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Congressional Record

PROCEEDINGS AND DEBATES OF THE 92d CONGRESS, SECOND SESSION

SENATE—*Wednesday, February 23, 1972*

The Senate met at 10 a.m. and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

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

Lord of our life and God of our salvation we praise Thee for the light of another day with its promise of achievement and its possibility of failure. May it be sufficient for us to know that we may have Thee for a constant companion and ever present friend. Keep us close to Thee that we may never be shaken by doubt or weakened by fear. Spare us from being overtaken by anything unworthy of our calling, from being trapped by temptations too strong, or from yielding to cowardly compromises. Keep us steady and secure amidst the shifting scenes of the day. And when the evening comes, give us the peace of those whose minds are stayed on Thee.

We beseech Thee to guide the leaders of the nations until all life is in alinement with Thy kingdom. And to Thee we ascribe all glory, majesty, and power forever. 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 assistant legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 23, 1972.

To the Senate:

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

ALLEN J. ELLENDER,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, February 22, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER FOR THE SENATE TO CONVENE AT 10 A.M. ON MONDAY, TUESDAY, AND WEDNESDAY OF NEXT WEEK

Mr. MANSFIELD. Mr. President, the distinguished deputy majority leader, now presiding over the Senate, has already received permission of the Senate to convene at 10 a.m., for the remainder of this week.

I ask unanimous consent that on Monday, Tuesday, and Wednesday of next week, the Senate convene at 10 a.m.

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

Mr. MANSFIELD. If there are to be any 15 minute remarks by Senators, they will be ordered prior to the hour of 10 a.m.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the distinguished minority leader wish to be recognized?

COMMITTEE SERVICE ASSIGNMENTS

Mr. SCOTT. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

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

The assistant legislative clerk read the resolution (S. Res. 261) as follows:

S. RES. 261

Resolved, That the Senator from New York (Mr. Buckley) is hereby excused from further service on the Committee on Aeronautical and Space Sciences; that the Senator from Kentucky (Mr. Cook) is hereby excused from further service on the Committee on Veterans' Affairs; that the Senator from Oregon (Mr. Hatfield) is hereby excused from further service on the Committee on Commerce; that the Senator from Illinois (Mr. Percy) is hereby excused from further service on Appropriations; that the Senator from South Dakota (Mr. Mundt) is hereby excused from further service on the Committee on Appropriations and the Foreign Relations Committee; that the Senator from Ohio (Mr. Saxbe) is hereby excused from further service on the Small Business Committee; that the Senator from Alaska (Mr. Stevens) is hereby excused from further service on the Committee on Interior and Insular Affairs and the Committee on Rules and Administration and that the Senator from Connecticut (Mr. Weicker) is hereby excused from further service on the Committee on Public Works; and be it further

Resolved, That the Senator from New York (Mr. Buckley) be and he is hereby assigned to service on the Interior and Insular Affairs Committee; that the Senator from Oregon (Mr. Hatfield) be and he is hereby assigned to service on the Committee on Appropriations; that the Senator from Illinois (Mr. Percy) be and he is hereby assigned to service on the Committee on Foreign Relations; that the Senator from South Dakota (Mr. Mundt) be and he is hereby assigned to service on the Committee on Aeronautical and Space Sciences and the Committee on Public Works; that the Senator from Ohio (Mr. Saxbe) be and he is hereby assigned to service on the Committee on Veterans' Affairs; that the Senator from Alaska (Mr. Stevens) be and he is hereby assigned to the Committee on Appropriations, and that the Senator from Connecticut (Mr. Weicker) be and he is hereby assigned to service on the Committee on Commerce.

Resolved further, That the following shall constitute the minority party's membership on the following committees:

The Committee on Government Operations:

Messrs. Percy, Javits, Gurney, Mathias, Saxbe, Roth, Brock, Mundt.

The Committee on Rules and Administration:

Messrs. Cook, Cooper, Scott, Griffin.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

Mr. SCOTT. Mr. President, I send another resolution to the desk and ask for its immediate consideration.

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

The assistant legislative clerk read the resolution (S. Res. 262) as follows:

S. RES. 262

Resolved, That the Senator from Connecticut (Mr. Weicker) is hereby excused from further service on the Committee on the District of Columbia and is hereby assigned to service on the Select Committee on Small Business.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

Mr. SCOTT. Mr. President, I yield back the remainder of my time.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum briefly, with the permission of the distinguished Senator from Virginia (Mr. BYRD).

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

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished senior Senator from Virginia (Mr. BYRD) is now recognized for not to exceed 15 minutes.

FORCED BUSING

Mr. BYRD of Virginia. Mr. President, the lovely wife of a presidential candidate has best articulated, it seems to me, the case against compulsory busing of schoolchildren to create an artificial racial balance.

Representing her husband at a political rally in Florida, Mrs. George McGovern angrily denounced another presidential candidate for charging that the McGoverns pay $1,400 a year to send their daughter to a school in Maryland so she does not have to go to an integrated school in the District of Columbia.

That was not our motive, Mrs. McGovern stated.

As one who knows Eleanor and GEORGE McGOVERN, I accept that statement completely. Both are sincere in their convictions. Neither, I feel sure, would have the slightest hesitancy in sending their children to an integrated school.

Why then do they pay $1,400 to send their daughter to a particular school? Mrs. McGovern answered this from a mother's heart:

She wanted to be with her friends.

To me, this dramatizes the thinking of the vast majority of those who are protesting forced busing. They are not protesting sending their children to an integrated school. In Virginia, for example, virtually every school is integrated.

What mothers and fathers everywhere want for their children is what Senator and Mrs. McGovern want for their daughter; they want her to be with her friends.

Federal judges in many areas are denying untold numbers of schoolchildren the right to go to school with their friends and neighbors.

Senator and Mrs. McGovern combat this by paying school tuition of $1,400. But most parents cannot afford such a cost.

This is why Congress and the President must devise an effective remedy against the compulsory busing of schoolchildren to achieve an artificial racial balance.

Eleanor McGovern's heartfelt assertion about her daughter represents the feeling of most mothers. Senator and Mrs. McGovern wanted their daughter to be with her friends and were willing to pay $1,400 to accomplish this.

Congress and the President, acting together, must make this possible for all parents—without the payment of $1,400—by preserving the neighborhood schools.

Mr. President, I received through the mail a communication from Rabbi Jacob J. Hecht, executive vice president of the National Committee for Furtherance of Jewish Education. The address is 824 Eastern Parkway, Brooklyn, N.Y.

This is a statement by Rabbi Hecht, the executive vice president of the National Committee for Furtherance of Jewish Education and the caption is "Busing Negro Children to Schools in White Neighborhoods is Educational Dead-End."

Among other assertions made in the statement is this one by Rabbi Hecht:

A good hard look at the history and the current situation in busing is all it takes to realize that this program has been a drastic mistake.

Mr. President, that is not a statement made by someone in South Carolina, Virginia, or Florida but by the National Committee for the Furtherance of Jewish Education in Brooklyn, N.Y.

Another paragraph reads:

As Rabbi Hecht explained, the nationwide lack of success with busing programs could have easily been predicted since busing a child daily many miles to school could hardly be conducive to providing him with a favorable educational environment. Busing in reality creates new tensions and anxiety at a time when he is already beset with the multiplicity of problems coincident with growing up and adolescence.

Another paragraph reads:

"Busing removes from a child one of his most powerful sources of security—his neighborhood," said Rabbi Hecht. "It places him smack into an alien atmosphere he could only react to with anxiety."

Mr. President, the question of busing to achieve an artificial racial balance is, indeed, a national problem. Mothers and fathers, wherever they may be or whatever their religion or race may be, are rising up in opposition to the extremism of some Federal courts and the extremism of the Department of HEW in attempting to force compulsory busing upon the people of our Nation.

I think it is significant that the National Committee for Furtherance of Jewish Education, located in Brooklyn, N.Y., stated the strong view that it takes in this regard. The Jewish people, as we all know, are warmhearted people. As a matter of fact the motto of this committee is "the organization with a heart." And I think that typifies the Jewish people.

Mr. President, I ask unanimous consent that the release from the National Committee for Furtherance of Jewish Education, located at 824 Eastern Parkway, Brooklyn, N.Y. 11213, containing the statement by Rabbi Jacob J. Hecht, executive vice president, be printed at this point in the RECORD.

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

BUSING NEGRO CHILDREN TO SCHOOLS IN WHITE NEIGHBORHOODS IS EDUCATIONAL DEAD END, CHARGES NATIONAL COMMITTEE FOR FURTHERANCE OF JEWISH EDUCATION

Says bussing programs are based on an educational fallacy, and not only waste taxpayers' money, but are disruptive to the child, school, family, and neighborhood.

The bussing of Negro children to schools in white neighborhoods in order to improve education is a pedagogical dead-end, it was charged by the National Committee for Furtherance of Jewish Education.

In a special report prepared by the NCFJE's Education Committee, it was stated that the whole bussing concept is based on "an educational fallacy," and that bussing is not only a "waste of taxpayers' money, but also a disruptive influence that succeeds only in disrupting the bussed child, the school, the family, and the neighborhood."

"A good hard look at the history and the current situation in bussing is all it takes to realize that this program has been a drastic mistake," said Rabbi Jacob J. Hecht, NCFJE executive vice president.

As Rabbi Hecht explained, the bussing concept stemmed from research studies conducted a decade ago which indicated that Negro children attending schools in white neighborhoods did better educationally than Negro children who went to school in black neighborhoods. "These study results were seized upon as the basis for a massive busing movement that education and social leaders saw as a panacea that would help solve the nation's racial and poverty problems."

According to the NCFJE report, it is now thought that the Negro children in the original studies improved educationally because of other factors, and not the bussing. "We are beginning to realize that these Negro children were not representative of all Negro children, but were from middle-class Negro families who were aggresively trying to upgrade their status. Thus, the group surveyed was atypical, and the results obtained with them do not apply to the majority of Negro youth, millions of whom are not middle-class.

The NCFJE pointed out that for this reason, "it is not sursprising that in those American cities where bussing programs have been carried out, Negro children have not done better, and that indications are, the bussing rather than improving their educational levels, may have had adverse effects."

As Rabbi Hecht explained, the nationwide lack of success with bussing programs could have easily been predicted since bussing a child daily many miles to school could hardly be conducive to providing him with a favorable educational environment. "Bussing in reality creates new tensions and anxiety at a time when he is already beset with the multiplicity of problems coincident with growing up and adolescence.

"Bussing removes from a child one of his most powerful sources of security—his neighborhood," said Rabbi Hecht. "It places him smack into an alien atmosphere he could only react to with anxiety."

Rabbi Hecht explained that even though a neighborhood may be depressed, with broken-down homes and dirty streets, it still provides to a child who grows up there a sense of security. "It is when we move this child into an unfamiliar locale with different types of children that his security turns to insecurity."

"Even the fact a child is being bussed into a different neghborhood has a negative effect, because somewhere along the line, he cannot help but think there must be something wrong with his own neighborhood and people

and thus he becomes more resentful and fearful."

The NCFJE report also stressed that bussing runs counter to the entire Negro trend of taking pride in himself and black culture. "This is one of the healthiest sociological developments in years, and what does bussing do but only try to ram down Negro throats the idea that his culture is inferior and that he should aspire to white culture."

Bussing, Rabbi Hecht explained, forces the Negro away from his aspirations, and even more damaging, influences his children to think that the Negro way of life is second-rate. "So again we deflate the Negro image, and we detract from another major source of security for Negro children—their parents. By bussing them outside their neighborhood, we are suggesting to them the fact their parents cannot provide the best environment, and thus we strike another low blow against both them and their parents."

Besides children and families, neighborhoods and communities also suffer when bussing programs are instituted, according to the NCFJE report. "The entire community is disrupted because the normal pattern of integration has been turned topsy-turvy. When Negroes move into an area under normal conditions, a mutual respect and understanding eventually develops between whites and blacks. But when the balance is drastically changed over night by bussing hundreds of Negro children into the area each day, the community pattern of growth becomes disjoined."

Bussing also precipitates community conflict according to the NCFJE report. Cited as an example is the New York area of Brooklyn Heights where bussing was introduced into the public school six years ago. "This school became the center of a terrible controversy which has intensified through the years rather than abated. Community groups, pro and con bussing, have fought so viciously through the entire six years that parents with school-age children have moved out of the area, neighbors once friendly have stopped speaking to each other, and the school itself has become such a wasteland that proper education is now impossible."

According to the NCFJE, it is important to take immediate steps (1) to stop bussing where it already exists and (2) to adopt other programs to accomplish what the bussing was intended to accomplish. "The first thing we must do is to turn educational authorities away from thinking in terms of bussing," said Rabbi Hecht. "This can be accomplished only by making the public aware of the consequences of bussing and then putting pressure on state legislatures and municipal administrations to outlaw this practice."

The next step is to take the millions of dollars saved by eliminating bussing, and divert them into programs aimed at improving schools in the Negro areas so these schools will be indistinguishable in faculties and facilities from schools in white neighborhoods.

The third step is to coordinate this program with another massive program, aimed at building up the black neighborhoods that need to be improved. "A massive infusion of federal government funds is needed here to make up for the years of neglect and to create neighborhoods as desirable as those in the other areas of the cities where whites live."

"Like anything else worthwhile, the accomplishment of all this will not be easy," concluded Rabbi Hecht. "But once we bring the neighborhoods and the schools of all our cities to comparable levels, we will then have black and white co-existing peacefully and living in harmony. We will also have equality of education and opportunity, and the results will be of optimum benefit to not only Negroes, but to the entire nation.

CONFUSION AND LACK OF COOPERATION IN HEW

Mr. BYRD of Virginia. Mr. President, on February 4 I had hand delivered to the Office of the Secretary of Health, Education, and Welfare, a letter I wrote Mr. Richardson under that date, February 4, 1972, inviting his attention to a very serious situation in Virginia.

In Campbell County, the county suburban to the city of Lynchburg, the school board, after appropriate hearings, fired a schoolteacher who, according to a letter to me from the superintendent of schools of Campbell County, hit a child with a plastic hose. After the school board had heard this case, the school board fired that teacher.

The teacher appealed to the Department of Health, Education, and Welfare, and the Department of Health, Education, and Welfare demanded that this teacher be reinstated with back pay.

The regional office of the Department of Health, Education, and Welfare refused to give the school board the facts on which region 3 of the Department of Health, Education, and Welfare based this demand that this teacher be reinstated.

Mr. President, I do not pretend to know the facts, other than those contained in the letter from the superintendent of schools. However, in my letter to Secretary Richardson, I quoted the statement of the superintendent of schools, and I expressed the view that the school board should have the facts upon which the Department of Health, Education, and Welfare based its demand for reinstatement.

In one paragraph of my letter I asked if, in view of the fact that HEW did not give the facts to the school board, Mr. Richardson would submit to me the facts upon which Dr. Severinson of HEW, justifies her assertion that the teacher was not dismissed for good cause.

I then asked:

Have you, as Secretary of Health, Education and Welfare, been informed that this teacher was dismissed by the school board for beating a child?

I also asked this question:

Do you not agree that this is a case which your office should investigate?

The Department of Health, Education, and Welfare has threatened to cut off school funds going to Campbell County unless this teacher is reinstated. Bearing in mind that the teacher was dismissed for beating a child and bearing in mind that region 3 of the Department of Health, Education, and Welfare has refused to submit to the school board the facts on which the reinstatement is demanded, the Secretary of Health, Education, and Welfare has an obligation to look into the case.

It was on February 4, 1972, that my letter was hand delivered to Mr. Richardson's office. A week ago yesterday, I had not received a reply. Mr. Richardson came before the Senate Finance Committee. I read this letter to him, and he promised to get me a prompt reply. That was a week and 1 day ago, and still there is no reply.

Mr. Richardson in his testimony before the committee—and it was in his written statement—asserted that the people of the United States are beginning to mistrust more and more their Government. I agree with that assertion. I think one reason is that many top officials of Government are lacking in interest in responding to inquiries and requests for information on the part of the people and even on the part of the Members of the Congress of the United States.

I thought perhaps it was because of inadequate help that the Department of Health, Education, and Welfare had not replied to my inquiry. I asked Mr. Richardson, "How many employees do you have?" After looking through his papers, he said he had 104,000 employees. It seems to me that with 104,000 employees, the Department of Health, Education, and Welfare and its Secretary, Mr. Richardson, could reply with some degree of promptness to official communications presented to the Secretary by elected representatives of the people.

My letter was hand-delivered on February 4. It is now the 23d day of February. I think this in a way dramatizes just how impersonal this big bureaucracy in Washington has got and how little interest it has in trying to help the people of our Nation.

I feel a deep obligation to answer the mail that comes to me from the 5 million people whom I represent in Virginia—a deep obligation. I stay here late at night signing mail. I submit that the Secretary of Health, Education, and Welfare, although he is a very busy man, and I admit that, can spend some time and utilize some of those 104,000 employees to answer some mail from the representatives of the people of our Nation.

Mr. President, I ask unanimous consent to have printed in the RECORD my letter under date of February 4, 1972, to Secretary Richardson.

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

U.S. SENATE,
Washington, D.C., February 4, 1972.

The Honorable ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare,
Washington, D.C.

MY DEAR MR. SECRETARY: My assistance has been sought by Mr. G. Hunter Jones, Jr., Division Superintendent of the Campbell County, Virginia, school system, with regard to demands placed upon him by Dr. Eloise Severinson, Regional Civil Rights Director for Region III. A copy of Dr. Severinson's letter to Mr. Jones is enclosed.

Dr. Severinson's letter directs Campbell County to re-employ, with back pay, a teacher, who, school officials state, was dismissed for cause.

Mr. Jones, in correspondence with me, said that:

"Mr. Oswald Merritt, a fifth grade teacher at the Altavista Elementary School hit a child with a plastic hose on January 29, 1971, which resulted in the parent seeking medical attention from the family physician, who was Chairman of our School Board at the time. The Board was scheduled to meet that same evening, and the matter was brought to the Board by him. The teacher was suspended by the Board, and after hearings by the Board, the teacher resigned."

An investigation was conducted by Region III HEW personnel during September 1971, but Mr. Jones writes me that Dr. Severinson

has refused to provide the Campbell County School Board with specific charges of any of the complaints against it.

In view of this, would you submit to me the facts upon which Dr. Severinson justifies her assertion that Mr. Merritt was not dismissed for good cause?

Further, Mr. Secretary, not even the Equal Employment Opportunity Commission has the power to order the reinstatement, with back pay, of an employee, yet Dr. Severinson has taken this power upon herself. On what legal authority does Dr. Severinson base that demand?

Have you, as Secretary of Health, Education and Welfare, been informed that this teacher was dismissed by the school board for beating a child?

Do you not agree that this is a case which your office should investigate?

I have protested Dr. Severinson's harassment of Virginia school officials in the past, and I await your reply as to the course of action which you intend to take in regard to the Campbell County case.

I am having this letter hand-delivered to your office.

Sincerely,

HARRY F. BYRD, Jr.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the transaction of routine morning business, with statements limited therein to 3 minutes.

THE U.N. SHOULD NOT DECIDE NEWSMEN'S ACCREDITATION

Mr. BYRD of West Virginia. Mr. President, the American people are now receiving the most extensive coverage of the People's Republic of China in a quarter century, and I believe the newsmen covering the President's trip deserve a great deal of credit.

However, there is a much smaller group of newsmen engaged in a quite different "China story" in New York, and I feel that their efforts deserve more recognition than they have thus far received.

I am referring to the group headed by Erwin D. Canham, editor in chief of the Christian Science Monitor, which is scheduled to meet this afternoon with United Nations Secretary General Kurt Waldheim. During that meeting, they will discuss the withdrawal of press credentials from two representatives of the Central News Agency of China—Taiwan.

As all of us recall, Mr. President, the two newsmen had their accreditation revoked at the request of the People's Republic of China when that nation replaced Nationalist China in the United Nations. The action was taken by former Secreary General U Thant, who chose to make this unconscionable move one of his final acts of office. From all indications, Mr. Waldheim intends to uphold the withdrawal of press credentials. His failure to take a stand on an issue so fundamental as this does not augur well for the United Nations during his term.

In my opinion, there was no justification for revoking the accreditation of the newsmen from Nationalist China, especially in view of the fact that the official news agency of East Germany has an accredited newsman covering events at the U.N.

I wish Mr. Canham's group well in its meeting this afternoon, and I hope that a rejection by Mr. Waldheim will not end the efforts to assure full coverage of U.N. activities by all nations of the world—nonmember nations, as well as member nations. I further hope that pressure will be brought to bear—especially by news organizations—to assure that newsmen, and not the U.N., will in the future decide accreditation of reporters who seek to cover the United Nations.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Waldheim To See Press Group on U.N. Credentials," which was published in Editor & Publisher of February 19, 1972.

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

[From Editor & Publisher, February 19, 1972]

WALDHEIM TO SEE PRESS GROUP ON U.N. CREDENTIALS

United Nations Secretary-General Kurt Waldheim will meet with a committee from the news media Wednesday afternoon, February 23, to discuss the withdrawal of press credentials from two representatives of the Central News Agency of China (Taiwan).

A few days before he set the date for a conference with the group, Waldheim told U.N. reporters he stood by the decision of his predecessor, U Thant, in accepting legal advice that the two Taiwan newsmen were ineligible for accreditation because they work for Nationalist China.

Under the General Assembly's resolution admitting the People's Republic of China and expelling Nationalist China, the ouster of Chen-chi Lin and T. C. Tang was held to be mandatory. At the time of the action in December, it was generally reported that the Chinese Communists had insisted on taking the credentials away from Nationalist China representatives.

"No new elements are involved," Waldheim declared at a news conference February 10, but he said he was willing to sit down with the press committee and talk it over.

This week the general board of the National Council of Churches joined press groups in criticizing the U.N. action and a resolution declared the journalists were not officials of the Taiwan government nor were their employers.

The ouster, News media have said, constitutes a dangerous precedent, insofar as it allows a Communist country to place a ban on newsmen that it does not want to be present at U.N. proceedings. Several nonmember states have journalists accredited to the U.N. Among them are East Germany, whose correspondent serves an official agency.

Erwin D. Canham, editor in chief of the *Christian Science Monitor*, was designated as spokesman for the committee appointed by Richard N. Fogel, *Oakland Tribune*, chairman of the Sigma Delta Chi freedom of information committee.

Other committee members are:

Frank Stanton, CBS.

C. A. McKnight, American Society of Newspaper Editors.

Mims Thomason, UPI.

Paul Miller, Gannett Newspapers.

Katharine Graham, *Washington Post*.

Robert U. Brown, Inter American Press Association.

Arthur O. Sulzberger, *New York Times*.

Julian Goodman, NBC.

Elton H. Rule, ABC.

Stanford Smith, American Newspaper Publishers Association.

Hugh N. Boyd, International Press Institute.

