauthorized residues of chemicals in that item. It is feasible that the portion of the product originating in the United States was free of unauthorized residues or well within tolerance limits established by the Food and Drug Administration. The foreign portion of that product could be the culprit but it would be the domestic producer who would suffer the consequences because the total product is considered to be "U.S. federally inspected."

Additional views of a licensed veterinarian who hapepns to be a member of the House Committee on Agriculture, appeared in that Committee's report on the Federal Insecticide Act of 1971. It was his conclusion that:

With the everwidening use of chemicals in food production, there is increasing need to protect the wholesomeness of dairy, fruit, vegetable, cereal, or meat products by avoiding application of chemicals that would leave residues injurious to health. It is fraudulent to tolerate a double standard between imported and domestic food supplies. Chemical pesticides or herbicides banned for use on domestic food products because their residue would be injurious to consumers, should not be allowed on imported foodstuffs. In most cases, there is no way for the consumer to know which products are imported and which are of domestic origin. But in neither case should we take the chance with the health of our consuming public.

Testimony before the Committee from Food and Drug Administration officials outlining surveillance for harmful residues was not reassuring. The testing of chemical residues on ready-to-eat meats, poultry, and fish was haphazard and raised doubts as to any effective control on residues on imported foods. As a result, the Committee approved a section in the bill requiring producers of imported foods to follow the same procedures as we do in this country to avoid contamination with toxic chemicals.

The State Department objected saying it would interfere with good relations with countries that export foods to us. The Department of Agriculture objected, stating it would interfere with agricultural trade. The Environmental Protection Agency, in sympathy with these two Cabinet Departments, also objected. But obviously the health of our consumers should be paramount to the speculation conjured by the two Departments which have little basis for their arguments. Their pale objections based on anemic judgments should not be allowed to jeopardize the health of American consumers. Exporting countries are interested in the health of their own consumers as well as the health of their customers abroad; and when our scientists determine that a chemical leaves a harmful residue in foodstuffs, this fact should be noted and observed by all countries. It is of mutual beneficial interest which is on a level higher than mundane trade policy or profits.

My colleague from Nebraska, Senator HRUSKA, has long been active in attempting to protect American consumers against unsanitary meat being imported from foreign nations. He noted in the hearings on S. 571:

Our meat inspection laws requires that importers meet equivalent standards in meat inspection, but the problem of harmful residues of economic poisons, drugs and metals is a weak link in our foreign inspection system. While requiring strict controls over the use of economic poisons and drugs in our own country, we have an inadequate knowledge and control of foreign laws and regulations and enforcement procedures to insure that residues are kept at the level required of our domestic producers. The Department of Agriculture and Secretary

Hardin should be commended for their efforts in recent months to improve the import sampling program. Residue sampling has been undertaken on a selective basis on products of certain countries where serious residue problems have been discovered during routine sampling. In these instances the Service has required pre-testing and certification of all meats entering the United States market from countries such as Argentina and Brazil.

Although the sampling program to monitor biological residue levels, including drug and pesticide residue levels in imported meat products, has been implemented. I feel it is important to strengthen this aspect of foreign meat inspection by the provisions included in S. 571.

I do not cast aspersions upon any other nation and their meat inspection systems. I believe it is worthwhile to note, however, that the U.S. Department of Agriculture has only seven foreign review officers and 11 doctors of veterinary medicine to monitor meat inspection in more than 1,000 plants in 42 countries. It would seem to be almost impossible for these men, or twice their number, to maintain adequate inspection of additional imports. For this reason, I hope that everyone involved will think twice before increasing meat imports.

Mr. President, any material or significant increase in the meat imports into this country would be a disservice to the United States. It would be a disservice to our consumers, to the Government itself, as well as to our farmers, ranchers, and cattle feeders. This is a decision that should be made by Americans. It is improper for any foreign country to be meddling in it and it should be stopped.

Mr. HRUSKA. Mr. President, will my colleague yield for an observation or two and one or two questions?

Mr. CURTIS. I am happy to yield, and in doing so the record should show the great amount of work over a long period of time that my colleague, Mr. HRUSKA, has rendered in this field. He has been most diligent in trying to improve foreign meat inspection. He has been most diligent in looking out for the interests of our domestic industry.

Mr. HRUSKA. Mr. President, my colleague is to be commended for bringing to the attention of the Senate, and others, this situation and the prospect of action in increasing beef import quotas. We hope that will not come about. I know of no Member of this body who is more closely allied with, associated with, and informed upon the general agricultural picture than my colleague, Mr. CURTIS, serving as he does on the agricultural legislative committee.

Being a close student of the problems of the States, he realizes that the cattle and livestock business in our native State of Nebraska accounts for two-thirds of farm income. It is for those reasons, as well as others, that he interests himself in making the kind of information available to us that he has been giving during these past few minutes.

Now, Mr. President, I should like to direct a question to my colleague in regard to the general level of cattle prices in the market over the past 20 years. Is it not true that the price reached by live cattle—that is, fat choice cattle—in the Omaha market, which is the largest livestock market in the world, stands at about $35.63 for the month of January of this year?

Mr. CURTIS. I think that is correct.

Mr. HRUSKA. That is wisely heralded to be the highest price for the past 20 years. The average was $34.92 in the year 1951.

Mr. CURTIS. That is correct. Some people viewed with alarm the fact that cattle prices had gone up. Anyone who has any knowledge of farming rejoiced over it, because prices were down so low that after some increases, the price has now reached a point that was attained 20 years ago. I do not think that we could conduct the business of Government if we paid the officers and employees of Government the same rate we paid them 20 years ago.