Chet Casselman, Radio and Television News Directors.

Malvin Goode, United Nations Correspondent Association.

Guy Ryan, Sigma Delta Chi.

Richard H. Fogel, Sigma Delta Chi.

Mr. BYRD of Virginia. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. BYRD of Virginia. Mr. President, I associate myself completely with the remarks just made by the distinguished Senator from West Virginia.

It seems to me that what we need in this world today is more reporting, more communicating. We need more people who can be accredited to report the facts and news developments, and not less.

I know of no reason why any particular country should be prevented from having a representative at the United Nations.

So far as I know, no charges have been made against these newsmen. The only charges made have been made by mainland China, or Communist China, or the People's Republic of China, whichever way one wishes to express it. They say they do not want the Taiwanese reporters to attend the United Nations and cover deliberations.

I would guess that other countries might have the feeling that they would prefer that such and such a country not have a representative. Why should any country have veto power over newsmen from other countries?

If we are going to have a world organization we need to have the right for countries to have reporters there to report the events that take place in that world organization.

The purpose of the world organization is to maintain a peaceful world. It seems to me that the more dialog we can have—that is why I like the President's trip to China—the more reporting of events which take place in the Halls of Congress, the United Nations, the British Parliament, and elsewhere, the better off everyone would be.

As a longtime newspaper editor, as a U.S. Senator, as one who favors President Nixon opening a dialog with the leaders of the People's Republic of China, and as one who has long felt that mainland Chinese reporters should be admitted to the United States and that U.S. reporters should be admitted to mainland China, I strongly protest the withdrawal of press credentials from two representatives of the Central News Agency of China—Taiwan. It seems to me that what we need in this world today is more dialog, more reporting, more communication. That also applies to the United Nations, and perhaps especially to the United Nations.

So I associate myself completely with the splendid remarks of the able Senator from West Virginia.

Mr. BYRD of West Virginia. I thank my friend, the distinguished Senator from Virginia.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. GRIFFIN. Mr. President, at the request of the distinguished majority leader, I ask unanimous consent that the period for the transaction of routine morning business be extended 10 additional minutes.

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

SCHOOL BUSING IN NEW YORK CITY

Mr. ALLEN. Mr. President, I was interested to note the news item this morning in the New York Times with the headline "Student Busing Never Big Issue Here Despite Racial Imbalance." The reference is to New York City.

Mr. President, isn't that very nice, indeed? It is no big issue in New York City because they have practically no busing there.

Mr. President, I ask unanimous consent that the entire article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ALLEN. Mr. President, reading from this article:

> Busing students to achieve racial balance in public schools, which Mayor Lindsay endorsed during his Florida campaign yesterday, has not emerged as a major issue in New York City, despite the fact that the city's schools are among the most racially imbalanced in the state.

And I might add parenthetically, in the Nation—

> The city has never had a busing program, nor has the school administration developed proposals for one.

We have busing programs in Alabama. We have busing programs throughout the entire South because the HEW and the Federal district courts and the courts of appeal and the Supreme Court have directed that we have busing programs. They do not have busing programs in New York City.

> The closest thing to it is the school system's open-enrollment program—

Is that freedom of choice, Mr. President—open-enrollment program?

> which permits students to apply—with their parents' approval—to fill classroom vacancies in other districts.

That is not the way it is done in Alabama and the South. Literally hundreds of thousands of students are transported from one area to another area in the city or in the county, irrespective of the ability of the school to which those students are transported to take care of the increased number of students. But in New York City all that they can do under the open-enrollment program is apply for a vacancy that might be created in one of the other districts.

Reading further:

> In practice this has meant that fewer than 3,000 students, most of them black—

That is out of hundreds of thousands of students—

> In practice this has meant that fewer than 3,000 students, most of them black, are bused daily to less-crowded and largely white schools. A very small number of white children, under the same voluntary program, travel to predominantly black schools each day.
>
> The recently published report of the so-called Fleischmann Commission on education label racial imbalances in New York City "severe." The 18-man commission, which was appointed by Governor Rockefeller two years ago, defined as "imbalanced" any school in which the representation of a given race varied by more than 10 percent from that race's proportion of the district.
>
> Under this formula, the commission concluded, 88.7 percent of the city's schools are imbalanced.

That is 88.7 percent. If there were such a district in Alabama or the South, would we not be hearing a hue and cry from all over this Nation to desegregate that district?

> 66 percent of the total of 906 schools range from being seriously imbalanced to "totally segregated."

That is the situation in New York and most sections outside the South, because the figures of HEW show conclusively that there has been more desegregation in the South than in sections outside the South.

Mr. President, the fact that in New York there is no busing, to speak of, certainly indicates that busing is no problem there, and certainly underlines and emphasizes the need that we have in Alabama and the South and throughout the Nation to put an end to the practice of forced mass busing of little children to create an artificial racial balance in our public schools.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. ALLEN. Mr. President, I ask unanimous consent to have 2 additional minutes.

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

Mr. ALLEN. There is another interesting paragraph in this article:

> Some black groups, however, have criticized busing as a solution to racial imbalances and underutilization of white schools in the city. They have argued, instead, that more and better schools should be built in black districts.

So, Mr. President, this issue is soon to be joined in the Senate later on this day, as to whether or not we are going to stop the forced busing of little schoolchildren in order to create an artificial racial balance in the public schools of this country.

I want to say right here and now again, as I said on yesterday and on Monday, that the so-called Scott compromise amendment, which will freeze busing in these desegregation plans as a possibility, is certainly not going to be accepted. How ironic and how cynical that approach is. It reminds me of the cynical approach which the distinguished Senator from Pennsylvania adopted with respect to the Stennis amendment and with respect to the Whitten amendment, when he came in with a scuttling amendment. That is what this amendment is, and it will certainly be resisted.

Another thing I would like to call attention to is an item appearing in the newspapers attributed to the distinguished senior Senator from New York (Mr. JAVITS) saying that the effort to stop busing would nullify the results of the Civil War, after the spending of billions of dollars and the loss of oceans of blood.

I notice that when those who advocate the desegregation of the schools in the South, without desegregating the schools in the North, are without arguments, they always wave the bloody flag of the War Between the States; but I would like to point out that if, as they contend, equality of education can be obtained only when there is integration of the races, why then does not the State of New York and other States of the North give equality of education to their black students, when they have not done so?

Mr. President, when we can have the same rule in the South that we have in the North, we are not going to have any objection in Alabama and the South.

EXHIBIT 1

[From the New York Times, Feb. 23, 1972]

STUDENT BUSING NEVER BIG ISSUE HERE DESPITE RACIAL IMBALANCE

(By Iver Peterson)

Busing students to achieve racial balance in public schools, which Mayor Lindsay endorsed during his Florida campaign yesterday, has not emerged as a major issue in New York City, despite the fact that the city's schools are among the most racially imbalanced in the state.

The city has never had a busing program, nor has the school administration developed proposals for one. The closest thing to it is the school system's open-enrollment program, which permits students to apply—with their parents' approval—to fill classroom vacancies in other districts.

In practice, this has meant that fewer than 3,000 students, most of them black, are bused daily to less-crowded and largely white schools. A very small number of white children, under the same voluntary program, travel to predominantly black schools each day.

The recently published report of the so called Fleischmann Commission on education label racial imbalances in New York City "severe." The 18-man commission, which was appointed by Governor Rockefeller two years ago, defined as "imbalanced" any school in which the representation of a given race varied by more than 10 per cent from that race's proportion of the district.

Under this formula, the commission concluded, 88.7 per cent of the city's schools are imbalanced, and 66 per cent of the total of 906 schools range from being seriously imbalanced to "totally segregated." And the commission notes that the city's four prestigious specialized high schools—the Bronx High School of Science, the High School of Music and Art, Stuyvesant High School and Brook-

lyn Tech, which have students from all over the city are 75.7 per cent white.

A feasibility study of busing in New York City that was done for the Fleischmann Commission by Dr. Dan W. Dodson of New York University concluded that such imbalances could be overcome by busing about 215,000 elementary and junior high school students each day.

The $16-million a year such a program would cost would be more than made up for by more efficient utilization of school space, Dr. Dodson's report said.

The Fleischmann Commission did not endorse the Dodson study, but included it in its final report as a basis for future discussion.

Some black groups, however, have criticized busing as a solution to racial imbalances and underutilization of white schools in the city. They have argued, instead, that more and better schools should be built in black districts.

Several New York City suburbs have active and largely successful busing programs to promote integration. Among the leaders is White Plains, which began busing in 1964. Currently, 600 kindergarten through sixth grade students are bused daily, at an annual cost of $105,000.

EDUCATION AMENDMENTS OF 1972—AMENDMENTS NOS. 916 AND 917

Mr. ERVIN. Mr. President, as a result of the War Between the States, the blacks were freed from slavery. Compulsory busing to achieve racial integration restores slavery insofar as little children, both black and white, are concerned.

Mr. President, on behalf of myself, Mr. ALLEN, 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, I submit two amendments and ask that they be printed and lie on the table until they are called up.

The PRESIDING OFFICER. The amendments will be received and printed and will lie on the table, as requested.

Mr. ERVIN. Mr. President, the first amendment, amendment No. 916, provides for the protection of the rights of children to attend neighborhood schools. It declares this:

No court, department, agency, or officer of the United States shall have jurisdiction or power to order or require by any means whatever the state or local authorities controlling or operating any public school in any state, district, territory, commonwealth, or possession of the United States to deny any student admission to the public or private school nearest his home which is operated by such authorities for the education of students of his age or ability. The Congress intends that this statutory provision to apply to every court, department, agency, or officer of the United States, and to every state or local authority, public school system, public school, student, or person, and to every circumstance and situation to which or to whom the Congress has the constitutional power to make it applicable, and to this end the Congress declares that its invalidity in particular respects or in particular applications shall not impair in any way its validity in other respects or in other applications.

The other amendment (No. 917) relates to freedom of choice assignments, and provides:

No court, department, agency, or officer of the United States shall have jurisdiction or power to order or require by any means whatever state or local authorities controlling or operating any system of public schools in any state, district, territory, commonwealth, or possession of the United States to assign students of any race, religion, or national origin to any schools other than those chosen by the students or their parents where such state or local authorities open the schools under their jurisdiction to students of all races, religions, or national origins and grant them the freedom to attend the schools chosen by them or their parents from among those available for the instruction of students of their ages and educational standings. The Congress, intends this statutory provision to apply to every court, department, agency, or officer of the United States, and to every state or local authority, public school system, public school, student, or person, and to every circumstance and situation to which or to whom the Congress has the constitutional power to make it applicable, and to this end the Congress declares that its invalidity in particular respects or in particular application shall not impair in any way its validity in other respects or in other applications.

Mr. President, the equal protection clause says that no State shall deny any person within its jurisdiction the equal protection of the laws. This is a simple clause. All that it means is this: That no State shall treat in a different manner persons similarly situated. That is all it means. And when a State school board opens its schools to children of all races, religions, and national origins, and grants them freedom to attend whatever schools are available to children of their ages and educational attainments and chosen by them or their parents, it treats everyone similarly situated in exactly the same manner; and I assert that oceans and oceans of judicial or political sophistry cannot erase that plain truth.

The best way to abolish all discrimination in schools is to allow the children or their parents to select the schools the children are to attend from among those open to children of their ages and educational standards. That is the one reason for this amendment: To stop the courts of this land and the Department of Health, Education, and Welfare from usurping and exercising the rights, powers, and responsibilities of local school boards throughout this Nation.

I wish to make one other observation. I say to my friends from the North that when those who want to forcibly integrate schools by busing and by denying children the right to attend their neighborhood schools have reduced the South to a state of vassalage, they are not going to sit down like Alexander the Great and weep, because they have no more worlds to conquer. They are going to turn their attention, as in fact they are now doing, to the schools north of the Potomac River and the Mason-Dixon Line, and they are going to try to inflict upon the schools in those areas the same tyrannies they have inflicted upon the schools, the school boards, the parents, and the little children of the South.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. MANSFIELD. Mr. President, if the Senator wants more time, I ask for recognition and yield to the Senator from North Carolina.

Mr. ERVIN. I thank the Senator; I would like to have about 3 minutes more.

The Wall Street Journal for February 8, 1972, published an article written by Vermont Royster entitled "Suffer the Children." It says:

For anyone with a grisly sense of humor—sick humor, in the current phrase—there is bound to be sardonic laughter in the rise of school busing as a social and political issue outside the South.

For one thing it does is expose some monumental hypocrisy. Over many years those in other parts of the country have treated the issue as one peculiar to the Southern states. Objections to hauling children all over the countryside to obtain a preconceived "racial balance" in the public schools were supposed to stem only from racial prejudice and to be raised only by Southern white racists.

I ask unanimous consent that the entire article be printed in the RECORD at this point.

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

SUFFER THE CHILDREN

(By Vermont Royster)

For anyone with a grisly sense of humor—sick humor, in the current phrase—there is bound to be sardonic laughter in the rise of school busing as a social and political issue outside the South.

For one thing it does is expose some monumental hyprocrisy. Over many years those in other parts of the country have treated the issue as one peculiar to the Southern states. Objections to hauling children all over the countryside to obtain a preconceived "racial balance" in the public schools were supposed to stem only from racial prejudice and to be raised only by Southern white racists.

Any other objections to this kind of busing—whether on educational grounds, the disruption of neighborhood cohesion, inconvenience to the children or parents, or considerations of cost—all were disdainfully dismissed as merely the rationalizations of diehard segregationists. Where, as sometimes happened, blacks in the South likewise objected they were dismissed as "Uncle Toms."

It was treated, in short, as a purely regional issue. The rest of the country looked on with smug equanimity as court decisions, government policy and public pressure forced area-wide school busing on community after community. After all, so said the rest of the country, it's not our problem.

Well, it is now. In the North, the Midwest and even in the Far West, in community after community, there have of late been eruptions of public protest when the same policy of area-wide busing came to be applied. And every poll of public sentiment is now showing that school busing for arbitrary racial balance has become a nationwide issue.

Congress is having to come to grips with it both as a substantive and a political issue. The House has already passed anti-busing legislation; it is also considering a Constitutional amendment banning busing. The Senate, to the agony of so many Presidential hopefuls, is finding it daily harder to avoid the issue because the people back home—all over the country—are forcing it.

In this, too, there is cause for sardonic laughter. Of all those Senate presidential hopefuls with school-age children only Senator Jackson (the most "conservative" of the Democratic aspirants) has his children in a Washington public school. The others, liberals all, send their own children to pri-

vate schools while proclaiming their devotion to busing for everybody else.

But for all this exposed hyprocisy there is, in all truth, nothing to laugh at, sardonically or otherwise. The whole business has become too sad even for sick humor.

A part of the sadness lies in the fact that this great convulsion over school busing comes at a time when the public, in the South and elsewhere, is at long last casting aside old prejudices. Just recently the National Opinion Research Center, as cited in a Wall Street Journal story, found that 80% of the nation (including half of the Southern white population) today accepts integration in schools and other aspects of public life. That is, acceptance of integration and opposition to school busing have grown together.

This paradox is only a seeming one. What the evidence shows is that it is no longer correct to treat the school busing issue as solely a "racist" one. Many blacks, as recent demonstrations witness, also oppose area-wide busing. So too do many whites who are not only not "racists" but actively support racial integration in the school system The busing issue now transcends the old labels.

This ought to be understandable to anyone who can put aside stereotyped thinking. There is, first of all, something absurd about busing a child, who lives within a few blocks of an elementary school, a half-day's journey across country, with some starting before dawn and returning long after dark. For years the country labored expanding its school system to avoid just this sort of necessity. Now when it isn't necessary we are reverting to it in the name of having the "right" racial quota.

The expense of it is ridiculous. The cruelty of it is that it takes a small child and makes him consume an 8 or 10 hour day for a few hours of schooling, and puts him in the position where the friends of his school are not the friends of his neighborhood or vice-versa. He (or she), aged six or ten, has life disrupted over a social policy of his elders.

And that, I think, gets us to what is really sad about the way we, the elders, have gone about the long overdue and necessary task of ending the segregation and isolation of the blacks among us.

It was a happenstance of history that the first major decision of the Supreme Court striking down the old laws and customs of segregation came in an elementary school case. The other court decisions and the various civil rights laws came afterward. But that happenstance focused the issue, first and foremost, on the school system.

And nowhere have we since applied the pressure as implacably as on the elementary school system. In the schools the courts have said that there is a legally correct "balance" and that if necessary children must be moved around to enforce it.

Where else have we said the same thing? Segregation has been struck down, and properly so, at the college level also. But no court has ordered any public college to truck a certain portion of its white students to a black college, or the other way around, to enforce the quota concept.

The courts and the statutes have attacked *de facto* segregation in neighborhood housing by striking down racial covenants and limiting the rights of sellers and renters. But nowhere is there a court decision or a law compelling people to move from one neighborhood to another, by governmental flat, to achieve some preconceived idea of what constitutes a correct neighborhood balance of the races.

The reason why this has not been done is quite plain. The people, white and black, would consider it outrageous; it could not be done by anything short of a Soviet type dictatorship. And the people would be quite right. The law of a free people ought to prohibit segregation of any of its citizens in any form. A law to *compel* people to move from one place to another would make our society no longer one of a free people.

But what we, the elders, have refused to decree for ourselves and our own lives we have, by some tortured logic, decreed for our children. However you may dismiss the inconvenience or the cost of this wholesale busing, we have asked our children to suffer what we will not. And the wrong of that cannot easily be dismissed.

Mr. ERVIN. I also call attention to an editorial entitled "Dubious Integration Plan," published in the New York Times of Friday, February 11, 1972. This editorial relates to recommendations by the Fleischmann Commission concerning the racial integration of the State's public schools in the State of New York. It says:

The Fleischmann Commission has properly given high priority to the racial integration of the state's public schools, and it has clearly described the disturbing trend of increasing segregation as the school population of the major cities turns predominantly black and Puerto Rican.

It is unfortunate, however, that the commission has proposed actions likely to create a maximum of conflict and in any case are quite unrealistic.

The key to the proposed approach is to create in every school a strict ethnic balance that approximates the racial pattern of total pupil population. In New York City, where the white enrollment now constitutes less than 40 per cent, this would mean that a white minority of roughly that proportion would have to be maintained in every school. Such a redistribution could be accomplished only by either transporting large numbers of white children into the presently predominantly black schools or by phasing out all schools in such areas. Both approaches would run into massive opposition on the part of black as well as white parents.

Mr. President, it is time for Congress to step into this picture and put an end to this busing of children to and fro, denying children admission to the neighborhood schools, and denying the people of our land freedom of choice, merely to mix children racially in the public schools.

The public schools were created to educate and enlighten the minds of children, not to integrate their bodies. The people of the United States have no governmental power which has the capacity to abolish this unspeakable bureaucratic and judicial tyranny except the Congress of the United States. These amendments which I have introduced today for myself and many other Senators are carefully drawn, and are drawn in the light of all the interpretations made by the Supreme Court with respect to the power of Congress to define or limit the jurisdiction of the Federal courts.

The PRESIDING OFFICER. The Senator's additional 3 minutes have expired.

Is there further morning business?

AUTHORITY FOR THE SECRETARY OF THE SENATE TO MAKE TECHNICAL CORRECTIONS IN S. 2515 AND IN H.R. 1746, THE EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT ACT OF 1971

Mr. WILLIAMS. Mr. President, during the consideration of amendment No. 813 to S. 2515, I offered an amendment to the amendment intended as a substitute. The Senate agreed to my amendment and then agreed to amendment No. 813 as amended. Due to an inadvertence, two lines were permitted to be deleted from the bill in such a way as to leave an inconsistency in the language of the bill as well as to cloud the intention of the Senate.

I have talked with the Senator from North Carolina (Mr. ERVIN), and cleared this matter with him. He was the sponsor of amendment No. 813. Accordingly, I ask unanimous consent that the Secretary of the Senate, in the engrossment of S. 2515, and in the enrollment of the Senate amendment to H.R. 1746, be authorized to insert between the word "that" on page 32 line 24 and the word "persons" on page 33 line 2 the following language which was inadvertently omitted:

During the first year after the date of enactment of the Equal Employment Opportunities Enforcement Act of 1972.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ADDRESS BY DAVID PACKARD BEFORE THE UNION LEAGUE CLUB OF CHICAGO

Mr. ALLOTT. Mr. President, last night, in Chicago, Mr. David Packard, the former Deputy Secretary of Defense, delivered an address to the Union League Club which I think demonstrates very amply the great mental horizons of this man—a man whom I have admired since he was in high school. The title of the speech is "Strong Defense—Guardian of Peace," and in it he analyzes not only the position of the United States in the area of defense but also analyzes, to some degree, the political and diplomatic situations of the world.

In order that Senators may have the benefit of this speech, which I believe is far reaching and contains many great elements which should be considered seriously by Congress, I ask unanimous consent that it be printed in the RECORD.

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

STRONG DEFENSE—GUARDIAN OF PEACE

(Address by David Packard before the Union League Club of Chicago, February 17, 1972)

I am delighted to be here tonight at the Union Club. Over the years I have visited Chicago many times. It has always been one of my favorite cities. And I can tell you, after spending three years in the cross-fire of the eastern press and television establishment in Washington—Chicago and the midwest look even better than ever.

I was very fortunate to have had the opportunity to serve during the first three years of President Nixon's administration. I say that for many reasons, but foremost because these have been three years of bold and imaginative leadership by our President.

If anyone doubts that bold and imaginative leadership was needed, just recall for yourselves the state of this nation in 1968.

There was rioting and burning on the streets. Our great universities were in shambles. We had over half a million service men and women in Vietnam and there was no plan to bring them home. In the second quarter of 1968 an average of 360 American

servicemen were killed in Vietnam—and hundreds more wounded—every week. Domestically, inflation was destroying all previous economic progress. In short, America was in deep trouble at home and abroad.

If anyone doubts the effectiveness of President Nixon's bold and imaginative leadership during these three years, compare those dark days of 1968 with the spring of 1972.

Peaceful and legal protest has replaced rioting and burning on the streets. Our great universities are back in the business of education. Our forces in Vietnam have been reduced by 418,000 without closing the door on the rightful aspirations of the peoples of Indochina. By the fourth quarter of 1971 the number of Americans killed fighting in Vietnam had been reduced to six per week. This is still too many, of course, but thank God it is sixty times fewer than three years ago.

Bold steps have been taken to bring inflation under control. American leadership abroad and American self-confidence at home are rapidly rising.

But there is something even more important about these three years. When the history of the 20th Century is recorded, 1968 will be recognized as the end of one era and the beginning of a new one. The end of the old era came when American military and economic commitments finally overextended our nation's resources to the breaking point.