Mr. HRUSKA. Mr. President, is there any commodity of any substantial portion of which the Senator knows that sells for the same amount of money today that it did 20 years ago, in terms of dollars in each instance?

Mr. CURTIS. There is not, and the consumers in this country should realize the great bargain they are getting in food. As I mentioned awhile ago, the average American industrial worker spends 16.5 percent of his disposable income for food. If he were living in an undeveloped country, it would take all he could earn to buy food. In a highly developed country, such as ours, it takes far less percentagewise for food.

Mr. President, in connection with the price of meat, we must not lose sight of the fact that there has been a general price increase throughout our country and that for so long a time and so often the price of farm products stood still or went backward, that perhaps there are people in this country who expect that this should be done and that it is right.

It is not right, and it is not proper. I hope that there could be a further increase in the price the farmers receive for their products, not only livestock, but other products as well.

Mr. HRUSKA. Mr. President, the fact is that while the price for fat cattle was $34.92 a hundredweight 20 years ago, it is $35.63 per hundredweight today, 20 years later.

The further fact is that the cost of producing that particular steer quadrupled in that time. Since 1952 the net return to the farmer after paying for his production is substantially less; is that not correct?

Mr. CURTIS. That is quite true. The cost of machinery and equipment has skyrocketed in that period of time.

The amount one must pay for property taxes, including real estate, has gone up and up. We hear a great deal said about the burden of property taxes. Farmers and ranchers and feeders must pay a very substantial amount in property taxes, because the land is theirs. Their livestock is in being. It can be seen, as is true with machinery and everything else. The tremendous increase in property tax alone is a significant factor in the increased cost to the farmer. However, we must add to that not only the machinery and equipment, but also the fertilizers, pesticides, tractor fuel, and expenses that many of them must pay in these days to comply with the environmental laws and regulations. All of these things have made the costs to the farmers increase a great deal.

Mr. HRUSKA. Mr. President, this problem is complicated a good deal and thrown into false focus, because of the retail price of meat at the counter. Is it not true that the farmers and ranchers do not sell T-bones, sirloins, shoulder steaks, or hamburger meat? Is it not true that he sells cattle on the hoof? Therefore, we find the situation that cattle 20 years ago sold for about $35 a hundredweight when the average retail price was 87 cents per pound. Today, when the price for fat cattle is about the same, in the range of $35, the retail price is no longer 87 cents, but is $1.04 per pound.

Does it not follow that something happens to the cost of processing and the selling or distribution of that meat, none of which increased price finds its way into the farmer's pocket?

Mr. CURTIS. That is so true. I know of no one who has stated it in more understandable terms than my colleague. Farmers and ranchers do not sell meat. They sell livestock. It was my colleague who coined that phrase, and it is so true.

It is not for me to defend or condemn anyone in the business world. However, we should take note of the fact that there are many things that go into the cost the consumer pays. Congress continues to increase payroll taxes. Various segments of the business community have their costs increased. The Federal Government approves increases in freight rates. And all of these increases have an accumulative effect. But the consumer must not blame the wrong person. The consumer has an obligation to be fair, just as every other citizen must be fair and recognize the fact that the farmer still must be paid, and certainly there is nothing wrong with that when the market price of a product reaches the level of 20 years ago.

Mr. HRUSKA. Mr. President, would it be wise to emphasize the fact that the average wage rates in the Nation today are 2.4 times greater than they were 20 years ago?

Mr. CURTIS. Mr. President, I thank my colleague. I think that is a very significant comparison.

Mr. HRUSKA. Mr. President, would it not be well also to consider the fact that in 1951, 1 hour of labor and the pay for that hour of labor brought a wage earner 1.7 pounds of beef. Today, in 1971—and I do not have the figures for 1972 as yet—the pay for that same hour of labor buys almost twice as much beef. It buys 3.3 pounds of beef, almost twice as much as for the same hour of labor 20 years ago, and we must couple that with the fact that the farm people are receiving 75 percent of the income received per capita by the nonfarming people in the Nation. Yet, in spite of that fact, we find people getting very alarmed about the idea that for the first time in that period from 1951 to 1972, the price is the same as 20 years ago. In all of these intervening years, it was selling for less than now. As soon as we reach a restoration of the price of 20 years ago, people are all ex-

cited about it and say, "For goodness sake. Let some more imports in of questionable quality and unnecessary quantity." The beef industry can furnish all the beef that this Nation wants, and quality beef.

Mr. CURTIS. I agree. I think it behooves all of us, in order to be fair to the agriculturalists of our country, to realize the other factors that go into the cost of running a household.

At the present time most areas of the country are served by large supermarkets. They sell clothing, drugs, cosmetics, and brooms; they sell almost everything. So the total amount that the customer pays out at the checkout counter is no measure by which to make critical remarks about agriculture or the prices farmers are paid for their products.

Also, we should keep in mind that our consumers are able to buy nutritious food plus a great deal of service. It has been a long time since the American people bought potatoes by the bushel or by the peck; so many people buy them now, not by a few pounds but already peeled, already cooked, and ready to warm up to place on the table. I am delighted they have all those conveniences. I am delighted that the person who is busy at another job can make instant mashed potatoes or instant something else. But that service they buy should be considered as a separate item and not as part of the cost of food, as represented by that small amount of money that goes to the farmer who produces it.

The PRESIDING OFFICER. The time requested by the Senator has expired.

Mr. HRUSKA. Mr. President, I ask unanimous consent that on my time I may be recognized for 15 minutes for the purpose of continuing the colloquy.