By 1968 most people in Washington and throughout the country recognized we were in serious trouble. In the Senate the liberals were making the most critical noises although their past policies were the very ones which had caused the disastrous situation. Even Senator Fulbright, dean of the Senate in foreign affairs and chairman of the Foreign Affairs Committee, had no particular plan except to withdraw from the world. He wanted troops withdrawn from everywhere and all aid stopped. Others wanted substantial cuts in defense. Many advocated immediate withdrawal from Vietnam even though at that time it would have been unconditional surrender by the United States. There was no plan, no usable policy suggested by the Senate majority. They were simply wailing and flailing.

Fortunately, President Nixon had the courage to seek a new course, and the vision to adopt one that was positive and imaginative. It is President Nixon's courage and vision that has made his leadership possible. It is because he charted a bold and positive course for America that his leadership has been effective.

Much study and analysis has gone into the development of policies to chart this new and positive course for both domestic and foreign affairs into the decades of the '70's and beyond.

Because of the recent notoriety about Dr. Henry Kissinger I want to say a word about his role in this planning process. He made a great contribution during this entire period. We in Defense worked very closely and effectively with him. This provided me with the opportunity to become very well acquainted with Dr. Kissinger. He was always very cooperative and helpful to me personally—and I hold him in great respect and consider him to be a good friend.

The extensive planning over these three years to develop an exciting new course for our country has not been a one-man show. There have been many people who have played important roles. Issues were carefully studied and thoroughly discussed before recommendations were made to the National Security Council and to the President.

Dr. Kissinger was the chairman of the groups that directed and reviewed the numerous studies and forwarded the recomcil and the President. Every department including State had ample opportunity to contribute. No one was reticent about expressing his personal opinion. If any one of us disagreed with the proposed recommendation, the opportunity was always there to present our views to the President.

I use this point because there has been considerable criticism of the decision-making process of this administration. Much of this criticism has been unjust, unreasoned, and in many cases just plain vicious.

Let me give you one example of such criticism. A few days after the Cambodia invasion some Harvard professors came in to see me. They were hopping mad. They said it was irresponsible for the President to make such a decision without thorough consultation with his advisors.

I pointed out that the Indochina problem had been discussed for months, that we all had been studying every aspect of the Vietnam problem including what might be done about Cambodia. I told these professors the President had fully consulted with his advisors before he made the decisions to send American troops to Cambodia. The response of the professors was, "In that case it is even worse".

This extensive planning for President Nixon's new course toward a generation of peace was of great importance to our planning and budgeting work in the Defense Department. We had an important part in helping to develop these policies and they, in turn, provided the foundation of our planning of future military forces.

The new policies were first delineated in Guam in 1969 by the President and have come to be known as the Nixon Doctrine. The President in his address to the Nation on January 20 of this year restated this new course for our foreign policy in the following terms:

We will maintain a nuclear deterrent adequate to meet any threat to the security of the United States or of our allies.

We will help other nations develop the capability of defending themselves.

We will faithfully honor all of our treaty commitments.

We will act to defend our interests whenever and wherever they are threatened any place in the world.

But where our interests or our treaty commitments are not involved our role will be limited.

We will not intervene militarily.

But we will use our influence to prevent war.

If war comes we will use our influence to try to stop it.

Once war is over we will do our share in helping to bind up the wounds of those who have participated in it.

This is a decisive change from the American foreign policy which prevailed from 1945 to 1968. During that period we were undisputed in military and economic strength everywhere in the world, and we thought we could act accordingly. President John F. Kennedy set the stage to carry the same foreign policy into the decade of the 1960s. In his inaugural address in 1961 he said:

"We shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe to assure the survival and the success of liberty."

Neither President Kennedy nor other leaders of the Democratic Party foresaw that this policy would commit us to Vietnam and bring America to the brink of disaster before the end of the decade.

As the great poet Robert Frost has said—there are only two things which are certain in this world: there will be conflict and there will be change. This is what President Nixon has recognized in forging his new American policy to meet the challenges of the final decades of this century.

It is a policy designed to deter major conflict, limit minor conflict, and accommodate to change. It is based on three pillars—negotiation, partnership, and strength. Important steps have already been taken building on these pillars.

We have already made considerable progress in negotiating a better understanding with the Soviet Union on a number of issues which will have a major impact on the future peace and security of the world. A treaty prohibiting nuclear weapons on the ocean seabeds has been concluded. A new treaty on Berlin, and a treaty on germ warfare, are two other important steps. Negotiations are underway with the Soviet Union directed at strategic nuclear arms limitations. These talks, which are identified as SALT, have been serious and constructive. At least limited agreement is likely to be achieved in the near future.

As a result of the President's leadership, fighting has stopped in the Middle East, replaced with discussions moving toward serious negotiations. Every conceivable effort has been made to find a way to negotiate an acceptable solution to the Indochina problem.

These have been important first steps from an era of confrontation to an era of negotiation.

Partnership has always been an important element of foreign policy. Nations have joined together to improve their security where they have a common interest. When we say that partnership is one of the three pillars of our new foreign policy, what is meant is that in the future our friends and allies, as our partners, will be expected to bear a larger share of the burden for their own security. They will be expected, as our partners, to take a more responsible role in international monetary policy and international trade as well. Parallel with this, as they carry a larger share of the burden, it is appropriate that they have a larger voice in determining the course of the partnership in areas relating to their national interests.

This new course in American foreign policy, involving as it does a readjustment of responsibilities among the free nations of the world, and a readjustment of American commitments around the world, has a substantial influence on the level and kind of military forces this nation will need in the decades ahead. Reduced commitments, in general, can allow for reduced levels of military forces. In deciding whether there can be an absolute reduction or only a relative reduction, we must not forget that realism is essential in military force planning. Our military strength combined with that of our allies must always be adequate to deter war, both nuclear and conventional, and that deterrence must be realistic and responsive to changing world conditions.

An adequate nuclear deterrent is an absolutely essential requirement of President Nixon's new foreign policy. Without an adequate nuclear deterrent, any significant contribution to world leadership would be impossible. Negotiations would fail and our partners would desert us. If we survived at all as a nation without an adequate nuclear deterrent, it would not be as a great nation.

Today we have an adequate nuclear deterrent—even in the face of a vast Soviet buildup of nuclear weapons. Our weapons have superior characteristics, though the Soviet's are larger in terms of total destructive power. One of these superior characteristics is called MIRV. There was considerable opposition to the MIRV program—its use to improve the capability of our Minuteman forces while the Soviets concentrated on increasing total numbers, and its use in the Poseidon program—a program which has improved the capability of our submarine-based forces during a time when the Soviets have been rapidly increasing theirs. If the opponents of MIRV had prevailed three years ago, we would not have an adequate nuclear deterrent today. The Soviet buildup is continuing and we must not stand still until

and unless we achieve mutual agreement on limitations.

We have planned our nuclear forces to be consistent with possible outcomes of the strategic arms limitation talks. We also have taken action to assure that we will have an adequate strategic nuclear deterrent, in case the arms limitation talks fail and the Soviet buildup of nuclear weapons continues.

There are two important actions, within these guidelines, which were taken in preparing the 1973 budget. One was to provide for substantial improvements in the responsiveness and survivability of the command and control of our strategic nuclear forces. This is so urgent, that the President has requested a supplemental appropriation to the fiscal 1972 budget so that this program can be accelerated.

Let me emphasize, in my view, this improvement in the command and control of our strategic forces is absolutely essential if we are to maintain an adequate nuclear deterrent in the future. This new Airborne Command Post program must have the highest priority in the 1972 supplemental request, in the 1973 defense budget, and in future budgets until it is complete and operational.

During these past three years Secretary Laird and I undertook very extensive studies to make sure that our strategic nuclear forces will provide an adequate nuclear deterrent—not only for today, but also into the foreseeable future. These forces include land-based missiles, submarine-launched missiles, and manned bombers. This is the so-called triad. By maintaining these three different types of forces, each with a very substantial capability, we make it impossible for an enemy to avoid unacceptable damage in retaliation to any conceivable attack he can mount. This ability must be assured for the 1970s, the 1980s, and beyond, until and unless some other way is found to eliminate the possibility of nuclear war.

Submarine-launched missile forces are considered by many to be the most important, because they seem potentially the most difficult for an enemy to neutralize. But, as launched forces have potential shortcomings which are being given attention at this time.

There is growing concern among our friends about the desirability of their having foreign nuclear weapons based on their land. It is therefore prudent that we should plan now for submarine-launched strategic forces which can be based in our own territory. However, the relatively short range of our present submarine-launched missiles requires that these submarines be operated at great distances from our borders, and in limited areas of the ocean. With longer range missiles our submarine force could be based at home, and operate over larger areas of the ocean, making it impossible for these forces to be located and destroyed by any means we can envision for the future. Finally, since our present submarine-based forces are under continuous operation they will eventually wear out. We estimate their usefulness will begin to deteriorate toward the end of this decade and they will have to be replaced.

For these very important reasons we have recommended that the development of an undersea long-range missile submarine force (ULMS) be accelerated. Substantial funds to do this are included in the 1973 budget. Additional funding is requested in the 1972 supplemental budget. This ULMS program will asure that we have an adequate nuclear deterrent in the decade of the 1980s and on to the end of this century. It is a major program and the development must be accelerated now to achieve an operational buildup beginning in 1978. This program will require the expenditure of many billions of dollars over an eight to ten year period. By going ahead now we can spread these costs, avoid a large buildup in any one year, and keep the defense budget at a reasonable level as a percentage of our gross national product.

Under this new policy our commitments are limited in a realistic way. We must, however, maintain strong conventional forces to support commitments we believe are important.

The FY 1973 budget provides for a strong Navy to counter the rapid Soviet naval buildup, and a strong Air Force as well. These forces have smaller numbers of ships and planes than they had in previous years, but they are better ships and better planes, and therefore the forces are more capable. The budget provides for fewer men and women in uniform than in previous years, particularly in the Army. The Army, too, has better weapons.

The 1973 budget has a substantial increase in research and development as did the 1972 budget. As Secretary Laird and I have said many times during these past three years—the realities of the situation indicate that we can have adequate forces for the future with lower levels of military manpower. However, America cannot afford to have both lower force levels and inferior weapons. Military research and development must receive increasing support as we reduce our force levels.

Some feel we have cut back too far in our military budget and military forces during these past three years. We have, in fact, made major reductions—while the Soviets, at the same time, have been increasing their military forces. I am confident, however, that the forces planned are adequate, and will remain adequate if they are not reduced further.

Some feel we have not cut back the Defense Budget far enough. They say it is actually as high as it was three years ago—that there is no peace dividend from Vietnam. In real dollars, adjusted for inflation, there has been a substantial reduction—over twenty-five billion dollars. The more important criterion is the effect of the Defense Budget on our economy and our federal resources. In 1968 Defense took 9.5% of this nation's GNP. The 1973 budget will take only 6.5%—the lowest drain on the economy in twenty years. This is a reduction of three full percentage points in relation to the GNP. The GNP should grow to 1,200 billion next year at the end of fiscal 1973. In these terms the reductions that have been made will be a drain on our resources of 36 billion dollars less in 1973 than in 1968. This is the real measure of the substantial reduction that has been made.

Secretary Laird and I have recognized that a strong nation requires both a strong defense and a strong economy. We have considered both in preparing the 1973 Defense Budget and in planning the military forces this budget will support.

This new course President Nixon has chartered for us is designed to bring to America and the world a generation of peace. To achieve this goal will require strong leadership along the course. There will be difficult negotiations to resolve areas of conflict without confrontation that could lead to war. There will be difficult negotiations ahead with our friends and allies to get them to accept a fair share of the burden of partnership. Above all, success toward our goal of a generation of peace requires that we maintain strong military forces—strong to back up the sincerity of negotiations with our enemies; strong to insure the confidence and support of our friends.

America must lead the nations of this world in the attainment of this exciting goal in the decade of the 1970s. America can take this lead only so long as she remains strong.

In the words of our President—"Strong military defenses are not the enemy of peace. They are the guardian of peace."

QUORUM CALL

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. BYRD of West Virginia) laid before the Senate the following letters, which were referred as indicated:

PROPOSED AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN MARITIME PROGRAMS

A letter from the Acting Secretary of Commerce, transmitting a draft of proposed legislation to authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce (with an accompanying paper); to the Committee on Commerce.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Better Inspection and Improved Methods of Administration Needed for Foreign Meat Imports," Consumer and Marketing Service, Department of Agriculture, dated February 18, 1972 (with an accompanying report); to the Committee on Government Operations.

REPORT OF NATIONAL ACADEMY OF SCIENCES

A letter from the President, National Academy of Sciences, transmitting, pursuant to law, a report of that Academy, for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on Labor and Public Welfare, and ordered to be printed as a Senate Document.

REPORT OF SECRETARY OF THE SENATE

A letter from the Secretary of the Senate, transmitting, pursuant to law, a statement of the receipts and expenditures of the Senate, for the 6-month period ended December 31, 1971 (with an accompanying report); ordered to lie on the table and to be printed.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. BYRD of West Virginia):

A resolution of the Senate of the State of Rhode Island; to the Committee on Finance:

"RESOLUTION MEMORIALIZING CONGRESS TO SET MINIMUM STANDARDS FOR PRIVATE PENSION PLANS

"Whereas, The Senate Labor Committee of the United States Congress recently revealed that only a fraction of the thirty million United States workers covered by private pension plans will ever receive any payment when they leave work; and

"Whereas, This committee's investigation revealed that in the fifty-one percent of the 5.2 million involved who retired or left their jobs early received nothing; and only three percent of this group retired with full pensions; and

"Whereas, This investigation also revealed that many pension plans invest their funds in the stock of the parent company, thus if the company should go bankrupt, claims for unpaid pension fund contributions are not entitled to priority in bankruptcy proceedings and these obligations are only partially paid if at all; and

"Whereas, Funding alone may not protect employees in the event of plant or company terminations; and

"Whereas, It is evident that only a relative handful of the estimated tens of millions of American workers under priavte pension plans will receive anything from the plans

on which they now stake their future; now, therefore, be it

"Resolved, That Congress be respectfully requested to support legislation which would guarantee, through Federal reinsurance, that benefits promised under pension plans will be paid by the Federal Government if the employer fails for any reason to meet his obligation; would set minimum standards for funding, vesting after ten years of service and the portability of pensions; would amend the bankruptcy laws to provide for special priority for pension obligations; would recognize that those responsible for the management of pension funds have assumed a solemn obligation to their covered employees and would impose severe criminal penalties for failure of such officials to exercise their fiduciary responsibility faithfully; and be it further

"Resolved, That the secretary of state be and he hereby is respectfully requested to transmit duly certified copies of this resolution to the President of the Senate of the United States, the Speaker of the House of Representatives, and to the Rhode Island delegation in Congress."

Resolutions of the Senate of the Commonwealth of Massachusetts; to the Committee on Foreign Relations:

"RESOLUTIONS URGING A SETTLEMENT OF THE CIVIL STRIFE IN NORTHERN IRELAND

"Whereas, The civil strife in Northern Ireland during recent months has become the social cynosure of the European community and the Western Hemisphere; and

"Whereas, The most recent deaths of thirteen citizens of Northern Ireland has highlighted the tragic dimensions of this internal unrest; and

"Whereas, A world saddened but wisened by a savage and brutal Second World War can no longer tolerate the oppression of a people because of their religious, ethnic or racial identity; therefore be it

"Resolved, That the Massachusetts Senate officially expresses to the government of Great Britain the sense of the Senate that the time has come for Great Britain to end the needless oppression and suffering extant in Northern Ireland by relinquishing her claims and ceasing her administration of Northern Ireland; that the time has come to move speedily and with all due regard for and protection of the civil rights of all groups and persons involved to satisfy Irish irredentism and effect the unification of the Irish people; and that the time has come to simultaneously right the wrongs of the past and help ensure a tranquil, prosperous era of cooperation and alliance for Great Britain and Ireland; and be it further

"Resolved, That a copy of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States, to the presiding officer of each branch of Congress, to the members thereof from the Commonwealth and to the Secretary General of the United Nations.

"Senate, adopted, February 8, 1972.

"NORMAN L. PIDGEON,
"Senate Clerk."

A resolution adopted by the City Council of White Salmon, Wash., praying for the enactment of legislation relating to revenue sharing; to the Committee on Finance.

A resolution adopted by the City Council of Carson, Calif., praying for the enactment of H.R. 11950, the Intergovernmental Fiscal Coordination Act of 1971; to the Committee on Finance.

A resolution adopted by the City Council of Hoquiam, Wash., praying for the enactment of legislation relating to revenue sharing; to the Committee on Finance.

A resolution adopted by the City Council of Yonkers, N.Y., praying for an end to the violence in Northern Ireland; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

H.R. 1824. An act for the relief of Clinton M. Hoose (Rept. No. 92-635);

H.R. 2828. An act for the relief of Mrs. Rose Scanio (Rept. No. 92-636);

H.R. 2846. An act for the relief of Roy E. Carroll (Rept. No. 92-637);

H.R. 4497. An act for the relief of Lloyd B. Earle (Rept. No. 92-638);

H.R. 4779. An act for the relief of Nina Daniel (Rept. No. 92-639);

H.R. 6998. An act for the relief of Salman M. Hilmy (Rept. No. 92-640); and

H.R. 7871. An act for the relief of Robert J. Beas. (Rept. No. 92-641).

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. SAXBE:

S. 3217. A bill to provide loans to enable certain health care facilities to meet requirements of the Life Safety Code. Referred to the Committee on Finance.

By Mr. McGOVERN:

S. 3218. A bill to declare that certain federally owned lands are held by the United States in trust for the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Indian Reservation in North and South Dakota;

S. 3219. A bill to authorize the Sisseton and Wahpeton Sioux Tribe of the Lake Traverse Reservation to consolidate its land holdings in North Dakota and South Dakota, and for other purposes; and

S. 3220. A bill to amend the Wild and Scenic Rivers Act. Referred to the Committee on Interior and Insular Affairs.

S. 3221. A bill to establish an Emergency Medical Services Administration within the Department of Health, Education, and Welfare to assist communities in providing professional emergency medical care. Referred to the Committee on Labor and Public Welfare.

By Mr. BIBLE (for himself and Mr. METCALF):

S. 3222. A bill to amend the Alaska Native Claims Settlement Act. Referred to the Committee on Interior and Insular Affairs.

By Mr. GRAVEL:

S. 3223. A bill to halt further operation and construction of civilian nuclear powerplants until the probabilities of major accidents and nuclear pollution are reduced by tested methods, until the justification for creating a permanent radioactive legacy is more widely debated, and until alternative energy sources are considered. Referred to the Joint Committee on Atomic Energy.

By Mr. SPARKMAN (for himself and Mr. ALLEN):

S. 3224. A bill to designate the Sipsey Wilderness and establish the Sipsey National Recreation Area, Bankhead National Forest, in the State of Alabama; and

S. 3225. A bill to establish Southeastern Wild Areas in U.S. national forests with the Sipsey Wild Area in the Bankhead National Forest as a prototype. Referred to the Committee on Agriculture and Forestry.

By Mr. DOMINICK (for himself and Mr. ALLOTT):

S. 3226. A bill to modify the project for flood control below Chatfield Dam on the South Platte River, Colo., authorized by the Flood Control Act of 1950. Referred to the Committee on Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SAXBE:

S. 3217. A bill to provide loans to enable certain health care facilities to meet requirements of the Life Safety Code. Referred to the Committee on Finance.

Mr. SAXBE. Mr. President, in the cold early morning hours of January 26, 1972, a fire swept through a nursing home in Cincinnati, Ohio, killing 10 and reaping heavy damage. This kind of tragedy has happened before in other places.

Mr. President, the Federal Government has jurisdiction over the fire and safety regulations of extended care facilities and skilled nursing homes certified under titles 18 and 19—medicare and medicaid—of the Social Security Act. Through a bill passed during the first session of this Congress, moreover, intermediate care facilities—such as the one that burned in Cincinnati—were placed under the same jurisdiction.

In many cases, nursing home facilities—for various reasons—have been exempt from some of the safety standards, and many homes lack adequate fire protection equipment. Today, I am introducing legislation designed to aid facilities in meeting safety standards by providing Government-backed low-interest loans to improve their fire protection equipment. Briefly, the loans would be issued by the Secretary of Health, Education, and Welfare to qualifying facilities, and they would be repayable over a 10-year period. Mr. President, I ask unanimous consent that the context of the bill be printed in the RECORD.

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

S. 3217

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) it is the purpose of this Act to provide assistance in the form of loans to hospitals and extended care facilities, which are providers of service participating in the health insurance program established by title XVIII of the Social Security Act, in meeting requirements of the Life Safety Code of the National Fire Protection Association.

(b) The Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary") is authorized for a period of five years commencing January 1, 1972, to lend to any hospital or extended care facility described in subsection (a) a sum sufficient to enable such hospital or extended care facility to install five protection equipment necessary to meet the requirements of the Life Safety Code of the National Fire Protection Association, but only if a State planning agency described in section 314(a), section 314(b), or section 604(a) of the Public Health Service Act (or such other appropriate planning agency as may be designated by the Secretary) determines that the proposed expenditure should be made to permit the continued participation of such hospital or extended care facility in the program established by title XVIII of the Social Security Act, and that the proposed investment is not inconsistent with, or inappropriate in terms of area needs for the facility concerned.

(c) (1) Loans under this Act shall be made only upon application therefor and shall be made by the Secretary in such amounts as the Secretary determines to be appropriate to carry out the purposes of this Act and

protect the financial interests of the United States.

(2) The rate of interest to be charged for any loan under this Act shal be the average of the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund as determined at the time such loan is made.

(3) Such loans shall be repaid over a period of not to exceed 10 years, in equal periodic installments to be made out less frequently than annually.

(4) Such loans shall become due and payable in full at once if the Secretary determines (A) that the funds in question were not used for the purpose specified in the loan application, or (B) that the facility has ceased to make its services available to a reasonable proportion of persons entitled to benefits under title XVIII of the Social Security Act in the area served by such facility and who require such services.

(d) No hospital or extended care facility shall be eligible for a loan under this Act unless—

(1) it was in operation and participating as a provider of services under title XVIII of the Social Security Act on January 1, 1972,

(2) the building in which the equipment is to be installed was constructed prior to January 1, 1972, and

(3) the Secretary is satisfied that the applicant is unable to secure such loan from other sources or is unable to secure such loan from other sources at a reasonable rate of interest and on reasonable terms and conditions.

(e) There are authorized to be appropriated for the fiscal year ending June 30, 1972, and for each of the next five fiscal years such sums as may be necessary to carry out this Act.

By Mr. McGOVERN:

S. 3220. A bill to amend the Wild and Scenic Rivers Act. Referred to the Committee on Interior and Insular Affairs.

Mr. McGOVERN. Mr. President, I introduce a bill which will protect the beautiful Oklawaha River from desecration by including it within the Wild and Scenic Rivers System. This lovely winding river, twisting its serene way through central Florida, is one of the most scenic rivers in the United States. Tree lined and veiled with Spanish moss, it deserves to be kept in its natural state and my bill would accomplish this. With the halt in construction of the Cross-Florida Barge Canal, which I opposed, the Oklawaha won a reprieve. Let us insure that it remains forever free by including it in the Federal system of wild rivers.