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

Mr. HRUSKA. A further factor that made itself known with respect to the price of $35 per hundredweight for a fat steer, is a fact I regretfully report. We have to be realistic in recognizing it is not going to last long at that level. The proof is in the fact that live cattle future prices, April through December 1972, for the rest of the year, are $2 to $4 per hundredweight lower than the present live prices. So it will not be long that instead of having a level on the market for this choice fat steer of $35 or $35.50, it will be back to the $30 level, or the level of $30 and $31.

If, in the meantime, we undertake to interfere with that well reasoned beef import quota on the basis of a short duration increase in price of cattle on the hoof, things will be worse than in 1964 when we had that very disastrous collapse of the cattle market which resulted in numerous instances of bankruptcy and dislocation in the cattle industry.

Mr. CURTIS. Very likely it appears something like that is likely to happen. Those prices may go down. I hope predictions are wrong, because it would be an injustice to go through that, but it is well that we mention it because I believe we are confronted with a situation where thoughtless and uninformed politicians, in order to cater to an area of the country that knows nothing of the production of food, not realizing the great injustice involved, and not realizing the hazard to the health of the American people, are tempted to take the action referred to, and at the same time foreign countries are here with their propaganda attempting to take advantage of the situation and get their quota increase. I hope every official of our Government will stand firm and will not yield to this pressure to increase foreign meat importation into this country.

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

Mr. CURTIS. I yield.

Mr. HRUSKA. The Senator performs a great service for a lot of people in raising this subject. There are 35 States that have a million or more head of cattle in them. Some of them reach as high as 10 million, which would be the range of the Lone Star State of Texas; then come the States of Iowa, Kansas, and Nebraska in that upper range. But 35 States in number have a million or more head of cattle in them. We have 83 million people on payrolls these days. They are the consumers and they are getting the best bargain in value of protein and beef ever available at the rate of 16 percent of their take-home pay.

It is a widespread problem. As I stated, 35 States have a total of a million head of cattle or more, which demonstrates that the entire Nation is a beef consuming Nation.

Again, I express appreciation to the Senator for bringing this matter up.

Mr. CURTIS. I thank the Senator. We also must keep in mind the vast army of men and women who make their living in the meat industry in the United States. They work in the various packing plants and the processing plants. They are engaged in transporting meat, they are engaged in services and in industries that slaughter and process meat.

We can ill afford to export those jobs to some foreign country and discontinue them here.

Again I repeat, Mr. President, that to increase the importation of foreign meats into the United States would be a disservice to our country and to our economy as a whole, to the consumer, and most certainly to all of our agriculture interests, as well as that great number of people engaged in processing and handling agricultural products.

Mr. President, I yield the floor.

Mr. HRUSKA. Mr. President, following the very fine analysis and recital of facts of my colleague with reference to an effort to increase the volume of beef imports into this country, I should like to indulge in a few remarks which I feel will be pertinent to that same issue.

It is fallacious and highly unwise to base an increase of beef imports on the present cattle and beef prices in the market.

Much of the concerted drive generated for more imports of ground beef is based on recent increases in beef cattle on the market.

Average prices for choice fat cattle in Omaha—which is the largest livestock market—for the month of January 1972, came to $35.63 per hundredweight. This was widely heralded as the highest price for cattle in 20 years.

And so it was. In 1971 that average price for such cattle in the Omaha market was $34.92.

That comes to about 70 cents per hundredweight, less than a penny a pound increase.

Mr. President, there are many reasons why such an increase in the beef cattle market should not alarm or excite anyone—either the housewife, the consumer, the retailer, or even the ground beef importer or any of his high-priced publicity or public relations agencies or his superlevel lobbyist.

They are superlevel, if we want to get into that subject of determining what price is being charged for these lobbying efforts.

Each of the reasons I recite will be persuasive in itself. Taken collectively, they are irrefutable.

First. The farmer or rancher does not sell processed beef or beef cuts—he sells cattle on the hoof.

Second. The price of beef cattle on the market reached a level of about $35 in 1951, but ever since that time has been at a lower level until recent weeks. Can anyone cite a price of any other commodity or product which is selling for the same price it was 20 years ago?

Third. Food is increasingly a better buy now than 20 years ago. In 1951 people paid 23 percent of their take-home pay for food. In 1972 they are expected to spend less than 16 percent for food.

Fourth. Average wage rates per hour in the Nation are 2.4 times higher than 20 years ago. Fat cattle prices have finally worked their way up to their 1951–52 level, with a tremendously sharp and disastrous valley between then and now.

Fifth. During the years between 1951 and 1971, cattle prices have been below the 1951 price.

Sixth. The cost of production of choice grade beef is nearly four times higher now than it was 20 years ago.

Seventh. Per capita income of farm people is only 75 percent as much as the per capita income of nonfarm people. The farm people have to rely on off-the-farm income for half of their net income, but even so, this brings farm folks' income to only three-fourths of the per capita income of nonfarm people, and there are those who seem to envy them that status, and would like to keep it there, or reduce it even further.

Eighth. Domestic beef is the Nation's best buy. First, as to cost: In 1951, 1 hour's pay for labor bought 1.7 pounds of beef. Twenty years later, in 1971, it bought 3.3 pounds—almost twice as much. As to quality: Domestic beef is the Nation's best buy, because the quality is the best, and it is the most reliable in the world.

Production of best grade beef is nearly four times larger than it was 20 years ago. One-third of our beef was well-fed, best grade beef in 1951. Now 60 percent of our beef produced is well-fed, best grade. Thus the total production of best beef is 3.94 times greater than 20 years ago—almost four times as great, Mr. President.