I ask unanimous consent that the text of my bill be printed at this point in the CONGRESSIONAL RECORD.

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

S. 3220

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(a) of the Wild and Scenic Rivers Act is amended by adding at the end thereof the following:

"(9) Oklawaha River, Florida.—The entire river".

By Mr. McGOVERN:

S. 3221. A bill to establish an Emergency Medical Services Administration within the Department of Health, Education, and Welfare to assist communities in providing professional emergency medical care. Referred to the Committee on Labor and Public Welfare.

EMERGENCY MEDICAL SERVICES ACT

Mr. McGOVERN. Mr. President, I introduce for appropriate reference a bill entitled "The Emergency Medical Services Act." The same legislation is being introduced in the House of Representatives by Mr. MOLLOHAN, of West Virginia, and Mr. ROBISON, of New York, and I commend their excellent, pioneering work on this important subject.

With attention focused on other important aspects of health care, few people are aware that simply by using emergency techniques and equipment already developed, we could, at very little cost, save tens of thousands of lives each year. According to a recent Public Health Service estimate, as many as 60,000 lives could be saved annually if we had truly effective ambulance and hospital emergency room systems throughout the country.

That is the objective of this legislation. I urge speedy action.

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

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

S. 3221

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 "Emergency Medical Services Act".

FINDINGS; DECLARATION OF POLICY AND PURPOSE

SEC. 2. (a) The Congress finds that countless lives have been and are being lost through the lack of prompt and professional ambulance care, and that many of these lives could be saved if such care were more readily available.

(b) It is the policy of the Congress and the purpose of this Act to prevent this needless loss of life by upgrading the quality of ambulance care in the United States through the establishment of a Federal entity having the power to set standards for ambulance vehicles, equipment, and personnel training and the authority to provide financial assistance to qualified ambulance services operated by or under the supervision and auspices of local political subdivisions or combinations thereof.

ESTABLISHMENT OF EMERGENCY MEDICAL SERVICES ADMINISTRATION

SEC. 3. There is established within the Department of Health, Education, and Welfare an Emergency Medical Services Administration (hereinafter referred to as the "Administration"). The Administration shall be headed by a Director (hereinafter referred to as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate.

DIRECTOR OF THE ADMINISTRATION; TECHNICAL AND PROFESSIONAL PERSONNEL

SEC. 4. (a) The Director, under the general direction and supervision of the Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary"), shall carry out the functions and responsibilities vested in or transferred to him or the Administration by or under this Act, and shall perform such related duties as may be prescribed by the Secretary to carry out the purpose of this Act.

(b) The Director shall serve at the pleasure of the President and shall receive basic pay at the rate prescribed for level 18 of the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code.

(c) With the approval of the Secretary, the Director shall appoint such technical and professional personnel as he deems necessary, in addition to the regular personnel of the Department under his jurisdiction and control, to carry out the functions of the Administration, and shall fix the pay of the personnel so appointed, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

ESTABLISHMENT OF STANDARDS FOR OPERATION OF AMBULANCE AND RELATED SERVICES

SEC. 5. The Director shall establish, keep current, and from time to time publish standards to govern the operation of ambulance and other emergency medical services. Such standards, which shall be designed to insure that such services are professionally provided and effectively available on the widest possible basis, shall include (without being limited to) standards and minimum requirements for—

(1) the licensing of ambulance services based (in the case of any entity providing such services) upon periodic inspection of its vehicles and equipment, and periodic review of the training level of its personnel and the adequacy of its dispatching and communications system;

(2) the licensing of ambulance drivers, and of ambulance attendants (taking into account the extent to which they meet the standards established by the Director with respect to level of medical training);

(3) the type and amount of equipment to be carried aboard ambulance vehicles;

(4) adequate liability insurance to cover ambulance operations;

(5) the performance of advisory and monitoring functions by physicians in connection with ambulance operations;

(6) the filing of reports on all calls to which response is made in the provision of ambulance services; and

(7) the revocation of licenses, or the imposition of other penalties, for violation of any of the standards established under this section.

FINANCIAL ASSISTANCE FOR OPERATION OF LOCAL AMBULANCE SERVICE

SEC. 6. (a) In order to make funds available to local communities and regional combinations thereof to assist them in the development and operation of ambulance services meeting the standards prescribed under section 5, the Director is authorized to allot funds to qualified States for distribution among their political subdivisions as provided in this section.

(b)(1) The Director shall allocate and pay to each State which qualifies for assistance under this section with respect to any fiscal year, from the funds appropriated pursuant to section 11(a) for such year, an amount (based on the population of the State and other conditions, such as population density and the availability of physicians and hospital facilities, demonstrating or bearing upon the adequacy of ambulance services in the State) which reflects the needs of such State and its political subdivisions for improved ambulance services relative to the corresponding needs in other qualified States.

(2) A State is qualified for assistance under this section with respect to any fiscal year if (and only if) it has in effect throughout such year a fully implemented comprehensive ambulance program, submitted by the Governor of the State and approved by the Director, which provides for financial

assistance to political subdivisions of the State or regional combinations thereof for the development and operation of ambulance services, and for the licensing of such services, based on vehicle design standards, personnel training standards, equipment standards, and other standards designed and established to improve the quality of ambulance care.

(c) Subject to subsection (d), funds made available to a qualified State with respect to any fiscal year under subsection (b) shall be disbursed by the appropriate agency of such State, in accordance with the State's comprehensive ambulance program and on such additional terms and conditions (consistent with such program) as such agency deems appropriate, to political subdivisions of the State or regional combinations thereof for the development and operation of improved ambulance services by or under the supervision and auspices of such subdivisions or combinations.

(d) (1) No funds shall be disbursed by a State to any political subdivision or regional combination of subdivisions under subsection (c) unless and until the Director has specifically approved such disbursement as suitably contributing to the achievement of the purpose of this Act on the basis of (A) reports submitted by such subdivision or combination along with its application for funds, and (B) any onsite inspections, review and other information and data which the Director may deem necessary.

(2) The amount of the funds disbursed by a State to any political subdivision or regional combination of subdivisions under subsection (a) with respect to any fiscal year for the development and operation of ambulance services shall not exceed one-third of the costs incurred or to be incurred by such subdivision or combination during such year for the development and operation of such services.

(c) Under regulations prescribed by the Director, any funds which have been disbursed by a State to a political subdivision or combination of subdivisions with respect to any fiscal year for the development and operation of ambulance services, and which remain unexpended and unobligated, may be withdrawn from such subdivision or combination (and redistributed to other political subdivisions or regional combinations of subdivisions in that State, or to other qualified States) if the Director deems the withdrawal of such funds warranted on the basis of subsequent inspections made or information received.

FINANCIAL ASSISTANCE FOR INITIAL PURCHASE OF AMBULANCE EQUIPMENT

SEC. 7. In addition to providing financial assistance for the development and operation of improved ambulance services under section 6, the Director is authorized to assist in the establishment of new ambulance services in any political subdivision or regional combination of political subdivisions in a qualified State by making grants to such subdivision or combination of subdivisions for the initial purchase of ambulance vehicles, equipment, and communication systems to be used in the provision of ambulance services by or under the supervision and auspices of such subdivision or combination. A grant under this section shall be in an amount not exceeding 50 per centum of the cost of purchasing the ambulance vehicles, equipment, and communication systems involved, and shall be made only to a political subdivision or combination of political subdivisions which demonstrates to the satisfaction of the Director that, with the acquisition of such vehicles, equipment, and systems, it will rapidly be able to provide ambulance services fully complying with the standards established by the Director under section 5.

TRANSFER OF CERTAIN HIGHWAY SAFETY FUNCTIONS TO DIRECTOR

SEC. 8. (a) All functions, powers, and duties of the Secretary of Transportation and the National Highway Safety Bureau relating to emergency medical services (standard numbered 11) which are being exercised under, in connection with, or as a part of the uniform standards for State highway safety programs are transferred to and vested in the Secretary of Health, Education, and Welfare, to be exercised and carried out by him through the Director and the facilities and other personnel of the Administration.

(b) So much of the positions, personnel, assets, liabilities, contracts, property, records, and unexpended balances of authorizations, allocations, and other funds of the Secretary of Transportation and the National Highway Safety Bureau as were employed, held, used, or available for use exclusively or primarily in connection with the functions, powers, and duties transferred by subsection (a) shall be transferred to the Secretary of Health, Education, and Welfare along with such functions, powers, and duties.

(c) The transfers under subsections (a) and (b) shall be made in accordance with such regulations as the Director of the Office of Management and Budget may prescribe to carry out this section.

(d) With respect to any function, power, or duty transferred by subsection (a) and exercised after the date of the enactment of this Act, any reference in any law, document, or record to the Secretary of Transportation or the National Highway Safety Bureau shall be deemed to be a reference to the Director of the Emergency Medical Services Administration.

APPLICATION OF STANDARDS TO FEDERAL PROGRAMS

SEC. 9. (a) The standards established by the Director under section 5 shall apply to and govern the operation of all ambulance and other emergency medical services which are provided or assisted in any way under Federal law or under programs established, carried on, or supported under Federal law.

(b) No loan, grant, or other assistance in any form shall be provided under any Federal law, directly or indirectly, to any public or private agency, organization, or other entity engaged in furnishing ambulance services, or to any State or local governmental agency exercising jurisdiction, control, or regulatory authority over any such entity, unless such services meet the applicable standards established by the Director under section 5.

(c) The Director shall consult with and provide technical and other advice and services to the heads of the various Federal departments and agencies having jurisdiction over programs or activities involving the provision of ambulance or other emergency medical services or the provision of assistance in any form, directly or indirectly, to entities furnishing such services, in order to insure that the requirements of this section will be met and that all such programs and activities of the Federal Government will be effectively coordinated with a view to the widest possible achievement of the purpose of this Act.

GENERAL PROVISIONS

SEC. 10. (a) In administering the provisions of this Act, the Director is authorized to utilize the services and facilities of any other agencies of the United States and of any non-Federal public or nonprofit private agencies or institutions, in accordance with agreements entered into between the Director and the heads of such agencies or institutions, on a reimbursable basis or otherwise.

(b) The Director is authorized to conduct or contract with others to conduct studies and research projects on the problems and conditions of emergency medical care and on methods of upgrading emergency medical services. Any such studies or projects shall particularly be directed toward the utilization of technological advances in the improvement of ambulance care.

(c) The Director, with the approval of the Secretary, shall prescribe such regulations as may be necessary or appropriate to carry out this Act.

(d) The Director shall annually submit to the President and the Congress a full and complete report on activities under this Act, including such recommendations as he may consider necessary or desirable for legislative or administrative action to improve and make more effective the program under this Act.

AUTHORIZATION OF APPROPRIATION

SEC. 11. (a) For assistance under sections 6 and 7, there is authorized to be appropriated the sum of $100,000,000 for the fiscal year ending June 30, 1973, the sum of $125,000,000 for the fiscal year ending June 30, 1974, and the sum of $150,000,000 for the fiscal year ending June 30, 1975.

(b) For other expenses incurred by the Director and the Administration in carrying out this Act, there is authorized to be appropriated the sum of $50,000,000 for the fiscal year ending June 30, 1973, the sum of $60,000,000 for the fiscal year ending June 30, 1974, and the sum of $70,000,000 for the fiscal year ending June 30, 1975.

(c) Any amounts appropriated pursuant to this section shall remain available until expended, and any amounts authorized for any fiscal year under this section but not appropriated may be appropriated for any succeeding fiscal year commencing prior to July 1, 1975.

By Mr. BIBLE (for himself and Mr. METCALF):

S. 3222. A bill to amend the Alaska Native Claims Settlement Act. Referred to the Committee on Interior and Insular Affairs.

AMENDMENT TO ALASKA NATIVE CLAIMS SETTLEMENT ACT

Mr. BIBLE. Mr. President, on behalf of myself and the junior Senator from Montana (Mr. METCALF), I introduce for appropriate reference a bill to amend the Alaska Native Claims Settlement Act of 1971. This amendment is designed to deal with a number of problems which have come to attention since this measure became law on December 18, 1971.

The amendment in major part is patterned after an amendment introduced in the House of Representatives by Congressman ASPINALL. The purpose of that amendment was to correct technical errors and internal inconsistencies. The amendment I introduce today would also conform the act to achieve what the conferees intended with respect to Naval Petroleum Reserve No. 4. It was the intent of the conferees that no subsurface estate be granted by the act to any lands within the petroleum reserve. I have, however, been informed that the Solicitor of the Department of the Interior feels that the act could be construed to permit one of the regional corporations to gain title to subsurface estate in some of the lands granted out of the petroleum reserve. This is contrary to the conferees' clear intent and should, in my view, be corrected by amendment.

Finally, the amendment deals with a

question which arose after the adoption of the act. The question is this: Does the State of Alaska have the right under the act to make land selections during the 90-day statutory land withdrawal period provided for in the act? The question is raised because the State of Alaska has attempted to select 74 million acres of land under the Statehood Act. This selection is in apparent conflict with the intent of the act and with Federal plans for additions to the Park and Wildlife Refuge System and may conflict with Native selection rights.

By Mr. GRAVEL:

S. 3223. A bill to halt further operation and construction of civilian nuclear powerplants until the probabilities of major accidents and nuclear pollution are reduced by tested methods, until the justification for creating a permanent radioactive legacy is more widely debated, and until alternative energy sources are considered. Referred to the Joint Committee on Atomic Energy.

SUSPENSION OF NUCLEAR POWERPLANT OPERATIONS

Mr. GRAVEL. Mr. President, the bill I introduce today would stop nuclear powerplant construction and operation, at least on a temporary basis, and therefore it would probably be called the nuclear power moratorium bill.

Mr. President, I shall ask that the full text of this bill be printed at the end of my remarks.

The reason for this bill is the multiplicity of unresolved safety problems regarding nuclear powerplants and their radioactive fuel cycles. Simply stated, the pace of nuclear licensing far exceeds the readiness of the technology.

A SURVEY OF NUCLEAR PROBLEMS

There are problems revealed almost daily in nuclear reactor design, manufacturing, construction, and operation.

In the West, we have found reactors located next to earthquake faults, and underdesigned for earthquakes which have more ground motion than predicted.

In the East, we have had the first case of sabotage—apparent arson by a worker at the Indian Point No. 2 nuclear plant near Peekskill, N.Y.

Vigorous dissent rages among nuclear safety experts on whether or not the most important safety system in a nuclear reactor will work effectively or not. The first large-scale test will not occur until 1975, and by itself cannot fully answer the crucial question. In recognition of the uncertainty, the AEC promulgated "interim" measures in June 1971, the adequacy of which is hotly disputed today even within the AEC's own staff. Some details on this particular controversy were place by me into the RECORD yesterday.

The possibility of building nuclear powerplants deep underground still needs exploration, and we urgently need an independent evaluation of the accident and sabotage hazards at nuclear fuel-reprocessing plants.

There are unresolved problems in the transport of radioactive fission products and plutonium on our highways and railways.

There is the problem of preventing theft of plutonium, which is probably worth more than heroin on the black market. It takes just a few pounds to make a nuclear bomb.

There is the overwhelming problem of human fallibility. For the nuclear power industry to leave us a livable world, it must perform all its radioactive operations and storage with 99.999-percent perfection, or else we face permanent nuclear poisoning of the planet. Performance, not good intention, is what counts. Every time a few million more defective automobiles are recalled, we had better start wondering about the nuclear power industry.

Although we are in the infancy of this technology, our civilian nuclear powerplants are already producing radioactive waste each year equivalent to the fissioning of 10,000 Hiroshima bombs. This radioactive legacy will have to be stored for several thousand years somehow, but no one agrees how.

The need to cope with this problem is felt so desperately that the AEC Chairman is now talking about shooting the waste in rockets into space. That might be fine, except that we will have to wait, forever perhaps, for infallible rockets.

There are presently 23 operating nuclear powerplants in the country, average size 440 electrical megawatts. By the end of 1972, the AEC hopes that 15 more will be ready, average size 700 megawatts. In other words, we are fast approaching the No. 50.

ACCIDENTS "AN ABSOLUTE CERTAINTY"

> Better government notwithstanding, when we talk about fifty [nuclear] reactors, the statistical probability of something going wrong and an accident occurring is an absolute certainty. . . . Mathematically, this is a certainty, and in a short finite period of time. . . . My feeling is that they will be minor accidents.

The statement was made by M. A. Shultz, professor of nuclear engineering at Penn State University.

All he has offered us is a hunch that the inevitable accidents will not be of catastrophic proportions. But then again, no one denies that a single nuclear accident could lay radioactive waste to a huge section of the country tomorrow. Everyone acknowledges the possibility, but no one knows the odds.

To argue that nuclear reactors are safe because we have not had a big accident yet is like arguing that your house is fireproof because it has not burned down yet. Yet we hear the argument frequently offered by nuclear promoters.

THE MORAL IMPERATIVES OF NUCLEAR ENERGY

More honest treatment of the hazard can be found in an important article in the December 1971 issue of Nuclear News, which is the journal of the American Nuclear Society. Entitled "The Moral Imperatives of Nuclear Energy," the article is by the Director of the AEC's Oak Ridge National Laboratory, Dr. Alvin Weinberg.

I do not mean to imply that Dr. Weinberg, any more than Professor Shultz, supports this bill. Nevertheless, in this article Dr. Weinberg points out that peaceful nuclear fission is "intrinsically dangerous," that we might not develop it if solar or fusion power were developed instead, and that deficiencies in fission technology, if unremediable, "could mean catastrophe for the human race."

When such an awesome possibility exists, it seem obvious that the burden of proof belongs on the AEC and the nuclear industry to show that nuclear power will not mean catastrophe; the burden of proof does not lie on the public to prove that it will.

The most profound and public debate is required before our economy becomes dependent on nuclear electricity, not afterwards. Therefore a moratorium is needed now, right away.

NO ONE PLANS A DISASTER

There has never been a public hearing specifically on nuclear hazards, at least not by my concept of the word, before any committee of Congress.

The assumption has simply been made at congressional hearings that, since sincere efforts are applied to preventing nuclear catastrophe, such efforts will actually succeed. Thus we are repeatedly offered the rosy prediction that by the year 2000, the population will be receiving only a trivial radiation exposure from nuclear power.

Truly this may be the plan—no one plans a disaster, at any rate. But the rosy predictions, so different from the warnings of Dr. Weinberg and others, are all based on the wild assumption that everything will go as perfectly as planned. That assumption urgently needs congressional examination.

RELATIONSHIP TO S. 1855 AND PRICE-ANDERSON ACT

There is glaring evidence right in the Atomic Energy Act that no one believes nuclear operations will go as planned. I am referring to its section 170, which was added by the Price-Anderson Act of 1957.

Section 170 acknowledges that giant nuclear accidents can happen, and then actually removes the very restraint which normally operates to prevent reckless activities—namely, full liability for public damages.

Section 170 places a limit for public liability at $560,000,000 per nuclear accident, regardless of the real size of the damage, and leaves the taxpayers instead of the AEC licenseholder to pay 83 percent of that. In other words, the victims do the paying.

This strange piece of legislation was written after the AEC had calculated that a single nuclear accident might cause $7 billion in public injury, an estimate which is now too low. Private industry refused to build nuclear powerplants if it had to be financially responsible for potential catastrophes, and so the Price-Anderson Act was written to provide 10 years of protection for the industry.

I am afraid Congress literally did not know what it was doing when it passed that piece of legislation in 1957. There was no rollcall vote in either the House or the Senate, and when the Price-Anderson Act was renewed in 1965, there was a rollcall vote in the House but none in the Senate.

Even today, I think many Members of Congress do not know that law exists. Otherwise, I feel confident there would

be cosponsors for my bill, S. 1855, which would repeal most of it.

As long as a law is necessary to deal with catastrophic nuclear accidents, there is no point denying that such nuclear catastrophes are possible. Until the utilities themselves unite to repeal Price-Anderson and to accept unlimited financial responsibility for nuclear damage there is no reason for any of us to have confidence in their nuclear safety claims, and there is every reason to declare a nuclear moratorium.

SUMMARY OF THE MORATORIUM BILL

The bill I am introducing today is designed "to halt further operation and construction of civilian nuclear powerplants until the probabilities of major accidents and nuclear pollution are reduced by tested methods, until the justification for creating a permanent radioactive legacy is more widely debated, and until alternative energy sources are considered."

The bill has Congress declare that the pace of nuclear powerplant licensing is not consistent with the health and safety requirement of section 3 of the Atomic Energy Act, and has Congress direct the AEC to suspend or revoke all powerplant licenses under section 186 of the Atomic Energy Act, and to arrange promptly for just compensation to licensees and disemployed Government and private workers under section 186 as amended by section 2 of this bill.

Since the bill refers to two provisions already in the Atomic Energy Act, their content should be made clear.

The relevant text of section 3, which is called "Purpose," states that one purpose of the Atomic Energy Act is to provide for "a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public."

The relevant text of section 186, which is called "Revocation," states the following:

> Any license may be revoked for . . . failure to observe any of the terms and provisions of this Act . . . Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under the Administrative Procedure Act. Just compensation shall be paid for the use of the facility.

The second section of the bill I am introducing today would add another subsection to section 186, in order to provide "just and prompt compensation" in cases of license suspension as well as license revocation, and to provide it for affected employees as well as license holders. It also clarifies the right of individual State governments to prevent nuclear power operations within their States.

The compensation provisions of the nuclear moratorium bill offer the same level of protection to the nuclear industry which the industry has allegedly been offering to the public—namely, reasonable assurance that there will not be undue risk to its health and safety.

I believe that the nuclear industry deserves this kind of assurance from the Government. After all, it was the Government which vigorously pushed nuclear power and prematurely licensed nuclear powerplants.

GROWING DEMAND FOR A MORATORIUM

There is no doubt in a growing number of minds that the licensing of nuclear powerplants is premature and inconsistent with public health and safety.

For instance, in California, half a million citizens signed an initiative petition which put a 5-year statewide nuclear moratorium on the June 1972 ballot.

In Oregon, a similar citizen initiative procedure is underway for November.

The Governor of Minnesota, Wendell R. Anderson, has urged the Minnesota Legislature to enact a nuclear moratorium of indefinite duration in that State. Early in 1971, State Senator Nicholas Coleman had introduced such a bill into the Minnesota Legislature.

In Kansas, the Kansas Academy of Science released its report in October 1971, stating that, if the problems of radioactive waste storage appear insurmountable, "a temporary moratorium on promotion of light-water, fission-type, nuclear powerplants must be considered."

In both Pennsylvania and South Carolina, the State legislatures have formed special nuclear study committees.

The distinguished Board of the Committee for Nuclear Responsibility, which includes four Nobel Laureates, has been urging a national nuclear power moratorium for a year already.

The Union of Concerned Scientists in Cambridge, Mass., has been urging a national moratorium since July 1971.

The National Intervenors, representing a coalition of citizen groups opposed to nuclear power in 14 States, announced its position in favor of a moratorium in January 1972.

Nevertheless, I do not pretend that a majority of the American people are presently demanding a nuclear power moratorium. Most people hardly understand what a nuclear powerplant is at all. But among those who do understand, there may well be a majority who are already very worried.

PREVIOUS STATEMENTS ON NUCLEAR HAZARDS

In my opinion, their worries are amply justified. I have previously placed a number of statements and papers on nuclear hazards in the RECORD, including the following:

April 6, 1970: "The Future Use of Atomic Energy."

April 30, 1970: "Radiation: the Ultimate Pollutant."

May 12, 1970: "Atomic Energy Commission."

May 13, 1970: "International Commission on Radiological Protection."

September 22, 1970: "National Air Quality Standards."

March 10, 1971: "Safe Electrical Energy."

March 19, 1971: "Concern Over Nuclear Power Plant Safety."

April 29, 1971: "Breeder Reactors and the Danger of Plutonium."

May 13, 1971: "S. 1855, Repeal of the Price-Anderson Act."

May 26, 1971: "Let's Learn About the Breeder."

June 10, 1971: "Radioactive Contamination From Nuclear Power Plants."

July 8, 1971: "The President's Energy Message."

July 20, 1971: "AEC Authorizations, 1972."

July 31, 1971: "Public Works Appropriations, 1972."

August 4, 1971: "S. 2430, a Bill To Reconcile Contradictory Risk-Estimates Regarding Nuclear Electricity."

October 15, 1971: "The Illusion of Nuclear Safety."

October 15, 1971: "Another Nasty Nuclear Surprise."

October 20, 1971: "Dealing With Nuclear Investors."

November 30, 1971: "What Is New at the AEC?"

December 2, 1971: "Politics of Electric Power."

January 25, 1972: "Radiation and the War on Cancer."

February 8, 1972: "Battling With the AEC."

February 14, 1972: "Amendment No. 879 to S. 3103, AEC Authorizations 1973."

February 22, 1972: "Looking for Nuclear Information."

February 23, 1972: "The Consequences of a Nuclear Moratorium."

Reprints are available from my office. In the weeks ahead, I shall place additional material in support of this moratorium bill into the RECORD. Cosponsorship of the bill would be welcome.

THE FINANCIAL AND ECONOMIC COMMITTEES OF CONGRESS

I believe it is time for the several economic committees of Congress to examine not only the economic implications of the proposed nuclear moratorium, but also the economic consequences of a single severe nuclear accident upon the whole economy, and the economic implications of very heavy private investment in a seriously flawed and unpopular technology which may never work out acceptably.

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

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

S. 3223

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Congress declares that an unacceptable immediate and future threat to the health and safety of the public is created by the operation of nuclear power plants prior to the installation of safety systems of tested effectiveness and prior to demonstration of safe methods for confining radioactive waste in perpetuity, and that this situation is not consistent with the requirement of section 3 d. of the Atomic Energy Act of 1954 that encouragement of widespread civilian energy activities must be consisted with the health and safety of the public.

(b) The Atomic Energy Commission is directed to suspend or revoke all construction and operating permits and licenses for civilian nuclear power plants granted under sec-

tions 103 and 104 of the Atomic Energy Act of 1954 and to arrange promptly for just compensation under the provisions of section 186 of such Act as amended by section 2 of this Act.

SEC. 2. (a) Section 186 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2236), is amended by—

(1) inserting in subsection a. immediately before the period at the end thereof a comma, and the following: "or following a determination that the facility presents or will present an unacceptable threat to the health and safety of the public"; and

(2) adding immediately after subsection c. the following new subsections:

"d. The Commission shall suspend any license issued under sections 103 or 104 following a determination that the licensed facility presents or will present an unacceptable threat to the health and safety of the public.

"e. A determination that a licensed facility presents or will present an unacceptable threat to the health and safety of the public under subsection a. or d. of this section may be made by the Commission, the Atomic Safety and Licensing Boards, by any court of competent jurisdiction in the United States, Congress, the legislature of any State in which such a facility is located, or by statutory enactment through citizen initiative procedures in any State in which such a facility is located and in which such procedures are lawful, any other provisions of this Act notwithstanding. Upon the suspension or revocation of the license by the Commission after such a determination has been made, the Commission may immediately recapture any special nuclear material held by the licensee or may enter upon and close the facility prior to any of the procedures provided under the Administrative Procedure Act. Whenever any license is suspended or revoked by the Commission as a result of a change in public policy rather than as a result of negligence or deception on the part of the licensee, the licensee and all employees of any facility, contractor, or agency affected by such action shall be entitled to just and prompt compensation by the Federal Government for financial loss and hardship incurred as a result of such suspension or revocation."

(b)(1) The caption of such section 186 is amended to read as follows:

"SEC. 186. Revocation and Suspension.—"

(2) The table of contents at the beginning of such Act is amended by striking out:

"Sec. 186. Revocation."

and inserting in lieu thereof:

"Sec. 186. Revocation and Suspension.".

By Mr. SPARKMAN (for himself and Mr. ALLEN):

S. 3224. A bill to designate the Sipsey Wilderness and establish the Sipsey National Recreation Area, Bankhead National Forest, in the State of Alabama; and

S. 3225. A bill to establish Southeastern Wild Areas in U.S. national forests with the Sipsey Wild Area in the Bankhead National Forest as a prototype. Referred to the Committee on Agriculture and Forestry.

Mr. SPARKMAN. Mr. President, on April 21, 1971, for myself and for Senators ALLEN, BENNETT, CHURCH, EASTLAND, HART, HATFIELD, JACKSON, METCALF, TOWER, and YOUNG, I introduced a bill, S. 1608, to designate certain lands within the Bankhead National Forest in Alabama as a wilderness area. The area involved surrounds the headwaters of the Sipsey River, and, under our bill, was to be known as the Sipsey Wilderness. Our bill is pending before the Senate Agriculture Committee.

Subsequent to the introduction of the bill, some feeling arose among those interested in the area that our bill was more broad than necessary in order to protect the Sipsey area. As a result, there have been submitted to me two further drafts of bills, with a request that they be introduced and made available for consideration by the committee and interested Senators. My colleague, Senator ALLEN, has received a similar request and, accordingly, we are introducing today two further bills dealing with the preservation of the Sipsey area for the enjoyment of future generations.

I ask unanimous consent that the two bills be printed in the RECORD following my remarks.

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

S. 3224

A bill to designate the Sipsey Wilderness and establish the Sipsey National Recreation Area, Bankhead National Forest, in the State of Alabama

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That certain lands within the Bankhead National Forest, Alabama, depicted as the "Sipsey Wilderness" on a map entitled "Sipsey Wilderness and National Recreation Area—Proposed", dated January 7, 1972, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture, are hereby designated as the Sipsey Wilderness within and as a part of the Bankhead National Forest, comprising an area of approximately 6,000 acres.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture (hereinafter called the "Secretary") shall file a map and a legal description of the Sipsey Wilderness with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Sipsey Wilderness shall be administered by the Secretary in accordance with the provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131 et. seq.) governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. In order to provide for the public outdoor recreation use and enjoyment of certain forested areas and recreational facilities in the State of Alabama by present and future generations and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters, there is hereby established, subject to valid existing rights, the Sipsey National Recreation Area (hereinafter referred to as the "recreation area"), within and a part of the Bankhead National Forest comprising an area of approximately 3,000 acres.

SEC. 5. The recreation area shall consist of those lands depicted as the "Sipsey National Recreation Area" on the map referred to in Section 1 of this Act. The Secretary shall, as soon as practicable after the date this Act takes effect, publish in the Federal Register a detailed description and map showing the boundaries of the Sipsey National Recreation Area.

SEC. 6. The administration, protection, and development of the recreation area shall be by the Secretary in accordance with the laws, rules, and regulations applicable to national forests, in such manner as in his judgment will best provide for (1) public outdoor recreation benefits, (2) conservation of scenic, scientific, historical, and other values contributing to public enjoyment, and (3) such management, utilization, and disposal of natural resources as in his judgment will promote, or is compatible with, and does not significantly impair the purposes for which the recreation area is established.

SEC. 7. The Secretary may acquire by purchase with donated or appropriated funds, by gift, exchange, bequest, or otherwise, such lands or interests therein within the boundaries of the recreation area as he determines to be needed for the purposes of this Act.

SEC. 8. (a) As soon as practicable after the date of enactment of this Act, the Secretary shall institute an accelerated program of development of facilities for outdoor recreation in the recreation area. Such facilities shall be so devised to take advantage of the topography and geographical location of the lands in relation to the growing recreation needs of the people of the United States.

(b) The Secretary is authorized to cooperate with all Federal and State authorities and agencies having programs which will assist in the development of the recreation area and rendering services which will aid the Secretary in evaluating and effectuating the establishment of adequate summer and winter outdoor recreation facilities.

SEC. 9. The distributive shares of the respective counties of receipts from that part of the Bankhead National Forest from which the recreation area and the wilderness area are created by this Act, as paid under the provisions of the Act of May 23, 1908, as amended (35 Stat. 260; 16 U.S.C. 500), shall not be affected by the enactment of this Act.

SEC. 10. The Secretary shall permit hunting and fishing on lands and waters under his jurisdiction within the Sipsey National Recreation Area in accordance with applicable Federal and State laws. The Secretary may designate zones where, and establish periods when, no hunting shall be permitted for reasons of public safety, administration, or public use and enjoyment. Except in emergencies, regulations prescribing any such restrictions shall be issued after consultation with the Alabama Department of Conservation.

S. 3225

A bill to establish Southeastern Wild Areas in U.S. National Forests, with the Sipsey Wild Area in the Bankhead National Forest as a prototype

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the Sipsey Wild Area Act.

WILD AREAS SYSTEM ESTABLISHED

SEC. 2. (a) There is hereby established a Southeastern Wild Areas Preservation System to be composed of federally owned lands designated by Congress as "wild areas," and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wild lands, and so as to provide for the protection of these areas, the preservation of their wild character, and for the gathering and dissemination of information regarding their use and enjoyment as wild areas; and no Federal lands shall be designated as "wild areas" except as provided for in this Act or by a subsequent Act.

Definition of Wild Area

(b) The term "wild area" applies to undisturbed or restored lands of a wild character which have not been reviewed under

the terms of the National Wilderness Law of 1964 or proposed for inclusion in the Wilderness System by the administering agency. They may be the subject of legislation introduced by congressional delegations in response to the demand of constituents. They may have undergone agency reviews and been excluded from the President's proposal. Or they may be newly defined wild land units that can be established as wild areas by Congress at any time, with or without prior agency reviews. In all cases, the congressional prerogative—to give protection under the National Wilderness Law of 1964 or to remove it—remains in force.

Statement of Policy

(c) The inclusion of an area in the Southeastern Wild Areas Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the Southeastern Wild Areas Preservation System, unless otherwise provided by Act of Congress.

(d) No appropriation shall be available for the payment of expenses or salaries for the administration of the Wild Areas as a separate unit nor shall any appropriations be available for additional personnel, stated as being required solely for the purpose of managing or administering areas solely because they are included within the Southeastern Wild Areas Preservation System.

EXTENT OF SYSTEM

SEC. 3. (a) All areas within Southeastern national forests which are potential wild areas under the definition should be studied for possible inclusion in the Wild Areas System. The Secretary of Agriculture shall—

(1) within two years after the effective date of this Act file a map and legal description of each wild area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives.

(2) The Secretary shall maintain, available to the public, records pertaining to said wild areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wild areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

DESCRIBES AND ESTABLISHES SIPSEY WILD AREAS

SEC. 4. (a) That, Congress hereby finds that the Sipsey Area of the Bankhead National Forest, as described herein, is an area of national forest land representative of Wild Areas in the Southeast.

(b) The Sipsey Wild Area, although in part once subject to the works and activities of man, has been restored or is in the process of restoration to a natural condition; appears predominantly primitive and undisturbed in character and has outstanding opportunities for solitude or a primitive and unconfined type of recreation; has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition, and also contains ecological, geological and other features of scientific, educational, scenic, and historical value.

(c) In order to provide permanent protection and enhancement of the resource values contained in the watersheds of the Sipsey River and its tributaries there is hereby created the Sipsey Wild Area (hereinafter referred to as the "Wild Area") within the Bankhead National Forest, State of Alabama.

ADMINISTRATION, MANAGEMENT, AND PROTECTION

SEC. 5. (a) The agency administering any land designated as wild area shall be responsible for preserving the wild character of the area, and shall so administer such area for such other purposes for which it may have been established as also to preserve its wild character. Except as otherwise provided in this Act, wild areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservational, and historical uses.

(b) The administration, protection, and management of the Sipsey Wild Area shall be by the Secretary of Agriculture (hereinafter called the "Secretary") as a part of the Southeastern Wild Areas Preservation System unless otherwise provided by Act of Congress.

(c) The Secretary shall manage the Sipsey Wild Area in accord with the following provisions:

(1) Primitive, wild conditions shall be preserved, restored, and protected.

(2) No structure or installation shall be erected within the wild area. Developments shall be of a rustic, primitive nature limited to those reasonably necessary for the health, safety and well-being of the visiting public and restricted to locations outside the boundaries of the wild area on land adjacent to it.

(3) Public use shall be consistent with the ability of the wild area to support such use and to retain its natural character.

(4) Except as necessary to meet minimum requirements for the administration of the area for the purposes of this Act, including measures required in emergencies involving the health and safety of persons within the area, there shall be no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft and no other form of mechanical transport.

(5) There shall be no permanent road within the wild area, and no temporary roads, except for purposes defined in (4) above. All existing temporary roads shall be allowed to revert to wild land.

(6) Commercial timber harvesting shall not be permitted. Such measures may be taken as may be necessary in the control of fire, insects and diseases, subject to such conditions as the Secretary deems unavoidable.

(7) Grazing of domestic livestock shall be limited to riding stock where permitted and where established prior to the effective date of this Act.

(8) Commercial services may be performed within the wild area if necessary for activities which are proper for realizing the recreational or the other stated purposes of the wild area.

(9) The Secretary shall provide a management plan for the wild area developed according to the provisions of the wild areas Act and it shall be given development with full public involvement.

MINING CLAIMS

SEC. 6. Subject to existing valid claims, the lands within the Wild Area are hereby withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing or disposition of minerals materials.

ACCESS LAND ACQUISITION, GIFTS, BEQUEST, AND CONTRIBUTIONS

SEC. 7. (a) In any case where State-owned or privately owned land is completely surrounded by national forest land within the areas designated by this Act as Wild Area, such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest.

(b) Within the Wild Area the Secretary may accept title to non-Federal property of substantially equal value and convey to the grantor of such property any federally owned property in the State of Alabama under his jurisdiction.

(c) Within the Wild Area the Secretary may acquire by purchase with donated or appropriated funds, by gift, exchange or otherwise, such lands, water or interests therein as he determines necessary or desirable for the purposes of this Act.

(d) The Secretary may accept gifts or bequests of land adjacent to the Wild Area for inclusion in the Wild Area.

SIZE OF SIPSEY WILD AREA

SEC. 8. The Sipsey Wild Area shall consist of approximately 9,000 acres as shown on a map entitled "Proposed Sipsey Wild Area" dated January 7, 1972 which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture and to which is attached and hereby made a part thereof a description of the exterior boundaries. The Secretary may by publication of a revised map or description in the Federal Register correct clerical or typographical errors in said map or description.

HUNTING, FISHING, AND TRAPPING

SEC. 9. The Secretary shall permit hunting, fishing, and trapping on the land and waters under his jurisdiction within the Wild Area in accordance with applicable Federal and State laws; except that the Secretary may issue regulations designating zones where and establishing periods when no hunting, fishing or trapping shall be permitted for reasons of public safety, administration or public use and enjoyment. Except in emergencies, any regulations pursuant to this section shall be issued only after consultation with the Alabama Department of Conservation.

RIGHTS RETAINED BY THE STATE OF ALABAMA

SEC. 10. The Secretary shall cooperate with the State of Alabama or any political subdivision thereof in the administration of the Wild Area and in the administration and protection of lands within or adjacent to the Wild Area owned or controlled by the State or political subdivisions thereof. Nothing in this Act shall deprive the State of Alabama or any political subdivision thereof of its right to exercise civil and criminal jurisdiction within the Wild Area, or of its right to tax persons, corporation franchises, or other non-Federal property, including mineral or other interests, in or on lands or waters within the Wild Area.

By Mr. DOMINICK (for himself and Mr. ALLOTT):

S. 3226. A bill to modify the project for flood control below Chatfield Dam on the South Platte River, Colo., authorized by the Flood Control Act of 1950. Referred to the Committee on Public Works.

Mr. DOMINICK. Mr. President, on behalf of myself and Senator ALLOTT, I am introducing today a bill to amend the legislation which authorizes a flood control project below Chatfield Dam on the South Platte River in Colorado. This bill would permit use of a portion of the authorized funds for acquisition of lands for a flood plain park. It is identical to a bill introduced by Congressman BROTZMAN last week.

The existing authorization is for 6.4 miles of channelization necessary to prevent downstream flooding during periods of high discharge after Chatfield Dam is completed late next year. Since the project was authorized, the city of Littleton, through which the South Platte flows, has proposed a natural flood plain park as an alternative to channelization for a portion of the 6.4-mile segment. Under the "Littleton Plan," the first 2 miles would be left in its natural state.

Approximately 475 acres along the river comprising the flood plain would be acquired and used as a park. In times of high water, the park would be closed, and since there would be no development, little damage would occur.

Mr. President, the park would preserve much needed open space for residents of Littleton and the Metropolitan Denver area. Littleton's commitment to the park project is evidenced by its approval last fall of a $400,000 bond issue for local matching funds. The major impediment to the park is that the authorization for the channelization project may not be broad enough to permit use of corps' funds for acquisition of the flood plain lands. This bill would remove that impediment.

The "Littleton Plan" is an imaginative concept in flood control, and will demonstrate that concrete is not necessarily the only answer. Many of my constituents are expressing concern about the environmental effects of channelization projects, and I think it would be a shame for a creative alternative like this to be stifled merely because the authorizing legislation was drafted at a time when the need for such an alternative was not foreseen.

Mr. President, I hope the Public Works Committee will consider incorporating this legislation in the omnibus flood control bill which it will take up shortly. Time is of the essence, because the flood plain lands should be acquired before Chatfield Dam is completed next year.

Mr. JORDAN of Idaho. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Colorado in connection with the introduction of S. 3226.

The PRESIDING OFFICER. Without objection it is so ordered.

STATEMENT BY SENATOR ALLOTT

I am pleased to join with Senator Dominick in introducing this legislation to assist the City of Littleton, Colorado in implementing a plan to create a flood plain park below Chatfield Dam and Reservoir on the South Platte River. I believe it is important to take one moment and trace the derivation of this legislation which we are introducing today.

In 1950, Congress authorized a project to provide flood control along the South Platte River south of Denver. This project was to consist of the Chatfield Dam and Reservoir and certain channel improvements along the River north of the Dam. The Chatfield Dam is on schedule and the closing date is now scheduled for sometime in 1973. The remaining downstream channel improvements are the purpose of this legislation.

As presently planned, these "improvements" will consist of widening, deepening, and straightening the channel of the South Platte River. The purpose of this is to assure that high water will remain in the channel.

The residents of Littleton question the necessity of these improvements. In fact, Mr. President, the people of Littleton have specifically and unequivocally stated that these improvements are not required. Instead, the "Littleton Plan" has been devised to create downstream flood control along with secondary benefits of recreation park land and urban open space.

The Plan is very simple. The City will acquire 500 acres of land below Chatfield for natural open space. This area, along both sides of the River, would remain basically undeveloped. This two-mile stretch of river flood plain will serve as a buffer zone. When the River is in a flood stage, it would cover this area but will not damage buildings or private property. At the end of the two mile stretch, dikes will direct the river back into its channel, a simple plan incorporating both safety and urban open space.

The legislation which we introduce today will assist in implementing the Littleton Plan. The legislation allows the Corps of Engineers to utilize the already authorized channelizing funds for assisting in the acquisition of the required lands.

I use the word, "assisting" purposely, Mr. President. The voters in the City of Littleton have already approved by a two to one majority a $400,000 bond issue for use in the acquisition of land. This was an important vote. Not only did approval obligate the City to the limit of its legal indebtedness, it also demonstrated that the residents of Littleton are prepared to "put their money where their mouths are!" I think the Congress can do no less. I urge speedy approval of this bill.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1485

At the request of Mr. RIBICOFF, the Senator from Arkansas (Mr. MCCLELLAN) was added as a cosponsor of S. 1485, a bill to establish a Department of Education.

S. 2574

At the request of Mr. MCGEE, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 2574, the voter registration bill.

S. 2981

At the request of Mr. AIKEN, the Senator from Texas (Mr. BENTSEN), the Senator from Oklahoma (Mr. HARRIS), the Senator from Ohio (Mr. SAXBE), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of S. 2981, a bill to provide for environmental improvement in rural America.

S. 3185

At the request of Mr. PERCY, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 3185, the Federal Corrections Reorganization Act.

ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 214

At the request of Mr. GRIFFIN, for Mr. CASE, the Senator from Nevada (Mr. BIBLE) was added as a cosponsor of Senate Resolution 214 relative to the submission of any Portuguese base agreement as a treaty.

EDUCATION AMENDMENTS OF 1972—AMENDMENTS

AMENDMENT NO. 918

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

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

AMENDMENT NO. 919

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

Mr. ALLEN (for himself and Mr. ERVIN) submitted an amendment intended to be proposed by them jointly to the committee amendment in the nature of a substitute offered to the House amendment to the bill (S. 659), supra.

AMENDMENT NO. 920

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

Mr. FULBRIGHT submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute offered to the House amendment to the bill (S. 659), supra.

AMENDMENT NO. 927

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

Mr. GRIFFIN submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute offered to the House amendment to the bill (S. 659), supra.

FAIR CREDIT BILLING ACT—AMENDMENT

AMENDMENT NO. 921

(Ordered to be printed and referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. BROCK. Mr. President, during the hearings before the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs on S. 652 to provide fair credit billing, the chairman of the subcommittee requested a panel of bankers appearing before the subcommittee on October 29, 1971, for their advice on improvement of S. 652. In response to that request, the American Bankers Association's witnesses have submitted specific recommendations for modifying the bill.

In order that other Senators and their staffs may have an opportunity to study these proposals, upon request and without commitment to the provisions of the amendment, I am introducing the banking panel's suggestions in the form of an amendment in the nature of a substitute to S. 652. I ask unanimous consent to place in the RECORD the text of the amendment along with the letters of transmittal from the American Bankers Association.