Ninth. This next reason, Mr. President I state regretfully, because it has to do with the futures market of today. The futures market is governed by the joint

business judgment of economists and people who are familiar with the economics of the cattle industry, as would be the case in any other industry for which futures are computed and graded.

Live cattle futures prices from April through December for the rest of the year are $2 to $4 per hundredweight lower than the present live prices. This does not bring cheer to the hearts of those who produce, but nevertheless it is a fact. Yet there are those who would seek to take this present temporary increase in livestock prices of cattle on the hoof and predicate thereon a request for an increase in the import quotas, in order to lower the prices. And it might be said parenthetically that the admission of that much imported beef would not lower prices. Those prices are fixed by other factors besides imports.

Tenth. There is a further factor, and that is that the prices received by farmers for food are not inflationary. Farm food prices are up only 7 percent from 20 years ago. Wholesale food prices are up 22 percent from 20 years ago—three times as high. Retail food prices are up 44 percent from 20 years ago, and that figures out to more than six times as great a percentage rate of increase as in farm food prices.

Eleventh. The next reason has to do with the spread between the retail prices of beef and the average retail price of beef 20 years ago and the spread between that retail price and the net farm value for the same pound of meat sold over the counter. The figures I give will be in cents per retail pound.

The average retail price of meat selling over the counter was 87.3 cents in 1951. That retail price in 1971, 20 years later, was $1.04.

The fact must be borne in mind, Mr. President, that the live fat stock still sold for about the same in 1951 as it did 20 years later, and yet there was an increase of from 87.3 cents to 104.3 cents—an increase of substantial character and in substantial degree, none of which went to the farmer or rancher, because he does not sell meat at retail, he sells it on the hoof.

What was the net farm value of that pound of meat? In 1951, the net farm value of that pound of meat was 67 cents. In 1971, the net farm value was 67.9 cents—just about a penny more than it was 20 years earlier. Almost everyone is familiar with the way that a 1,000-pound steer dresses down to about 620 pounds in carcass form, and when the retail dealer gets through with it, it dresses to about 450 pounds. But with all that taken into consideration, the net farm value of that pound of meat was 67 cents in 1951, and 20 years later was 67.9 cents, less than a penny increase, and here we have an increase in retail prices during that period of time from 87.3 cents to 104.3 cents.

For all those reasons, Mr. President, it would certainly seem to me that those in authority would have every reason to analyze these figures, and any one of the reasons would be sufficient in itself to say, "This is no time to make a change in the import quotas. This is no time to complain about the price of cattle. This is no time even to complain about the greatly increased retail price of meat as compared with 20 years ago. It is still the best bargain. It is still the best quality product, and the beef industry should be allowed to go forward on the basis of the present import quotas, with the hope that farm prices in this field will go up. They should go up, with the farm population getting only 75 percent of the per capita income received by nonfarm people."

Mr. President, this is not the fight of only one section of the country. It is not the fight of only the beef industry or the cattle industry. It is the fight of 35 States which have a big stake in this business of letting down the bars on the importation of beef.

Thirty-five States have a million or more head of cattle, and that means that the problem is that widespread. It means there is that great a demand for the products of the cattle industry, and thank goodness there is, because it means an expanding population and a fitter one, with the nutritional food that quality beef can supply.

Mr. President, at a later time within the next few days I shall undertake a little more extended and more documented, by way of statistics, set of remarks on this subject. In the meantime, it is our hope that these facts and figures will cause those in authority to look at the full picture and the full impact that would be wrought upon this Nation and a very important segment thereof if any inconsiderate, premature, and ill-advised action is taken.

Mr. DOLE. Mr. President, Kansas is rapidly increasing the number of cattle it produces each year. Livestock production is now the largest single industry in the State and among the many letters and telegrams I have received protesting the many stories that are appearing daily about high cattle prices is the telegram which I would like to submit for inclusion in the RECORD. Kansas farmers have invested millions of dollars in feedlots and equipment to feed and produce meat for the people of the Nation, and deserve to receive a fair return on the investment. Figures recently released by the Department of Agriculture indicate we spend less than 17 percent of our disposable income on food. No other nation on earth has such a bargain.

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

TOPEKA, KANS.,
February 16, 1972.

Senator ROBERT DOLE,
New Senate Office Building,
Washington, D.C.:

Are current beef prices really inflationary? Would an increase in foreign meat import quotas, a "roll back" of live cattle prices or a freeze on current beef prices accomplish either current or long range objectives in providing a high quality, reasonably priced food source for the American consumer? We understand that these are current options under consideration in Washington. Let us examine a few statistics to find out if beef prices have been inflationary or if in fact they have been one of the major deterents to the spiraling cost of living.

1. This year the American housewife will spend 16.2% of her disposable income to feed her family. This is a smaller percent spent for food than ever before in the history of this or any other country. In 1960 expenditures for food accounted for 20% of disposable income, in 1940 the figure was 22% and in 1930 it was 24%.

2. Live cattle prices to the producer are just now getting back to where they were twenty years ago. It is a fact that farmers today are receiving the same price for their cattle as they were back in 1952.

3. Prices of other commodities have increased much more than the price of food. Since 1950 rents have risen 50%, health care costs have increased 136%. Wages in manufacturing industries have climbed 122% since 1950. That's about 2½ times as much as the cost of food has increased.

4. Beef production has doubled since 1960. Beef cow numbers have been on the increase for many years. In Kansas alone feedlot capacity has increased 197% since 1965.

5. Today one average hour of factory work will purchase about 2½ pounds of round steak, in 1950 the same hour of work would only purchase about half that amount.

6. Livestock production is a billion dollar business in Kansas. This does not automatically imply profitability and continued growth. If the livestock industry continues to grow and prosper so does the State of Kansas. The livestock industry is the single most positive force for economic and rural development in our State. The multiplier effect for the beef business is 5.5. This means that for every dollar that turns over in the beef business 5.5 dollars turn over elsewhere in the State's economy.

7. An increase in meat import quotas would have little if any effect on the current retail meat prices but would definitely have a detrimental effect on the live beef cattle prices.

8. The obvious strong demand for beef which reflects the rising disposable income of the consuming public has increased consumption of beef from about 69 pounds per capita twenty years ago to 114 pounds today.

9. The quality of beef is vastly improved over that of twenty years ago. In 1950 only about one half of all market cattle were grain fed. Today 80% of all market cattle have been grain fed. Grain feeding to choice grade is what makes a quality product.

Beef cow numbers have been on the increase for many years with a dramatic six percent increase in heifers for beef cow replacements in the nation this year. The best way to continue this increase in cow numbers and insure an adequate supply of beef to the consuming public is to have a healthy and prosperous livestock production industry. To "roll-back" the live beef price or increase meat imports would actually be a deterrent to any increase in livestock production in the United States. This does have long range detrimental affects on the beef supply to the American consumer.

It is not in the best interest of the consuming public to place artificial price restraints on beef thereby curtailing the present trend to increase beef production.

Sincerely,

KALO A. HINEMAN,
President,
Kansas Livestock Association.

Mr. HANSEN. Mr. President, I commend the junior Senator from Nebraska on his very fine statement. I too am concerned over the possibility that meat import quotas might be increased without a full appreciation of the facts of life as they relate to the livestock producer.

Today, I have written to the Honorable Donald Rumsfeld, Chairman of the Cost of Living Council, on this subject, and I ask unanimous consent that the letter be printed in the RECORD at this point.

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

U.S. SENATE,
Washington, D.C., February 18, 1972.

Hon. DONALD RUMSFELD,
Counselor to the President,
The White House, Washington, D.C.

DEAR DON: I read with interest the reports of your press conference on Friday, February 11. You stated at that time that an increase in the meat import quota for 1972 is "among the more likely possibilities" for action by the Administration to keep food prices down.

The livestock industry has never asked the government to provide supports for livestock. The industry has experienced some very tough times, but it is willing to endure the hard years, provided it receives the benefits when prices are higher. Most operators are able to set aside enough to get them through the leaner years.

During the past decade the return on total capital investment realized by the livestock industry has been extremely low. It is difficult to find another industry with a lower return. The significance of this fact for the nation is that young people are finding it increasingly difficult to make a living in the livestock industry. States such as Wyoming whose economies are based on agriculture are finding that their young people are forced to leave the State. This migration from rural areas continues to contribute to the problems being experienced in the nation's cities.

In 1971, the prices to beef producers reached the 1951 price level for the first time. Prices paid for meat products reflect many factors beyond production costs such as processing and convenience packaging. Many of these services have been demanded by the consumers themselves.

The Administration should consider these facts and the consequences of future actions on livestock producers before resorting to an increase in meat import quotas or the imposition of price controls.

Certainly the import quota is one tool which can be used by the Administration for controlling meat prices. The fee schedule for grazing on public lands is another tool within the power of the Administration. It is important to note that the Nixon Administration has increased the average fee for cattle grazing on Bureau of Land Management administered lands from $.33 to $.66 in the last three years.

This action does have a significant impact on livestock producers in my own state of Wyoming and other public lands states in the West. Marginal operations, usually family owned and run, in these states find that their ability to survive is greatly impaired by these fee increases. If these livestock producers are forced out of business, not only will the local economies suffer, but the decreased supply of livestock will put increased pressure on meat prices.

The President and the Cost of Living Council should be aware of this situation. I have written to the President and his appointees on this subject in the past. It is my hope that the Cost of Living Council will take a very close look at the problem of grazing fees and make its views known to the Department of the Interior, the Department of Agriculture and the Office of Management and Budget. Timely attention to this problem is needed since the grazing fees are scheduled to be increased again next January.

Sincerely,

CLIFFORD P. HANSEN,
U.S. Senator.

THE DEBT CEILING AND H.R. 1

Mr. LONG. Mr. President, as chairman of the Senate Committee on Finance, the junior Senator from Louisiana has been doing everything within his power to move along the administration-supported measure, H.R. 1, involving social security and public welfare, including the controversial family assistance plan.

I regret to report that, notwithstanding the very diligent efforts of some members of the committee, including the distinguished occupant of the Chair (Mr. JORDAN of Idaho), on some occasions we just have not been able to move, because of a lack of a quorum. That was the occasion on yesterday, and it was also the situation that existed this morning. We would have had a meeting today except that a poll of the Members indicated that it would not be possible to have a quorum of the Senate Finance Committee to have a meeting today.

I had set Monday, which will be a holiday, because of George Washington's Birthday, to call a meeting of the committee to hear the Secretary of the Treasury and the Director of the Budget testify for an increase in the Nation's debt limit. Unfortunately, the Secretary of the Treasury and the Director of the Budget will not be available to us on Monday and, therefore, in view of the importance of that measure, it seems to the Senator from Louisiana that we should postpone that hearing until such time as the Secretary and the Director of the Budget can be present.