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

AMENDMENT NO. 921

Strike all after the enacting clause and insert the following:

That this Act may be cited as the "Fair Credit Billing Act".

SEC. 2. Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended:

(1) by adding at the end of subsection (f) the following:

"Provided, however, That for the purposes of the requirements imposed under section

127(a)(6), 127(a)(7), 127(a)(8), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(9), 127(b)(10), 127(b)(11), and chapter 4 of this Act, the term creditor means any person who regularly extends credit, or arranges for the extension of credit whether in connection with loans, sales of property or services, or otherwise."

(2) by adding at the end of the section the following new subsection:

"(s) With respect to any disclosure required pursuant to § 127(a), the opening of an account under an open end consumer credit plan shall be deemed to be the relevant consumer credit transaction for the purposes of any determination of liability pursuant to § 130."

SEC. 3. Section 105 of the Truth in Lending Act (15 U.S.C. 1604) is amended to read as follows:

"Sec. 105. Rules and Regulations.

"(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may include, without limitation, regulations governing the disclosure, billing, collection and other practices of creditors in consumer credit transactions so as to insure fair treatment of obligors with respect to the timely transmission of periodic statements and crediting of payments received, replies to obligor complaints and inquiries, correction of billing errors, and other matters affecting the fair and effective operation of consumer credit plans, and may contain such classification, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purpose of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

"(b) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation or interpretation issued by or under authority of the Board or other agency designated in section 108, notwithstanding that such rule, regulation or interpretation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason."

SEC. 4. Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended—

(1) by amending subsection (a)(1) to read as follows:

"(1) The conditions under which a finance charge may be imposed, including the time period, if any, within which any credit extended may be repaid without incurring a finance charge, *Provided that*, the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period but before the opening date of the next billing period.";

(2) by adding at the end of subsection (a) a new paragraph to read as follows:

"(8) A brief statement of the protection provided by Section 101 to an obligator in a form prescribed by regulations of the Board;"

(3) by amending subsection (b)(2) to read as follows:

"(2) the amount and date of each extension of credit during the period and a credit sufficient to enable the obligor to identify the transaction or relate it to copies of sales vouchers or similar instruments previously furnished.";

(4) by amending subsection (b)(10) to read as follows:

"(10) The date by which, or the period (if any) within which, payment must be made to avoid additional finance charges; *Provided that*, the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after said date or the termination of said period but before the opening date of the next billing period."; and

(5) by adding at the end of subsection (b) a new paragraph to read as follows:

"(11) An address and telephone number to be used by the obligor in making inquiries concerning his statement; "and (6) by amending subsection (c) to read as follows:

"(c) In the case of any account under an open-end consumer credit plan which is in existence on the effective date of subsection (a) or any amendments thereto, the items described in subsection (a), to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not later than sixty days after such date."

SEC. 5. Effective upon the date of enactment of this Act, section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by amending subsection (a) to read as follows, and except with respect to proceedings in which final judgment has been entered and from which the time to appeal has expired, any action heretofore commenced thereunder shall be further prosecuted for the recovery of liability only pursuant to the section as hereby amended:

"§ 130. Civil liability

"(a) Except as otherwise provided in this section,

"(1) any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this chapter to be disclosed to that person is liable to that person in an amount equal to twice the amount of the finance charge in connection with the transaction; and

"(2) any creditor who fails to comply with any requirement imposed under chapter 4 of this title with respect to any person is liable to that person in an amount equal to the amount of any actual damages sustained by that person as a result of such failure;

"*provided, however*, that the liability under either of the foregcing paragraphs shall not be less than $100 nor greater than $1,000, and, *provided, further*, that, in the case of any successful action to enforce liability hereunder, the court shall award to the person bringing the action the costs of the action together with a reasonable attorney's fee, without regard to the amount of recovery, as determined by the court. No action to recover liability under this section may be brought or maintained as a class action pursuant to any state or Federal statute, rule or procedure."

SEC. 6. Section 134 of the Truth in Lending Act (15 U.S.C. 1644) is amended to read as follows:

"(a) Whoever in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use one or more counterfeit, fictitious, altered, forged, lost, stolen or fraudulently obtained credit cards to obtain money, goods, services, or anything else of value which within any one year period has or have a value aggregating $1,000 or more; or

(b) Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, lost, stolen or fraudulently obtained; or

"(c) Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, altered, forged, lost, stolen or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, lost, stolen or fraudulently obtained; or

"(d) Except as hereinafter provided in subsection (e), whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value, which within any one year period has or have a value aggregating $1,000 or more, moving as, or which are part of, or which constitutes interstate or foreign commerce and which has or have been obtained with counterfeit, fictitious, altered, lost, stolen or fradulently obtained credit cards; or

"(e) Whoever, knowingly receives, conceals, uses, sells or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which within any one year period has or have a value aggregating $500 or more, which has or have been purchased or obtained with one or more counterfeit, fictitious, altered, lost, stolen or fradulently obtained credit cards; or

"(f) Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services or anything else of value, which within any one year period has or have a value aggregating $1,000 or more, through use of one or more counterfeit, fictitious, altered, forged, lost, stolen or fraudulently obtained credit cards knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen or fraudulently obtained—shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

SEC. 7. The Truth in Lending Act (15 U.S.C. 1601–1655) is amended by adding at the end thereof a new chapter as follows:

"Chapter 4.—CREDIT BILLING

"Sec.
"161. Correction of billing errors.
"162. Regulation of credit reports.
"163. Length of billing period.
"164. Crediting payments.
"165. Crediting excess payments.

"§ 161. Correction of billing errors

"(a) If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account under an open-end consumer credit plan, receives from the obligor, at an address designated therefor by the creditor, a written notice, other than a notice on a payment stub or other payment medium supplied by the creditor, in which the obligor—

"(1) sets forth sufficient information to enable the creditor to identify the obligor and the account,

"(2) directs the attention of the creditor to an amount shown in the statement which the obligor believes involves a billing error and indicates the amount (if any) by which the amount shown in the statement is greater or less than the sum believed by the obligor to be owing to the creditor, and

"(3) sets forth facts, providing a reasonable basis for the obligor's belief that the statement is in error, the creditor shall—

"(A) not later than fifteen days after the receipt of the notice, send a written acknowledgment thereof to the obligor, and

"(B) not later than sixty days after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, believed to be in error—

"(i) make appropriate corrections in the account of the obligor and either transmit to the obligor a statement of his account, showing the corrections, at the end of the billing cycle in which the corrections are made, or send to the obligor a written notice that the corrections have been made, or

"(ii) after having conducted an investigation in response to the obligor's written notice, send a written explanation to the obligor setting forth the reasons why the creditor believes the account of the obligor was correctly shown in the statement, unless the obligor has previously agreed that the account was correctly shown.

"(b) For the purposes of this section, a 'billing error' shall consist of one of the following: (a) an extension of credit which was not made to the obligor, or if made was not made in the amount reflected on the statement, (b) the creditor's failure properly to reflect a payment or credit on such statement, (c) a computation error of the creditor, or (d) a similar error of an accounting nature which the obligor relates to a specific transaction (if any).

"(c) For the purposes of this section, action to collect amounts believed by the obligor to be in error shall not include sending periodic statements of account as required by subsection 127(b) which include such amounts, so long as the obligor's account is not restricted or closed solely due to the amount claimed to be in error, and further provided that nothing herein shall be construed to prohibit any action by a creditor to collect amounts not claimed by the obligor to be in error.

"(d) Requests of obligors for clarification of statements, which do not claim error in accordance with subsection (a), shall be answered promptly by the creditor in accordance with regulations of the Board.

"§ 162. Regulation of credit reports

"(a) After receiving a notice from an obligor as provided in subsection 161(a), a creditor may not, until thirty days after the date on which the creditor has met the requirements of that subsection, directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing solely because of the obligor's failure to pay the amount described in the notice pursuant to subsection 161(a) by which the balance in the account is greater than the balance believed to be correct.

"(b) After receiving a notice from an obligor as provided in subsection 161(a) and until the creditor has met the requirements of that subsection, a creditor may not report to any third party that the account of an obligor is delinquent solely because of the obligor's failure to pay the amount described in the notice as greater than the balance believed to be correct without also reporting that the account is in dispute and at the same time notifying the obligor of the name and address of the parties to whom the creditor reported such information.

"§ 163. Length of billing period

"If an open-end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring additional finance charges, such additional finance charges may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement including the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date of termination of the period specified on the statement by which payment must be made in order to avoid imposition of that finance charge.

"§ 164. Crediting payments

"Payments received from obligors under an open-end consumer credit plan by the creditor shall promptly be posted to the obligor's account as specified by regulation of the Board.

"§ 165. Crediting excess payments

"Whenever an obligor transmits funds to a creditor in excess of the total balance due upon an account under an open-end consumer credit plan, the creditor shall promptly credit such excess amount to the obligor's account; and if the creditor receives a request from the obligor for a refund of any credit balance properly owing to the obligor, such refund shall promptly be made."

SEC. 8. Section 104 of the Truth in Lending Act (15 U.S.C. 1603) is amended by adding at the end of subsection (3):

"*Provided, however,* that regardless of whether they are real property transactions, if the extensions of credit are for agricultural purposes and the total amount to be financed exceeds $10,000, those transactions shall also be exempt."

SEC. 9. This Act takes effect upon the expiration of eighteen months after its enactment except that the provisions of section 3, as it relates to Section 105(b) of the Truth in Lending Act, 5, 6, and 8 shall take effect on the date of enactment.

THE AMERICAN BANKERS ASSOCIATION,
Washington, D.C., February 16, 1972.

Hon. WILLIAM E. BROCK,
U.S. Senate, Washington, D.C.

DEAR SENATOR BROCK: Enclosed for your consideration is a copy of my letter of February 16, addressed to Senator Proxmire, Chairman of the Subcommittee on Financial Institutions, concerning S. 652. I hope that you may react favorably to our proposed changes in the bill. These changes are consistent with testimony given in behalf of The American Bankers Association on October 29, 1971, and, in addition, would implement two of the recommendations made by the Federal Reserve Board in its Annual Report on the Truth in Lending Act.

Sincerely,

CHARLES R. MCNEILL.

THE AMERICAN BANKERS ASSOCIATION,
Washington, D.C., February 16, 1972.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Financial Institutions, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: You will recall that during hearings on S. 652, on October 29, 1971, you requested The American Bankers Association witness to give the Subcommittee specific recommendations for modifying the bill. Since that time, we have worked with other banking and bank-card organizations, and have agreed upon an amendment in the nature of a substitute for the present text of S. 652. A copy of this amendment and a comparative summary of the two texts are enclosed.

Since the Subcommittee may meet in the near future to consider S. 652, we would appreciate it if you or some other member of the Subcommittee would introduce the proposed amendment, so that other Senators and their staffs may have a better opportunity to study the specific proposals it contains. We hope that these recommendations will be acceptable to you, but we clearly understand that introducing the amendment would not commit you or any other Senator to provisions which may be unacceptable. I am sending a copy of this letter to the other members of the Committee on Banking, Housing, and Urban Affairs.

If the Subcommittee determines that legislation like S. 652 is needed. The American Bankers Association is prepared to support the proposed substitute, and will cooperate fully with the Subcommittee in developing workable legislation.

Sincerely,

CHARLES R. MCNEILL.

MODIFICATION OF PAR VALUE OF THE DOLLAR—AMENDMENT

AMENDMENT NO. 926

(Ordered to be printed and referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. GAMBRELL. Mr. President, I submit an amendment to S. 3160, now pending before the Committee on Banking, Housing and Urban Affairs, the so-called gold revaluation bill. The amendment is self-explanatory. I ask that it be received and printed, and printed in the RECORD at this point, and I ask unanimous consent to have printed in the RECORD following the printing of the amendment a series of questions and answers and a statement which I made yesterday at the Banking Committee hearing on this bill.

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

AMENDMENT NO. 926

At the end of the bill, add the following:

"SEC. 5(a) Whenever the rate of economic inflation as defined in Subsection (b) hereof, shall increase during any six-month period at an annual rate greater than 5%, the President shall declare an economic emergency, and shall stabilize prices, rents, wages, salaries, dividends and interest, pursuant to Section 203 of the Economic Stabilization Act of 1970 (Public Law 91-379) as amended, with rules, regulations, and requirements thereunder substantially identical to those in effect on January 1, 1972. The period of economic emergency, and the program of economic stabilization shall continue for not less than 180 days, and until the President has determined that the rate of inflation has been reduced to less than 5 per centum, and has declared said emergency terminated, but not more than 180 days after the rate of inflation has been reduced below 5 per centum.

The Board of Governors of the Federal Reserve System, if it shall determine that the rate of economic inflation has increased during any six-month period at an annual rate greater than 5 per centum, may after 30 days notice to the President, declare such economic emergency and the President shall thereupon proceed as required by this section.

(b) The rate of economic inflation is the percentage increase in the cost of living determined pursuant to an index or standard established by the Secretaries of Treasury, Labor, and Commerce. Until an index shall have been established by said Secretaries, the Consumer Price Index of the Department of Labor in effect on January 1, 1972, shall be the index or standard used for the purposes of this section. The index determined by said Secretaries, and any changes and adjustments made therein from time to time, shall be subject to veto by the Board of Governors of the Federal Reserve System within forty-five days after its publication in the Federal Register."

STATEMENT BEFORE BANKING COMMITTEE

Senator GAMBRELL. Secretary Volcker, let me begin by saying I appreciate the necessity of having such legislation and do not have in mind being against its adoption, but I am concerned along the lines that Senator Roth expressed, that we simply turn off these things that we have got to do by a flick of the wrist, and we don't get on to dealing with the very basic substantive problems that bring on such things as devaluation of our dollar. To me it is about like issuing a death certificate for somebody who died in an epidemic. I think the issuance of a death certificate is almost automatic, but I think we need to deal with what is causing the epidemic.

Why do we have to issue these death certificates all of the time? I am frankly surprised in connection with the Smithsonian agree-

ments that the foreign governments haven't said not only to revalue our dollar but that we should impose certain other disciplines on ourselves before we come back to the bargaining table to discuss international economic arrangements.

I was pleased more than anything else in your statement by the recognition on page 14 that the success of our economy at home, our ability to achieve growth without inflation, to restore the vigor of our ex parte industries, to improve our technology and spur productivity are the more basic considerations. I know Senator Roth has a bill pending to impose a spending limit on the government. I know that the Finance Committee at the present time is considering the debt limitation. Frankly I don't think that ought to be an automatic thing simply because we foresee a deficit, that we just automatically agree to borrow the money to carry through with it.

I think we ought to impose some disciplines on ourselves in that respect. Frankly I consider this measure here a vehicle by which we might undertake to impose some disciplines on ourselves. We seem to be perfectly happy to rush through this death certificate on the value of the dollar, but we don't seem to be anxious to rush through any fundamental disciplines on ourselves and on our economic mismanagement.

I would like to ask you if you consider it appropriate that we do something specific to control such things as Senator Roth was mentioning, our deficit spending, and to impose some rigid limitations on how much we will spend in excess of our income over the next two, three, four, five, or eight or ten years, as a commitment by this country to manage our economy.

Mr. VOLCKER. Well——

Senator GAMBRELL. Do you think this would be a good time to take that up?

Mr. VOLCKER. I think it would be an excellent time to take up the question of a spending limitation. As you know, President Nixon has proposed a rigid spending limitation and we urged the Congress to move in that direction. In terms of the longer term budgetary discipline, I would note that the Administration has invested a good deal of intellectual effort as well as spending discipline in maintaining, insofar as possible, adherence to the full employment budget concept whereby spending would not exceed our revenue generating capacity at full employment.

Now the present budget for the present fiscal year does not meet that criteria, but the budget for fiscal 1973 does. And that has been proposed as a serious effort to maintain over a period of time the kind of discipline to which you are referring. I couldn't agree with you more.

Senator GAMBRELL. I consider that as an explanation of why we continue to have deficits and no discipline at all.

Mr. VOLCKER. I wish you would look at it the other way, Senator, because I think it can be in a very difficult area a useful disciplinary tool. If it is not, it is not of much value. But I would hope it can be looked at and become a real disciplinary tool and in a sense combining that with the spending limitation set at that level, provide the kind of practical mechanism by which the discipline can be imposed and we would be in favor of that.

Senator GAMBRELL. I understood you to say to Senator Roth that continued deficit spending over a period of time would undermine our international economic position.

Did it make any difference whether the deficit arrives from a full employment budget or from just a deficit spending budget?

Mr. VOLCKER. What I think I said in this connection is if we run deficits of the magnitude we have been running, it would either reflect continuing inadequate performance of the American economy, which wouldn't be helpful domestically or internationally, or it would be a tremendous inflationary force which wouldn't be helpful either.

So I don't contemplate deficits of that size continuing.

Senator GAMBRELL. Of course there are two aspects to a budgetary deficit. Putting a spending limit on and putting a borrowing limit on don't mean we are going to meet our goals in terms of productivity or revenue income. If we fall short it is just as deficit creating as overspending.

Mr. VOLCKER. I think it does have a different economic impact, assuming that the spending level again is within the capacity to generate revenues. If the deficit arises from slack in the economy, it has quite a different implication than if the deficit arises when the economy is more or less fully employed.

There is a tremendous difference in those terms between the deficit we have at the present time and the deficits we had in the late 1960s, when they were superimposed upon an economy that was already subject to inflationary pressures, already at full employment, already with very tight labor markets. Under those conditions the large deficits were a recipe for inflation. I don't think that is true of the current deficit, when the bulk of the deficit arise from a short fall in revenues as you point out.

Senator GAMBRELL. What programs other than deficit spending does the government have to increase productivity?

Mr. VOLCKER. Well, as part of the very measures taken on August 15, there was an investment tax credit, for instance, proposed directly as an effort to stimulate productive investment, modernization of industry. There had been actions taken on depreciation procedures prior to that time for the same reason.

The Administration is concerned with other means more directly of stimulating technology and of course spend a good deal of money or sponsors a good deal of money on research itself. One of the strengths of the American economy is our lead in technology. I think that lead has probably been slipping in recent years and it remains vitally important that we do the things that are necessary not only to modernize investment, but to keep up at the very forefront of technology and break new grounds in that area.

Senator GAMBRELL. I realize that all of these things are going on, but it is discouraging to me that we are willing to consider the disciplines at leisure, and we have to rush through the legislation by which we recognize our faults.

Mr. VOLCKER. I would like to think we have been considering these disciplines for some time, Senator, if I may. I just want to emphasize that on August 15, when the actions were taken that led to this particular bill, at the same time the President did take very drastic actions in other directions. He took actions directly on the wage-price situation, he took action on the investment tax credit, he took action to cut government spending at that time. This was a program that by no means neglected the side you are concerned about and that I am concerned about and that the President is concerned about. I think his concern was reflected in his program. This is only one little part of it.

Senator GAMBRELL. Well, I agree with you that the President acted decisively on August 15. But who is to say that he will do so next year or the year after that, and why should it be left to the President's discretion to act in ways that are necessary and disciplinary on ourselves. I think the Congress should enact legislation and enact it in a hurry to impose the disciplines on the economy that are necessary to keep us from having to periodically revalue our dollar and go through domestic inflation and other conditions that have arisen that we have been wrestling with for the last year.

Mr. VOLCKER. Well, I hope the appropriations committees will act on that with dispatch, Senator.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 776

At the request of Mr. GAMBRELL, the Senator from Florida (Mr. CHILES) was added as a cosponsor of Amendment No. 776 intended to be proposed to the committee amendment offered as a substitute for the House amendment to the bill (S. 659), the Education Amendments of 1972.

NOTICE OF HEARINGS ON AUTHORIZATION OF APPROPRIATIONS

Mr. FULBRIGHT. Mr. President, I wish to announce that the Committee on Foreign Relations will hold hearings during March on legislation to authorize appropriations for the Department of State and the U.S. Information Agency. A provision in the Foreign Assistance Authorization Act for fiscal year 1972 requires passage of authorization legislation this year for Department of State and USIA activities before appropriations can be provided. It is expected that draft legislation will be transmitted to Congress by the executive branch shortly.

Administration witnesses, headed by Secretary of State Rogers, will be heard on the State Department legislation on March 8, 9, and 10 and on the USIA legislation on March 20, 21, and 22. Public witnesses will be heard on both bills on March 23. The hearings will be held in room 4221 in the New Senate Office Building beginning at 10 a.m. each day. Any person wishing to testify should communicate with Arthur M. Kuhl, chief clerk of the committee, room S–116, the Capitol, telephone 225–4615.

NOTICE OF HEARING ON NOMINATIONS

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Wednesday, March 1, 1972, at 10:30 a.m., in room 2228, New Senate Office Building, on the following nominations:

Louis C. Bechtle, of Pennsylvania, to be U.S. district judge, eastern district of Pennsylvania, vice John W. Lord, Jr., retired.

James L. Foreman, of Illinois, to be U.S. district judge, eastern district of Illinois, vice William G. Jurgens, retiring.

Howard David Hermansdorfer, of Kentucky, to be U.S. district judge, eastern district of Kentucky, vice a new position created by Public Law 91–272, approved June 2, 1970.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Arkansas (Mr. McCLELLAN), the Senator from Nebraska (Mr. HRUSKA), and myself as chairman.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

John A. Field III, of West Virginia, to be U.S. attorney, southern district of West Virginia, for the term of 4 years, vice Wade H. Ballard III, resigned.

Robert Gottschalk, of New Jersey, to be Commissioner of Patents.

William K. Schaphorst, of Nebraska, to be U.S. attorney for the district of Nebraska for the term of 4 years, vice Richard A. Dier, resigned.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Wednesday, March 1, 1972, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF HEARINGS ON ALASKA NATIVE CLAIMS ACT AMENDMENTS

Mr. BIBLE. Mr. President, on March 2, 1972, at 1 p.m. in room 3112, the Senate Interior and Insular Affairs Committee has scheduled a hearing to consider amendments to Public Law 92–203, the Alaska Native Claims Settlement Act. This complex measure became law on December 18, 1971. The committee will be considering a number of technical and perfecting amendments to the bill as well as any other pending amendments.

ADDITIONAL STATEMENTS

WILLOWBROOK TRAGEDY

Mr. JAVITS. Mr. President, as a public service, WABC–TV in New York has focused attention on the tragic conditions at the Willowbrook State School in New York, a residential facility for the mentally retarded.

I have long been deeply concerned with the human rights of the mentally retarded and was profoundly shocked and concerned, as were the Governor of New York and other officials, by the dreadful conditions found at the Willowbrook State School on Staten Island.

Governor Rockefeller, with Dr. Alan Miller, Commissioner of Mental Hygiene, requested me to seek to assure that the Federal Government would do everything in its power to assist the State of New York in improving the situation at Willowbrook, Letchworth, and at any other New York State institutions with similar difficulties. I discussed this matter immediately with Secretary Richardson and he assured me that the full resources of HEW would be made available.