We will, of course, find some time between now and March to conduct that hearing, and we will set it with less than a week's notice, if need be, in order to accommodate the administration. We do not feel—I know the junior Senator from Louisiana does not feel—that a financial crisis of that sort should be handled without hearing from those whom we vote on and confirm to positions held in the administration, and having them explain to us the necessity of a further increase in the Nation's debt limit.

I regret that we could not hold such a meeting on Monday, because Senators had canceled other engagements and had made plans to be there. We would have had a quorum to hear the Secretary of the Treasury and the Director of the Budget, but, unfortunately, they were not available to us on that occasion, and we were unable, therefore, to schedule a meeting.

It is not too easy to try to fly north and then turn around in midair and suddenly fly south, with busy Senators who have plans to attend other meetings and who have other commitments. Therefore, the regular meeting of the committee will be held on Tuesday, and we will proceed with H.R. 1 and make such progress as we can on that occasion. I believe we will have a quorum there and I am hopeful we will. I would urge Senators who are particularly enthusiastic about certain aspects of that measure to be present. I will help expedite and move ahead on activities of the committee if they will arrange their plans to be there.

I know the junior Senator from Louisiana has been present at every meeting, so far as he can recall, since we brought this matter up, and has been trying to press, morning and afternoon, to move these matters to a conclusion.

QUORUM CALL

Mr. LONG. 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.

THE PEACE CORPS

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished junior Senator from Nevada (Mr. CANNON), I ask unanimous consent to have printed in the RECORD a statement by him.

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

STATEMENT BY SENATOR CANNON

The future effectiveness of the Peace Corps may depend largely upon the amount of money this Congress appropriates for the present fiscal year.

Since the conception of Peace Corps, the United States has attempted for the first time a large-scale world-wide movement to establish peace, friendship and brotherhood around the globe. Peace, friendship and brotherhood are not established on a foundation of lonely green-back paper dollars or sophisticated weapons, rather the basis for these concepts must come from person to person relationships and this is the level which our Peace Corps works every hour of the day.

There are presently 8,000 volunteers in 55 countries with each volunteer faithfully serving our country as well as the host country. It is not easy to work and make friends while living and experiencing the problems which many underdeveloped countries are faced with today, and one should hesitate when calling these volunteers useless and a burden to the taxpayer; these men and women are *volunteers* residing in a country whose government has specifically requested their presence and services. These services whether they be technical (mechanics, plumbers, carpenters), professional (teachers, nurses, public administrators), or specialist (agiculture, forestry, planning) are performed at the level most important, person to person. Thus evolves an understanding of one's world with another's, an opening of the lines for communication, an interchanging of ideas, and a peaceful coexistence.

President Nixon had asked for $82 million for the continuing and expanding work of this organization overseas. Congress has not forgotten the needs of the people here in the United States which should be and continues to be our top priority, but in a projected budget of $229 billion for fiscal year 71–72, the present $77.2 million figure is a relatively small price to pay for the benefits that our country and the world have received from these dedicated volunteers. The United States foreign investment in the Peace Corps has been the kindling for that flickering light in the darkness and let us continue to add the fuel for brighter and more peaceful days to come in a world besieged with problems.

Recent editorials in the *Washington Post*, the *Evening Star*, and the *Los Angeles Times* strongly back the bare minimum figure of $77.2 million and express disappointment that it is not more. But the never ending flow of letters, telegrams and conversation from volunteers in the field, ex-volunteers, parents, concerned citizens, as well as host nationalists, strongly indicate that irreparable damage to our nation and other countries would result from an appropriation below the $77.2 million figure.

I submit a statement from Peace Corps Chief in the Office of Evaluation, Curt Jones, which I believe will help clarify some of the misunderstanding surrounding the request for Peace Corps funds for FY 72.

TRAINEE INPUTS AND THE PEACE CORPS BUDGET

Mr. Passman has presented the correct numbers for fiscal 1971 and 1972. Some background may help in interpreting those figures.

The Peace Corps is a broker matching up applications by Americans for volunteer service with requests by foreign governments for volunteers. The amount of money requested is a function of the expected number of situations where the skills, family status, and geographical preferences of the volunteer applications will match the requests.

In fiscal 1971, the Office of Management and Budget was not confident of the Peace Corps estimates of new volunteer inputs. It released $80,000,000 of the $90,000,000 appropriated by Congress. In the middle of the fiscal year, OMB recognized that the volunteer input rate was higher and released an additional $5,000,000 to the agency. At that time, the decision was made to hold to the $85,000,000 for the full fiscal year.

In the development of the FY '72 budget, the Office of Management and Budget was not convinced by the Peace Corps' estimate of 5800 trainees to be started in that year. The President requested a budget of $71.2 million, sufficient to finance 4000 new volunteers. By April of 1971, when it had become clear that both applications and requests were running high enough to allow more volunteers, the President revised the request upwards to $82.2 million to cover 5800 trainees. When the Congress authorized only $77.2 million, the Peace Corps was forced to revise its target to 5000 new volunteers.

SUBSTITUTION OF SENATOR STENNIS FOR SENATOR McCLELLAN AS A CONFEREE ON H.R. 12067, THE FOREIGN ASSISTANCE APPROPRIATION BILL

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished chairman of the Committee on Appropriations, I ask unanimous consent that the Senator from Mississippi (Mr. STENNIS) be substituted for the Senator from Arkansas (Mr. McCLELLAN) as a conferee on H.R. 12067, the foreign assistance appropriation bill.

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

ORDER FOR RECOGNITION OF SENATOR SCHWEIKER ON MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, at the conclusion of the remarks of the distinguished Senator from Utah (Mr. Moss), the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for Monday is as follows:

The Senate will convene at 12 o'clock meridian. Following the remarks of the two leaders under the standing order, the distinguished junior Senator from Texas (Mr. BENTSEN) will deliver a reading of George Washington's Farewell Address, after which the distinguished Senator from Utah (Mr. Moss) will be recognized for not to exceed 15 minutes. He will be followed by the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) 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 at that time will be on the adoption of the amendment by the distinguished Senator from North Carolina (Mr. ERVIN). There is no time limitation on that amendment. Whether or not there will be rollcall votes on Monday, I am unable to say. The Senate will be transacting business. Senators may offer amendments and motions to table, and other motions can be made which could require rollcall votes. So I cannot say that there will be rollcall votes on Monday, nor can I say that there will not be rollcall votes on Monday.

It is much like seeing "through a glass darkly."

ADJOURNMENT UNTIL MONDAY, FEBRUARY 21, 1972

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock meridian on Monday next.

The motion was agreed to; and (at 2:53 p.m.) the Senate adjourned until Monday, February 21, 1972, at 12 meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 18, 1972:

NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

I. H. Hammerman II, of Maryland, to be a member of the Board of Directors of the National Corporation for Housing Partnerships for the term expiring October 27, 1974.

SECURITIES INVESTOR PROTECTION CORPORATION

Henry W. Meers, of Illinois, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1974.

COUNCIL OF ECONOMIC ADVISERS

Marina von Neumann Whitman, of Pennsylvania, to be a member of the Council of Economic Advisers.

COMPTROLLER OF THE CURRENCY

William B. Camp, of Maryland, to be Comptroller of the Currency.

IN THE AIR FORCE

The following-named officers for temporary appointment in the U.S. Air Force, under the provisions of chapter 839, title 10, of the United States Code:

To be brigadier general

Co. Solomon E. Lifton [redacted] FR, Regular Air Force, Medical.

Col. Stanley H. Bear, [redacted] FR, Regular Air Force, Medical.

Col. George E. Reynolds, [redacted] FR, Regular Air Force, Medical.

Col. Paul Krause, [redacted] FR, Regular Air Force.

Col. Howard E. McCormick, [redacted] FR, Regular Air Force.

Col. Hilding L. Jacobson, Jr., [redacted] FR, Regular Air Force.

Col. William H. Fairbrother, [redacted] FR, Regular Air Force.

Col. Leslie J. Campbell, Jr., [redacted] FR, Regular Air Force.

Col. Paul W. Myers, [redacted] FR, Regular Air Force, Medical.

Col. John R. Kelly, Jr [redacted] FR, Regular Air Force.

Col. Frank O. House, [redacted] FR, Regular Air Force.

Col. William B. Yancey, Jr., [redacted] FR, Regular Air Force.

Col. William F. Georgi [redacted] FR, Regular Air Force.

Col. John G. Albert, [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Charles L. Wilson [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Clyde R. Denniston, Jr., [redacted] FR, Regular Air Force.

Col. Timothy I. Ahern [redacted] FR, Regular Air Force.

Col. Harold E. Confer [redacted] FR, Regular Air Force.

Col. Robert L. Moeller [redacted] FR, Regular Air Force.

Col. Ethel A. Hoefly, [redacted] FR, Regular Air Force, Nurse.

Col. Glenn R. Sullivan [redacted] FR, Regular Air Force.

Col. William A. Temple, [redacted] FR, Regular Air Force.

Col. David D. Bradburn, [redacted] FR, Regular Air Force.

Col. Ranald T. Adams, Jr., [redacted] FR, Regular Air Force.

Col. John W. Burkhart [redacted] FR, Regular Air Force.

Col. Carl G. Schneider [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Richard C. Henry [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Raymond L. Haupt [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Lucius Theus, [redacted] FR, Regular Air Force.

Col. Robert C. Thompson, [redacted] FR, Regular Air Force.

Col. John M. Rose, Jr., [redacted] FR, Regular Air Force.

Col. Kenneth E. Allery [redacted] FR, Regular Air Force.

Col. Lawrence N. Gordon, [redacted] FR, Regular Air Force.

Col. Guy E. Hairston, Jr., [redacted] FR, Regular Air Force.

Col. Louis W. La Salle [redacted] FR, Regular Air Force.

Col. John R. Spalding, Jr., [redacted] FR, Regular Air Force.

Col. Benton K. Partin [redacted] FR, (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Mervin M. Taylor [redacted] FR, Regular Air Force.

Col. Walter F. Daniel [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Robert S. Berg [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Lloyd R. Leavitt, Jr., [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Ralph J. Maglione, Jr., [redacted] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.