Since Dr. Bertram S. Brown, Director of the National Institute of Mental Health, has announced the formation of a special action team of Federal mental retardation and mental health specialists and consultants who will visit Willowbrook and other New York State Department of Mental Hygiene facilities and meet with key State personnel to review promptly and effectively the institutions' problems and identify possible areas of increased Federal assistance. The visits on February 28 and 29 will be headed by Dr. Brown, the Director of the National Institute of Mental Health, and will include:

Mrs. Bernice Bernstein, Director, Region II, New York, Department of Health, Education, and Welfare.

Dr. George Tarjan, program director of mental retardation, Neuro Psychiatry Institute, UCLA.

Dr. Edward Zigler, Director, Office of Child Development, Department of Health, Education, and Welfare.

Dr. Edwin W. Martin, Associate Commissioner, Bureau of Education for the Handicapped, Office of Education, Department of Health, Education, and Welfare.

Dr. Julius B. Richmond, director, Judge Baker Guidance Center, Boston, Mass.

Dr. Joseph Douglas, Executive Director, President's Committee on Mental Retardation.

Dr. Norman Lourie, Executive Deputy Secretary for Federal Policies and Programs, Pennsylvania Department of Public Welfare.

Mr. Francis X. Lynch, Director, Division of Development Disabilities, Rehabilitation Services Administration, Social and Rehabilitation Services, Department of Health, Education, and Welfare.

Mr. Wallace Bevington, Director, Office of Mental Retardation Coordination, Department of Health, Education, and Welfare.

As the ranking minority member of the Senate Committee on Labor and Public Welfare, I will accompany the special team, and I have also invited the entire New York congressional delegation, as well as Senator WILLIAMS, the chairman of the committee, Senator KENNEDY, and other members of the Committee on Labor and Public Welfare, to be on the scene.

I believe the WABC–TV series of newscasts, which culminated in a half hour documentary entitled "Willowbrook—The Last Great Disgrace" has made a most significant contribution to arousing public concern for the plight of the mentally retarded. I ask unanimous consent that the transcript of "Willowbrook—The Last Great Disgrace," presented by WABC–TV in New York on February 2, 1972, from 7:30 to 8 p.m., be printed in the RECORD.

Mr. President, I have not asked that the transcript be printed in the RECORD to point the finger of blame at anyone, for we are all—society at large—who are to blame for permitting retarded children to live—perhaps exist is a more appropriate word—in such degradation. Rather, I hope the transcript will remind all of us of our responsibilities to one another, particularly to those less fortunate.

I agree with Dr. Allen Miller, New York State Commissioner of Mental Health, who termed the WABC–TV telecasts of conditions at Willowbrook:

An honest portrayal of the problems at their worst.

Dr. Miller's concept of the value of the programing is one I share. He said:

If the public eye leaves Willowbrook and all of the other places and we once again find ourselves, we and the directly involved parents, trying to go it alone, then I think we struggle to maintain our few gains and we struggle slowly to get ahead, and that a window on those conditions could reinforce a sense of hopefulness and to reestablish in people's minds that we're talking about human beings with potential.

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

WILLOWBROOK—THE LAST GREAT DISGRACE, FEBRUARY 2, 1972

ANNOUNCER. There are some aspects of life which society has hidden from public view. The following program will remind you that they exist and that we all bear a responsibility to humanity. If you have children, you may want to exercise parental guidance.

ROBERT KENNEDY. When I visited the state institutions for the mentally retarded, and, I think, particularly at Willowbrook, that we have a situation that borders on a snake pit and that the children live in filth, that many of our fellow citizens are suffering tremendously because lack of attention, lack of imagination, lack of adequate manpower gives very little future for the children or for those who are in these institutions. Both need a tremendous overhauling, and I'm not saying that those who are the attendants or the ones who run the institution are at fault. I think all of us are at fault. And I just think it's long overdue that something be done about it.

GERALDO RIVERA. It's been more than six years since Robert Kennedy walked out of one of the wards here at Willowbrook and told newsmen of the horror he'd seen inside. He pleaded then for an overhaul of the system that allowed retarded children to live in a snake pit. That was way back in 1965 and somehow we'd all forgotten. I first heard of this big place with the pretty sounding name because of a call I received from a member of the Willowbrook staff, Dr. Michael Wilkins. The Doctor told me he'd just been fired because he'd been urging parents with children in one of the buildings, Building #6, to organize so they could more effectively demand improved conditions for their children. The Doctor invited me to see the conditions he was talking about, so unannounced and unexpected by the school administration, we toured Building #6.

The Doctor had warned me that it would be bad. . . . It was horrible. There was one attendant for perhaps 50 severely and profoundly retarded children. The children, lying on the floor and smeared with their own feces, they were making a pitiful sound . . . a kind of mournful wail that it's impossible for me to forget. This is what it looked. . . . This is what it sounded like. . . . But how can I tell you about the way it smelled? It smelled of filth. . . . It smelled of disease . . . and it smelled of death.

We've just seen something that's probably the most horrible thing I've ever seen in my life. Is that typical of ward life?

Dr. WILKINS. Yes. There are 5,300 patients at Willowbrook, which is the largest institution for the mentally retarded in the world. The ones that we saw were the most severely

and profoundly retarded. There are thousands here like that . . . not going to school . . . sitting in the ward all day . . . not being talked to by anyone. . . . Only one or two or three people to take care of 70 people in the ward. . . . Sharing the same toilet . . . contracting the same diseases together. One hundred percent of the patients at Willowbrook contract hepatitis within six months of being in the institution. . . . Most patients at some time in their life have parasites. . . . The incidence of pneumonia is greater than any other group of people that I think exist in this country. . . . Trauma is severe because these patients are left together in a ward . . . seventy retarded people basically unattended . . . fighting for a small scrap of paper on the floor to play with . . . fighting for the attention of the attendants, who are overworked trying to clean them, feed them, clothe them and, if possible, pay a little attention to them and work with them and develop their intelligence. But what, in fact, happens is that they go downhill.

GERALDO RIVERA. Two days after our first unofficial visit, our camera crew was given an authorized tour of the facility. While unannounced we had found the children naked and basically unattended, then we were shown children who were fully clothed and generously attended. It was to insure that this sudden improvement in the quality of life was permanent that we returned without the knowledge of the school administration and through a back door. It was the first day all over again.

Dr. WILKINS. For these people life is just one hour after another of looking at the floor. There's no training going on here.

GERALDO RIVERA. Can the children be trained?

Dr. WILKINS. Yes. Every child can be trained . . . You know . . . these kids . . . there's no effort . . . We don't know what these kids are capable of doing. Some training programs go on at Willowbrook, but the State provides a bare minimum, just enough so that they can call this place a school . . . Clearly these kids aren't getting any training. I mean, I don't think I even have to say that. They're just sitting here in the ward . . . These are the hours in which they should be in school and they're not.

GERALDO RIVERA. What ward is this now?

Dr. WILKINS. This is Building 27 . . . These patients do have clothes on today. But as you can see, the one thing that can't be hidden is that there are no training programs . . . That all these patients do is sit during the day. They are not occupied. Their life is just hours and hours of endless nothing to do . . . no one to talk to . . . no expectations . . . just an endless life of misery and filth. What you see, it makes you think that it's hopeless . . . but you know they only look this way because they haven't ever had opportunity for training. Now if you or I were left to sit in a ward, surrounded by other mentally retarded people, we would probably begin looking like this, too.

GERALDO RIVERA. The Willowbrook State School is this country's largest home for the mentally retarded. It's called a school, but that's more a statement of aspiration than of fact. Fewer that 20% of the 5,230 people who are kept here attend any kind of classes.

When the State of New York entered a period of economic retrenchment two years ago, a hiring freeze was clamped on this and other institutions in the Department of Mental Hygiene. In the intervening months, Willowbrook lost 600 employees through attrition. For the budget of fiscal '71–'72 the Governor recommended a hold-the-line appropriation of $603 million for the Mental Hygiene Department. The Legislature, seeking to trim the waste and fat from the budget, cut it down to $580 million. Willowbrook lost another 200 employees and a situation that two years ago was bad became hopeless. The attendants tried to care for their wards but were simply overwhelmed. The attendant-to-patient ratio which should be about 4–1 dropped to 30–1 or 40–1 and the average feeding time per patient which should be 20 or 30 minutes went down to 2 and 3 minutes.

Dr. WILKINS. Many of the retarded children aren't capable of feeding themselves. In my building we had no staff to train them in a systematic way to use utensils to feed themselves. . . . That can be done, but what's necessary is to feed them. You take a bowl of food that you've made into a mush-like substance with a big spoon and you ladle it out into their mouth. In the building where the kids can't feed themselves there are so few attendants that there is only an average minimum time—three minutes per child, per feeding.

GERALDO RIVERA. How much time would be needed to do the job adequately?

Dr. WILKINS. The same amount of time that your children and my children would want to have breakfast.

GERALDO RIVERA. What's the consequence of three minutes, per meal, per child?

Dr. WILKINS. The consequences is death from pneumonia.

GERALDO RIVERA. North of the City, on the way to Bear Mountain, is a lovely-looking place called Letchworth Village Rehabilitation Center. Set among the hills and woods of suburban Rockland County a passerby could easily mistake the place for a country club or a college campus, but the early morning mist gave the place an eerie feeling, like a set from a horror movie. And once inside that feeling became suddenly appropriate. It was a repeat of the misery and degradation of Willowbrook.

Congressman Mario Biaggi had planned an official tour of the facility for ten o'clock in the morning, but by this time, wary of what I felt were attempts on the part of the Department of Mental Hygiene to make the situation look better than it really was, my camera crew and I got there two hours before that. As the hour of the official tour approached, bundles of clothing were brought in for the children and the process of cleaning up was begun. Even so, none of these cosmetic changes could do much to improve the place.

Congressman BIAGGI. Who's in charge here, Gerry?

GERALDO RIVERA. Mrs. Nixon . . . This is . . .

Congressman BIAGGI. Mrs. Nixon? I'm Congressman Biaggi. How are you? Why are these patients unclothed?

Mrs. NIXON. We don't have enough clothing. We don't have the proper help to keep clothing on them. We have a few nudists that will not keep clothes on. They will pull them off. But most of all we don't have the help to keep the kids properly dressed.

Congressman BIAGGI. You're talking about more money for the institution?

Mrs. NIXON. Well, that we could use because then we would have more help.

Congressman BIAGGI. How understaffed are you?

Mrs. NIXON. Very understaffed. There are days we have four or five attendants to take care of 134 kids. Like today, we have four people on to take care of the entire group of kids.

Congressman BIAGGI. We have a condition in a very beautiful ground, very well-built buildings, where inside we have housed the children of many of our citizens who are subjected to what appears to be the worst possible conditions I've ever seen in my life. I visited penal institutions all over the country . . . I visited hospitals all over the country . . . I visited the worst brigs in the military . . . I've never seen anything like it.

GERALDO RIVERA. About 25% of the funding for Letchworth Village comes from the Federal Government and one of the requirements for continued eligibility is that there be 80 square feet of space per patient . . . Here they get only 35 square feet. In the face of this terrible overcrowding there was a ward there that stood empty because they hadn't the funds to hire the 38 people it would take to staff it.

How can this be?

MILTON RESSEL. Well we need 38 additional positions, then we would be able to staff this area and reduce our overcrowding in overcrowded areas.

GERALDO RIVERA. It's a sin, my God, a sin.

MILTON RESSEL. Well, we have submitted and we are expecting that we might be getting them and then we will be able to reduce the overcrowding in certain areas.

GERALDO RIVERA. There's at least one more horrifying aspect of life at Letchworth . . . More than 300 able-bodied patients, both physically and mentally able to work outside the institution, are not being allowed to. They are being used to fill the places of the too few employees. They get paid $2.00 a week for their efforts . . . about what they'd make each hour on the outside. And there was another development on the day we visited Letchworth.

It was eight days after our investigation had begun. Governor Rockefeller admits the growing public outcry over the conditions at Willowbrook . . . made an announcement. He was restoring the $20 million he had stricken from the budget of the Department of Mental Hygiene. Willowbrook, it was said would be able to rehire 300 of the 900 employees it had lost since November 1970. Letchworth Village would be able to rehire about 200. But the additional employees, while perhaps slowing the downward course of these two institutions, would not be able to change the basic nature of the two places, mere depositories for the retarded.

Do you think what we showed on television in the past week is an adequate reflection of the situation?

Dr. ALLEN MILLER, Commissioner of Mental Hygiene, N.Y.S. I think it focused and made vivid the problems at Willowbrook.

GERALDO RIVERA. Do you think it was an honest portrayal?

Dr. MILLER. I think it was an honest portrayal of the problems at their worst. It may not tell the whole story of Willowbrook and it certainly doesn't tell the whole story of the retarded, but it does describe unmistakably the kind of problems that we've seen and now, thanks to the coverage, many people are seeing. If the public eye leaves Willowbrook and all of the other places and we once again find ourselves, we and the directly involved parents, trying to go it alone, then I think we struggle to maintain our few gains and we struggle slowly to get ahead and perhaps if you were to come back a year from now and look again you might see we've made headway . . . I'd expect you would, but you won't see it all solved in two weeks. I wish you would go back in two weeks and in two weeks and in two weeks because I think that a window on these conditions and maybe even allowing to begin to see not only what it is but what it could be and even what it is already in some places . . . so to reinforce a sense of hopefulness and to reestablish in people's minds that we're talking about human beings with potential. I would hope that you would see continued change and if you didn't see it that you'd say so.

GERALDO RIVERA. Two weeks after that interview I took Dr. Miller up on his invitation to revisit Willowbrook. I found no meaningful change in the quality of life for the 5,230 people who live here. The attendants are trying their best but the staff is just too small to do anything more than just try and keep the place clean. When there's one person to take care of 30 or 40, nothing can

possibly happen . . . No rehabilitation . . . no training . . . nothing. The attendants are as much the victims of the conditions here as the patients are. And this visit has reminded me of something else Dr. Miller told me. He said, "Now that society has moved to clean up the lunatic asylums, the prisons and the hospitals, the way we care for our mentally retarded is the last great disgrace."

The story of Willowbrook and of Letchworth Village is a story of degradation . . . a real life horror story of lack of attention, of filth and of children living as animals live, an uncivilized and inhuman existence. But our intention is not just to horrify but also to demonstrate that it doesn't have to be that way.

This is Children's Hospital in Los Angeles. It houses the Regional Center for the Mentally Retarded. The Director of the program is Dr. Richard Koch. Last month, at the invitation of several parents' groups he toured the Willowbrook facility.

Dr. KOCH. The conditions that I saw at Willowbrook are somewhat like this . . . When you enter the building I entered, the smell is so over-whelming. It's almost nauseating. I frankly don't understand how they have people who will work there, to be honest with you. And I think that's the first thing that hits you. Secondly, you find many patients in the same room, all milling about with nothing to do. Now, I may have seen an unusual situation but I don't believe so because I saw three different buildings and in those buildings I did not see any kind of program . . . I saw men sitting around masterbating . . . I saw boys and girls lying on the floor, some of them naked. In other words, it just was without program. That is the crucial thing. It's just simply too big.

Now you've got to get the clients out of there because they're becoming dehumanized in the conditions that I saw. They've got to come out where they can become part of society and become treated as an individual. I think the most important thing, though, about the Willowbrook situation, as I see it, is that the system is feeding on itself. In other words, there isn't any alternative for parents that need help. The State is only reaching out its hand primarily with residential care in mind and what parents want, by and large, are a rich variety of programs, primarily in the community. And the reason we've been able to get an expansion of our program in California, even with Mr. Reagan as Governor, is because this program is showing that it has cut the rate of institutionalized retarded persons in California to practically almost in half in just five years.

GERALDO RIVERA. Public pressure can apparently force change in California as well as it does here in New York. They had a system that resembled ours until 1965 . . . That was when a prominent European expert on retardation said something that was widely publicized. After touring the California facilities he said, "My God, you don't take care of your mentally retarded children as well as we, in Europe, take care of our cattle." The remark eventually caused them to dramatically restructure their approach.

The heart and soul of the California system is now no longer the large institutions . . . it's the regional center. Children's Hospital is one of the 13 centers in the State. Various programs are administered in neighborhoods all over Los Angeles County and the San Fernando Valley from here. Suboffices provide whatever services a family with a retarded child needs . . . be it a day-care center, a sheltered workshop or medical care. The idea is to shift the care and training of the retarded children to their own communities . . . In other words, to help the parents keep their children at home.

Education for the retarded in California is as much a right as education for normal children . . . and they're working toward the development of a public school program for every child, no matter what the degree of retardation.

This is a developmental center for handicapped minors . . . All these children are severely or profoundly retarded.

Dr. KOCH. This is entirely a State supported program and provides tremendous relief to the parent in terms of day-care.

GERALDO RIVERA. Now these children would be parallel to the children at Willowbrook, for instance?

Dr. KOCH. Oh, yes. All of these children would be in an institution for the retarded if we didn't have this kind of program for them. The fact is, in years past, I used to recommend institutional care myself for similar children. Now New York is doing some of this, but here again we've realized that the community programs should have top priority in terms of state dollars rather than last priority and I think your priorities are mixed up in New York in terms of serving the retarded. Your top investment is in institutions. . . Our top investment is in the Department of Education, in providing a program for the child while he's at home and in terms of day care, for example. These kids can go to school at age 3 years so they start it very young and that helps a great deal for parents. And when parents are actively encouraged to keep their child at home, they do so because they know they can have the help of the regional centers or public schools or the Health Department in terms of services, etc.

GERALDO RIVERA. For the mild to moderately retarded, over school age, the regional center assists in the finding of employment in one of the many sheltered workshops in the area.

Dr. KOCH. In the workshops you are seeing less severely retarded persons and the tremendous importance of this is that it gives the retarded person something to do during the daytime that gives them dignity and they earn a little money with it and do something useful. They become a contributor to society instead of a drag on society.

FRED GLAD. If you look around and see and just visualize all these people sitting home vegetating and here they are out in the stream of life, doing their own thing. They're earning their own way.

GERALDO RIVERA. Dr. Koch told me time and again that the importance of prevention could not be overemphasized. Families with histories of genetic retardation are counselled not to have more children. And if there's a great possibility that a pregnant woman is carrying a retarded child she's tested and if the fetus is found brain-damaged, the center recommends a therapeutic abortion. The center also runs an extensive program of community education and prenatal care, the lack of which is a prime cause of retardation.

Dr. KOCH. Now actually this child has Downes Sydrome and she's just as retarded as most of your patients at Willowbrook. And we're helping this family to keep her at home and the mother's doing a beautiful job on her and the important thing is we're also providing genetic counselling for the family. This is an inherited form of Downe's Syndrome and we have advised the mother that this is true and frankly have advised them not to have any more of their own children.

GERALDO RIVERA. How is this child being better serviced by being home rather than being in an institution like Willowbrook?

Dr. KOCH. Well, for example, she has access to one of the finest pediatric facilities in the world right here at Children's Hospital. If she were in a state hospital she wouldn't have access to this kind of a facility.

GERALDO RIVERA. How about parental care? Is that making a difference in this child?

Dr. KOCH. Parental care makes a difference in every child, even the very retarded person. If you could get that across to the people . . . that retarded people are more normal than they are abnormal . . . they have feelings—love, hate, etc.—just like normal people. The only thing is they simply don't think as fast as a normal person.

GERALDO RIVERA. How old is she?

Dr. KOCH. She's two years old.

GERALDO RIVERA. Two years old. What would be happening to her if she were in a place like Willowbrook?

Dr. KOCH. Well, frankly, probably nothing.

GERALDO RIVIERA. But Dr. Koch admits that for some retarded, perhaps 1½% to 3%, 24-hour residential care will always be necessary and some California institutions, Fairview State and Orange County, for example, could be described in the most unflattering terms as smaller, cleaner Willowbrooks. But while Willowbrook has a large waiting list, the California institutions are being rapidly emptied. In five years the total population is down from more than 14,000 to less than 10,000 and that number continues to go down. But even in the area of 24-hour residential care, they are moving to improve the quality of life.

This is the Spastic Children's Foundation, a private foundation that provides total care. It costs $14 a day for children to live here. It costs the State of New York $21 a day to house a child at Willowbrook and if the California parent can't afford the bill, the State contributes based on the family's ability to pay.

ANNE WENDT. This is an individualized program, each child has a prescription . . . for therapy, for academic training, for social adjustment, for feeding training, toilet training . . . every facet of his life that he needs help with. We sit down as a staff and we talk about his total needs, not just today, but where he is going to be in the future . . . and how does his family relate to him because all of these things are a part of the whole with this child. See, we see these people as very important human beings.

GERALDO RIVERA. It's a five day resident program so the children actually go home?

ANNE WENDT. Right, because we want the family to remain the controlling factor in this child's life presently.

GERALDO RIVERA. We started this series as a kind of an expose on the conditions at Willowbrook and one of the things that really struck me as barbaric were the toilet facilities. They are so awful, so filthy. Is this more money to keep it this way?

ANNE WENDT. It isn't one cent more . . . it doesn't cost any more to be clean . . . it doesn't cost any more to be cheerful and bright and colorful. . . . It's a matter of interest and seeing that children are important people. . . . It's how much status you give to them. And sometimes because they can't respond and say what they like and dislike, it's very easy for people to just sit back and think, 'Oh, this is good enough.' . . . But it isn't good enough. They deserve everything that you and I want out of life. But they can't get it for themselves.

GERALDO RIVERA. Here the toothbrushes have the children's names on them. . . . In Willowbrook there were no toothbrushes.

Hi, Richard. How you doing?

RICHARD. Fine.

GERALDO RIVERA. I see you're copying a Van Gogh there. You'd better watch it, you'll get in trouble.

RICHARD. Yes.

GERALDO RIVERA. How long did you live in the state school before you came here?

RICHARD. I was there for ten years.

GERALDO RIVERA. Do you like it better here?

RICHARD. Yes.

GERALDO RIVERA. The thing that impressed me most on the California trip was an apartment where retarded people live in semi-independence.

Irene, how do you like it living here?

IRENE. I love it.

GERALDO RIVERA. How come?

IRENE. I can do my own thing.

GERALDO RIVERA. I think the main difference between the approach of New York and that of California to the problem of caring for the mentally retarded is that they treat the retarded as people . . . we treat them as something less.

We haven't given the people who run the New York program equal time to give their side of the story, for as Edward R. Murrow once said, "On some stories there is no other side!"

Perhaps the Governor can defend and explain away the budget cuts for the Department of Mental Hygiene . . . And perhaps Dr. Miller can explain and defend the filthy, dehumanizing conditions we found in this and other buildings. But they won't do it on this program.