Col. Eugene B. Sterling [xxx-xx-xxxx] FR, Regular Air Force.
Col Lyle E. Mann, [xxx-xx-xxxx] FR, Regular Air Force.
Col. Robert E. Sadler, [xxx-xx-xxxx] FR, Regular Air Force.
Col. James S. Murphy, [xxx-xx-xxxx] FR, Regular Air Force.
Col. William H. Ginn, Jr. [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Bennie L. Davis, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. James A. Young, [xxx-xx-xxxx] FR, Regular Air Force.
Col. Charles G. Cleveland, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Charles A. Gabriel, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Winfield W. Scott, Jr., [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Thomas P. Stafford, [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. Richard M. Baughn, [xxx-xx-xxxx] FR, Regular Air Force.
Col. Richard H. Schoeneman, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Robert F. Titus, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Thomas M. Sadler [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Kenneth P. Miles, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Fred A. Treyz, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. David E. Rippetoe, Jr., [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Freddie L. Poston, [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. Lovic P. Hodnette, Jr., [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. Hoyt S. Vandenberg, Jr. [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. Billy F. Rogers [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. Richard L. Lawson, [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. Walter D. Druen, Jr., [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. James R. Brickel [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. James O. Putnam [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. Leland C. Shepard, Jr., [xxx-xx-xxxx] FR, Regular Air Force.
Col. Rupert H. Burris, [xxx-xx-xxxx] FR, Regular Air Force.
Col. George M. Wentsch, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. John C. Toomay, [xxx-xx-xxxx] FR, Regular Air Force.
Col. James R. Hildreth [xxx-xx-xxxx] FR (major, Regular Air Force) U.S. Air Force
Col. Louis G. Leiser, [xxx-xx-xxxx] FR (lieutenant colonel, Regular Air Force), U.S. Air Force.
Col. John F. Barnes, [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force.
Col. Henry J. Meade, [xxx-xx-xxxx] FR (major, Regular Air Force), U.S. Air Force, Chaplain.

U.S. NAVY

Rear Adm. William W. Behrens, Jr., U.S. Navy, for appointment to the grade of vice admiral for the duration of his service in duties determined by the President to be of importance and responsibility within the contemplation of subsection (a), title 10, United States Code, section 5231.

Adm. Horacio Rivero, Jr., U.S. Navy, for appointment to the grade of admiral on the retired list pursuant to title 10, United States Code, section 5233.

Vice Adm. Richard G. Colbert, U.S. Navy, having been designated for commands and other duties of great importance and responsibility determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of admiral while so serving.

Rear Adm. Julien J. Le Bourgeois, U.S. Navy, having been designated for commands and other duties of great importance and responsibility determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

U.S. MARINE CORPS

The following-named officer of the Marine Corps Reserve for temporary appointment to the grade of major general:

Richard Mulberry, Jr.

The following-named officers of the Marine Corps Reserve for temporary appointment to the grade of brigadier general:

Robert E. Friederich
Paul E. Godfrey

IN THE ARMY

The nominations beginning Joseph L. Perry, to be major, and ending Steven A. Zurian, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 31, 1972; and

The nominations beginning Bobby E. Bogard, to be major, and ending James H. Zetti, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 31, 1972.

IN THE NAVY

The nominations beginning Max N. Akers, to be commander, and ending William L. Wood, to be commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 31, 1972; and

The nominations beginning Seth E. Anderson, Jr., to be commander, and ending Richard A. McGonigal, to be a permanent lieutenant commander and temporary commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 7, 1972.

IN THE MARINE CORPS

The nominations beginning Jesse W. Addison, to be first lieutenant, and ending Robert A. Yaskovic, to be first lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 7, 1972.

EXTENSIONS OF REMARKS

NATIONAL NEW IDEA DAY

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 1972

Mr. RODINO. Mr. Speaker, this morning, I received a short note from an old friend reminding me that February 16 had been declared "National New Idea Day" in Chases' Calendar of Annual Events for 1972.

There's nothing as fleeting or fragile—or as powerful—as a good idea. But it has to be put into action; it has to be shared.

Andrew Ettinger's reminder has remained in my thoughts throughout the day and the more I reflected upon his suggestion, the more enthusiastic I have become. How many of us, he asks, have set aside 15 minutes a day to utilize our individual ability to think and to judge by creating, formulating and expressing ideas of our own?

The Latin, Greek, and French languages in unison construct the word "idea" from the root "to see." The connection between ideas and seeing further reinforces Mr. Ettinger's suggestion. Each of us possess the gift of sight and through this gift we distinctly and individually view our society, its purposes and our location in this entire complex scheme. If each man. therefore, sees settings and situations in his own unique way, why should he not carry through his perceptions into the form of concrete and clearly defined ideas. Perhaps if we set aside these 15 minutes to be employed in this specific manner, meanings would become less clouded, reasons more clear, understanding a little easier and communication more beneficial.

Mr. Ettinger, director of Montclair New Jersey's Marketing Directions Group, has established the following format for practically implementing his suggestion:

To help in switching on the thinking cells to full power, MDG developed a short, mind-jogging checklist of idea-generating techniques. The list, they say, can be applied to any problem or situation:

1. Isolate the problem so you can visualize it clearly. Get it down on paper with a short, simple sentence, a drawing or a doodle. Think of the problem as a unit; then as separate parts. Think of each part as one of a set of children's building blocks. Mentally regroup them into different combinations.

2. Be an optimist. Be confident that there is a solution. Don't discard partial solutions. The full answer may have to develop in stages.

3. Make language work for you, not against you. Rename the parts of the problem to avoid getting hung up on traditional terminology. Try substituting numbers or symbols for words.

4. Let your experience be your take-off point, not your cage. Don't be hemmed in by conformity. If one approach doesn't succeed, completely reverse direction. Try another point of view—look at the problem from a different angle.

5. If the problem has physical dimensions, think of it in different shapes, sizes, weights, colors or textures. Think of a new use for it, however outrageous or unrelated to its present function. Don't be afraid to be laughed at.

6. Don't let mistakes or set-backs stop you. Even if some of your discoveries prove not to be new (that's called re-inventing the wheel), each can be as exciting to you as it was to the first one who conceived it. Keep charging the barriers of habit to gain that important "fresh" vantage point.

It must be stressed that this format may only be successful if the attitude is