What we found and documented here is a disgrace to all of us. This place isn't a school, it's a dark corner where we throw children who aren't pretty to look at. It's the "big town's leper colony."

How long have you been at Willowbrook?

BERNARD. Eighteen years.

GERALDO RIVERA. How long were you given physical therapy in school?

BERNARD. Five years.

GERALDO RIVERA. Are you still going to school?

BERNARD. No.

GERALDO RIVERA. Why?

BERNARD. Cause I'm over age.

GERALDO RIVERA. You're too old?

BERNARD. Yes.

GERALDO RIVERA. Would you like to go back to school?

BERNARD. Yes, I would.

GERALDO RIVERA. What would you want to learn if you went back to school?

BERNARD. Learn how to read more.

GERALDO RIVERA. Learn how to read?

BERNARD. Yes.

GERALDO RIVERA. How is it living on the ward that you live?

BERNARD. Disgrace.

GERALDO RIVERA. It's a disgrace?

BERNARD. Yes.

GERALDO RIVERA. Why?

BERNARD. Because the conditions are getting worser every time they cut the budget more and more.

GERALDO RIVERA. But even Bernard with his tragically eloquent plea for help doesn't really understand that what Willowbrook needs isn't more money . . . more money would certainly help, at least the kids would have clothes and they'd be cleaner than they are now, but they'd still be basically human vegetables in a detention camp. What we need is a new approach . . . We have to change the way we care for our mentally retarded. We ask for change . . . We demand change. What you've seen here just doesn't have to be this way.

ANNOUNCER. This special report was brought to you as a public service by WABC-TV News.

RELIGIOUS DEVOTIONS AND BIBLE READING IN PUBLIC SCHOOLS

Mr. ALLEN. Mr. President, some may believe that the people are giving up the fight to restore the traditional and cherished right of children to voluntarily participate in Bible reading and other forms of devotions conducted in public schools. It is my opinion that such a conclusion is both premature and gravely in error. There is evidence that the fight is only begun. Witness the letters I have received from schoolchildren in the fifth grade of Mitchell Elementary School in my hometown of Gadsden, Ala.

The letters to which I refer were sent to me with a letter of explanation from Mrs. Patricia I. O'Neal, the teacher of these pupils. It was she who had the difficult task of trying to explain to her pupils why it is supposed to be unconstitutional and therefore illegal and wrong to read or to hear Bible stories read in classrooms.

Mr. President, these letters have the emotional impact of opinions written with the sincerity, simplicity, and eloquence of children. I invite and I urge all Senators to take time from their busy schedules to read these letters.

Mr. President, I am convinced that the judgments expressed by these schoolchildren are shared by teachers, schoolchildren, and parents throughout the Nation and that they and countless other citizens will not be turned back in their firm determination to remove the blight of illegality from the simple act of Bible reading and participation in simple devotions in the public schools in the United States.

Mr. President, I ask unanimous consent that the letter from Mrs. O'Neal and the letters from her pupils be printed in the RECORD.

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

MITCHELL ELEMENTARY SCHOOL,
Gadsden, Ala., February 17, 1972.

DEAR SENATOR ALLEN: As you can see, my children were most upset that we have been directed, because of our school board's interpretation of court orders, to stop having any kind of Devotionals here at school.

The children wondered what they could do to let someone know how they felt about this. Although I explained that this was not your decision, but the Supreme Court's, I thought perhaps you might like to see how strongly some of them felt.

Respectfully,

(Mrs.) PATRICIA I. O'NEAL,
Fifth grade teacher.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: I wish that we could still have a devotional each morning. Everybody in our class enjoyed it. Our devotional helps make our day better. It really teaches us to be better boys and girls. I think that everyone in our room believes in God. In fact, I believe that everybody in our school believes in God. So, our class thinks that we should still have devotional, if we don't read directly from the Bible.

Please help us to keep devotions in our classroom.

Sincerely,

DIANNA HOLCOMB.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: I am not writing this just for me, but for the rest of my class as well. Just because one out of five people doesn't believe in Christ, if they are hundreds of miles away, that shouldn't mean that we can't have a Bible reading. All the people in my class believe in Christ. That means a lot to me because I love Him and I know all the people in my class do too. In all my classes at school we have set a time every morning for either reading directly from the Bible or reading just a Bible Story. It meant a lot to us. It seemed to give us a brighter day. Please see if there is something you could do to help us be able to have our Devotional again.

Thank you,

TIM BELK.

GADSDEN, ALA.,
February 12, 1972.

DEAR SENATOR ALLEN: I wish you could see if you could do something about the law that you can't read the Bible in the classroom. We were upset when we found out that we could not read the Bible or even a Devotional. Like it says in the Constitution, we want our freedom of religion.

Yours truly,

LORI DOOLEY.

GADSDEN, ALA.,
February 14, 1972.

DEAR SENATOR ALLEN: I would like to know why we can not read the Bible or have a devotional of any kind anymore.

There is no one in our room that does not believe in God, yet we still can not read the Bible or have a devotional. Personally I don't understand why we can't do these things.

If we can't read the Bible why do you allow the Gideons to hand out Bibles to all fifth graders.

Some people say it will hurt their religion. Well, if we don't read the Bible it will hurt ours.

When we have a devotional or read the Bible we know God is with us and will help us to come through the day safely.

My class discussed the problem and we think it is unfair to us and other people. Used to, we had a devotional every day first thing. Now we don't have one because of one lady who complained.

Very truly yours,

MARY HUNKAPILLAR.

GADSDEN, ALA.,
February 15, 1972.

DEAR SENATOR ALLEN: I am writing to you on behalf of our fifth grade class at R. A. Mitchell School.

We respectfully request that you introduce a constitutional amendment to grant the right for Bible reading in schools.

This right is one of the first American heritages that we had.

Please help in any way that you can.

Respectfully,

DEBRA BASSON.

GADSDEN, ALA.,
February 15, 1972.

DEAR SENATOR ALLEN: About four months ago we heard that we couldn't have Bible reading in schools. My teacher, Mrs. O'Neal, kept reading from a Devotional book.

Monday Mrs. O'Neal found out at a teacher's meeting that we couldn't even read these stories. This has made my class and me very mad. Everybody in my classroom believes in God so why can't we have it? If there is a classroom that has somebody that doesn't believe in God, that class doesn't have to have Bible readings.

There are more people in the world that believe in God than there are that don't, so why can't we have Bible readings in school?

Yours truly,

CINDY CONDRA.

GADSDEN, ALA.,
February 14, 1972.

DEAR SENATOR ALLEN: I go to R. A. Mitchell School. I am in the 5th grade. I am writing about the rule that we are not to have a devotional in our school room each morning. I wonder if you could do anything about it. There is one thing I don't understand, about a week ago they gave out Bibles to both of our 5th grades. I do understand that some people in some schools don't believe in God, but there is nobody in our room who doesn't so why can't we? So please try to do something!

Yours truly,

KIM NALER.

P.S.—Everybody in my room agrees with me!

GADSDEN, ALA.,
February 15, 1972.

DEAR SENATOR ALLEN: I would like for you to try to put Bible reading back in school, if you can. If it hurts other children because of their religion they do not have to listen, but it may hurt ours if we don't hear it. So please try to do all you can about it.

Yours truly,

RENEE ROBINETTE.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: I'm the granddaughter of the Honeycutts who are staying in your house in Gadsden.

I hope you can do something for me. I would appreciate if you would tell me what is wrong with this woman who doesn't want Bible reading in the Schools.

My class and I feel that if we don't have Bible reading it may affect our religion. When we have Bible reading it starts us off with a happy and good day.

I hope you can do something about this woman who does not want Bible reading. If you can do anything about this my class and I will be very thankful to you.

Yours truly,

BELINDA LONG.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: Everyone in my class at school believes in God and wants to be able to have a devotional. When we had a devotional our schoolday seemed to run smoother, but now since we don't our days just aren't the same. Please see what you can do to get a devotional back in school.

Yours truly,

CAROL LAMBERT.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: I am a fifth grade student at P. A. Mitchell School in Gadsden, Alabama. All of my life my mother and daddy have taught me to pray and be thankful for America and its freedoms. This week we were told we must not read from the Bible or from the Bible storybook in our school. As long as it does not hurt anyone in my class, I'm wondering why we must stop giving devotion to God.

Will you please help our class to be able to have our morning devotional?

Respectfully,

JAN WATSON.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: We are having trouble in our school about religion. Some people think we should not read the Bible because they think it will hurt their religion. But we believe in the Bible. So please do everything you can to let us read the Bible.

Sincerely yours,

DAVID COCHRAN.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: We were very upset to have to cut out our Devotional. Our class likes it very much. No one in our class objects to having it. It starts our day with a happy feeling. We get along better with each other if we have Devotional.

Our whole class was upset when we found out we couldn't have a Devotional. We were in an up roar.

So can't you please do something to let us have Devotional again?

Sincerely yours,

APRIL MCWILLIAMS.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: We have no devotional because it might hurt other people's religion. My class disagrees with the Supreme Court. If we don't read the Bible, it may hurt our religion. In the Constitution there is freedom of speech, freedom of religion, and freedom of petition. Please help us. We also can not have a School Christmas Program this year because of this.

Sincerely,

BOB COFFMAN.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: I am not trying to be critical or anything, but I think that we ought to be able to read the Bible if we want to. Please see what you can do to let us read the devotional. We think that we ought to have our freedom of religion and Christmas programs and other things like that too.

Sincerely yours,

TAYA MCLESTER.

GADSDEN, ALA.,
February 11, 1972.

DEAR SENATOR ALLEN: The children of R. A. Mitchel School, Gadsden, Alabama, have been told that we could not have Bible reading, or Devotional in school every day. We would like for you to do something about it if you can. We think we should be able to read the Bible or have daily Devotional in our class.

Very truly yours,

WARREN COX.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: We, the pupils at R. A. Mitchell school, think that we should get to have a Devotional every morning. I am sure my classmates will agree. We miss it very much. Please see if there is anything you can do.

Sincerely yours,

RHONDA HENEGAR.

GADSDEN, ALA.,
February 14, 1972.

DEAR SENATOR ALLEN: I don't approve of taking away our Bible readings at school. When you have Bible readings it starts your day off right. Every person in my class likes to have a devotional and want it back in our school.

Sincerely yours,

CURT SCARBOROUGH.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: I hope you can do something about our not having a devotional in class. Could you? What about freedom of religion and freedom of speech? My class and I were wondering if you could do anything about this. If you can please do.

Sincerely,

LARISSA HIGGINS.

GADSDEN, ALA.,
February 17, 1972.

DEAR SENATOR ALLEN: I am writing about the devotional we had to quit giving. Anyway what's wrong with giving the devotional as long as everybody else doesn't mind and I'm sure they don't. So would you please see if you could do something about it.

Sincerely yours,

TAMMY BALLARD.

DEVELOPMENT OF NUCLEAR ROCKET ENGINE

Mr. CANNON. Mr. President, for more than a dozen years Congress has given overwhelming support to the development of a nuclear rocket engine, known as NERVA, which has been under development in connection with our commitment to explore space.

Over these years the project has challenged the maximum capability of our science and technology and has been an unqualified success. Repeated tests have demonstrated beyond doubt that an atomic energy in space will work and would enable the United States to double its payload capability as well as affording our spacemen maneuverability in space to an extent never before possible using conventional fuels.

While this development phase has met every expectation, the ax wielders in the administration have steadily applied a starvation budget and scaled down U.S. objectives to a point where now, instead of an original 200,000 pound thrust engine, it is proposed that Congress approve a 20,000 pound thrust, thus minimizing the weight advantages which the system itself affords.

Mr. President, it seems to me to be a tragic example of waste and mismanagement for the administration to ignore the fact that the American people have invested $1.5 billion over these years for a successful program, only to find that they have created little more than a tool for a group of confused accountants and bewildered fiscal managers who are more interested in starting new and unproven schemes in space than they are in reaching objectives to which we have made firm national commitments.

I am pleased that the Senate Space Committee will be looking into this and related questions when they meet next month on the NASA authorization bill.

The situation which I have described was succinctly summarized in a statement by Commissioner James T. Ramey, of the AEC, in testimony last week before the Joint Committee on Atomic Energy. I ask unanimous consent that his statement be printed in the RECORD.

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

STATEMENT BY JAMES T. RAMEY, COMMISSIONER, U.S. ATOMIC ENERGY COMMISSION

As I look at the proposed Nuclear Rocket Program, I am fearful that the old requirements merry-go-round is about to nail another scalp to the wall. This Committee need not be reminded how the system works. There is no requirement and, therefore, we should not develop the technology. Then later comes a requirement, but we cannot meet it because the technology does not exist. This disease breaks out in the bureaucracy in almost every season and this Committee has had many past opportunities to observe the results.

To date, the American people have invested $1.4 billion in the Nuclear Rocket Program and results have been highly satisfactory. For something like an additional $400 million, we can proceed with confidence through a flight test and give the United States an unquestioned place of leadership in space.

Instead of proceeding with the confidence which past technological accomplishment justifies, it seems to me that we are about to sink the whole program. In Fiscal Year 1971, the combined NASA/AEC Nuclear Rocket Program totaled $84 million. In Fiscal Year 1972, it was cut to $34 million with an avowal that we were planning to maintain our technological base that had been developed. Now we are proposing to cut the combined program to $13.5 million with only $5 million of that total available to the Atomic Energy Commission to carry out a

skeleton program at the Los Alamos Laboratory and the Nevada Nuclear Rocket Development Station. Again, we are told that this program will preserve the technological base in order that the nuclear propulsion option will be available in the event a requirement develops. I certainly agree that we should preserve the technological base in order that the nuclear propulsion option will be available in the event a requirement develops. I certainly agree that we should preserve the technological base, but I do not believe that we can do it very well for $5 million. I would suggest that an appropriation of $20 million for the entire program with $12 million allocated to the AEC and $8 million to NASA would come much closer to accomplishing the stated desire to maintain the technology and to avoid wasting much of the $1.4 billion invested to date.

For this amount of money, a proper program consisting of the following could be conducted. First, we could maintain a strong test and facility organization at NRDS that would be able to conduct reactor and component tests and perform facility engineering functions required to prepare for testing low-thrust nuclear rockets. Second, the fuel and reactor technology program could be expanded to include nuclear furnace tests on a more rapid pace and permit an early test of a Peewee reactor fueled with modern composite fuel elements. This step is vital to round out our technology, because reactor tests are the only valid proof of our technical capabilities. Third, the increased funding would make it possible to commence development of vital, long-lead-time components for a low-power nuclear rocket engine. Essential components include the turbopump, nozzle, gimbal, pressure vessel, valves, and actuators. Fourth, an adequate program on advanced solid core technology (carbide fuel elements) could be conducted along with other supporting research and technology activities that must otherwise be terminated.

To summarize, I continue my strong support for the nuclear rocket program. However, I must register the dissenting view that inadequate funds are budgeted in FY 1973 for this program. I believe that past progress and future promise for nuclear rockets warrant continuation of the program at a higher level to insure the maintenance of a strong and dynamic program with proper near term goals.

DISTURBING REPORTS FROM DEPARTMENT OF TRANSPORTATION

Mr. WEICKER. Mr. President, in the last several weeks I have heard some very disturbing reports emanating from the Department of Transportation. Those reports concern two internal DOT studies both of which appear, at least on the surface, to have excellent potential—first, the broad, overall National Transportation Planning Study initiated by Secretary Volpe 2 years ago and, second, the Urban Mass Transportation Administration's study into new guidelines for mass transit capital grants.

The purpose of the National Transportation Planning Study is to provide both DOT and Congress with a coherent framework within which to evaluate all future transportation bills, projects and planning. Unfortunately its formulation seems to have some serious flaws.

As we who are strong supporters of total transportation well know, State and Federal highway departments are the only transportation agencies which have real, long-term experience with broad-spectrum planning. Mass transit, by its nature, is localized and less susceptible to planning on a national scale. Airports and airways have national impact but their planning process is still in its infancy. Waterways, as a means of mass transit have been completely ignored. The only national study of inter-city rail needs has been done by a private group—America's Sound Transportation Review Organization—ASTRO.

As a clear result of these planning traditions, or lack of them, any National transportation plan which uses today's methodology and today's experiences must end up with an overemphasis on highways. This, I am convinced, would be a major mistake, just as would be any plan weighted in favor of mass transit or airports. It is absolutely essential that any such plan include a heavy dose of data and thinking on all modes of transportation, even going so far as to consciously deemphasized highways to compensate for the inevitable bias in their favor.

Any national plan must also include the best possible projections on developing technology effecting all forms of transportation and, perhaps most important, must carefully analyze the impact of each different mode on the environment, on housing, on the economy as a whole and job opportunities specifically. Finally, any planning process must consider the changing nature of urban and rural development including the need for transportation to follow population as it moves out from and encircles our major cities.

However, if any one kind of transportation is emphasized over the others, such rational planning will simply be impossible. If the selfish desires of a particular interest group, a particular industry or a particular history of expertise is allowed to predominate, we might as well scrap the whole project right now and spend the money where it will be more useful. Therefore, I would urge Secretary Volpe and all others involved in the study to again review their sources of information and their methodology to remove all the natural biases toward long established programs and to assure adequate compensation for intrenched, preconceived ideas.

Another aspect of the current DOT planning process which I find somewhat alarming is the fact that the final recommendations may well attempt to set rigid guidelines for allocating DOT funds among various transportation modes. For instance, it is said that capital needs for highways by 1990 will cost $600 billion while those for mass transit will be a mere $60 billion. Now those figures may, in 1990, turn out to be correct. But the Federal Government has no business imposing a 10-to-1 ratio on the whole country without reference to local, State, and regional needs which may bear no relationship to such a ratio. I have often said that I want no part of applying a Montana or Wyoming solution to a Connecticut problem. Nor would I impose the answer to Connecticut's transportation needs on other States. Any planning process which starts at the Federal level and imposes rigid technical or funding guidelines on local or State governments undermines the entire purpose of transportation planning. Such planning must come from the bottom up and not from the top down.

Mr. President, on February 2, I introduced S. 3110, a bill to create a national transportation trust fund. This would dump all Federal transportation funds into a single pot, allocate the pot as a whole to the States on a formula basis without reference to any particular transportation mode, requiring only that it be spent in accordance with a State plan approved in advance by the Department of Transportation. These plans obviously would have to be coordinated with those of adjacent States and would, therefore, taken together, constitute a national plan. But in this case the planning initiative would come from the level of government faced with the problems and would not be imposed from above.

This bill may not be the ultimate answer, but it seems to me to at least address the right questions. From what I have heard of the DOT study with its rigid guidelines, it would appear that, once again, we have lost sight of the right questions.

Mr. President, transportation is typical of many Federal programs. Somehow the assumption is made that Washington is the repository of all wisdom. Somehow we have come to feel that we in Washington know the answers to State and local problems better than the State and local officials elected to solve them. This simply is not true.

I would be the first to admit that transportation across the country is in a mess. In some areas, highways are desperately needed to clean up this mess. But in other areas more highways would only make the mess worse. What I am talking about is coordinated flexibility not planned ridigity. If the DOT study finally emerges in the form it appears to be taking, I will be the first to demand that Congress scrap it in favor of greater local option.

Finally, Mr. President, there is a strong indication that the Urban Mass Transportation Administration will soon issue new guidelines for capital grants which will place heavy emphasis on highway-oriented transit—in effect making it virtually impossible for any city to build or substantially improve a rail transit system.

It is said in justification for this action that only a very few cities are suited for the traditional form of rail system such as now exists in New York, Philadelphia, Chicago, and Cleveland. This may be true. But then, again, it may not be true. In any case, who are we, in Washington, to tell Baltimore, Atlanta, Buffalo, Dayton, St. Louis, Los Angeles, or any other city that we can solve their transportation problems better than they themselves can? Who are we to say that mass transit funds must be spent for anything more specific than mass transit in general? Who are we to say that rail transit or a combination of highways and rails will not best suit the needs of a particular city? Who are we to say that, because someone in Washington wants to pour more concrete, we are going to close all nonhighway options to local communities even though they may already have available rail lines which they could use,

thus saving billions of dollars and hundreds of acres?

A good example seems to be developing in Dayton, Ohio. There a plan has been advanced to put commuter cars on existing Penn Central tracks, thus relieving existing highways of commuter traffic and relieving the city of the painful need to further tear itself apart with even more highways. This proposal has not even been officially submitted to UMTA, and perhaps, based on local evaluations of local problems, it never will be. But what business does Frank Turner, the Federal Highway Administrator, have to descend on Dayton and, in essence, inform the city's officials that they might as well forget about plans for rail transit?

Proposals have been made for a simliar rail system in Washington and my own State capital of Hartford may well be a candidate for a similiar program. And I will be damned if I will sit back and watch all freedom of choice removed from Hartford, Washington, or any other city simply because UMTA guidelines are so rigid as to eliminate even the option of funding rail mass transit.

Mr. President, I would sincerely hope that rumors I have heard about both the broad planning study and the UMTA guidelines are wholly without foundation. But should they be true, let me assure my colleagues and transportation officials in Washington and throughout the country that I will be prepared to offer whatever legislation may be required to restore and improve local and State flexibility wherever possible.

LOOKING FOR NUCLEAR INFORMATION

Mr. GRAVEL. Mr. President, the AEC's hearing on nuclear powerplant safety—specifically on the untested emergency core cooling system in such plants—has been underway since January 27.

Thanks to the February 17 issue of Nucleonics Week, we have available a summary account of some important developments there, including the disagreement within the AEC's Division of Reactor Standards about the adequacy of the present performance criteria.

Mr. President, I ask unanimous consent that the following items from Nucleonics Week be printed in the RECORD:

First, "ACRS Again Urges ECCS Improvements; Pressures Grow for It To Testify."

Second, "Industry Feels ECCS Dissent Healthy; Opposition Sees Its Case Proved."

Third, "AEC Internal Documents on ECCS Reveal Staff Qualms."

Fourth, "Strength of ECCS Hearing Intervenors' Technical Case Questioned."

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

ACRS AGAIN URGES ECCS IMPROVEMENTS; PRESSURES GROW FOR IT TO TESTIFY

The Advisory Committee on Reactor Safeguards has written a second strongly worded letter to AEC chairman James Schlesinger calling for the commission to strengthen its emergency core cooling research program. The letter, sent last Thursday (Feb. 10), said: "The ACRS recommends that a subtantial increase in funds be made available for regulatory support of these activities and for reactor safety experiment which can be initiated in prompt response to items identified in regulatory review." The research areas identified in the letter are 1. flow phenomena during reactor depressurization; 2. reflooding rate as affected by steam binding; 3. flow and heat transfer during blowdown; 4. improved ECCS computer codes; and 5. fuel rod failure.

The letter follows an earlier one to AEC calling for ECCS design improvements for future reactors (NW, 20 Jan, 1). It comes in the middle of a heated controversy over whether AEC should reverse its recent ruling and require ACRS to testify at the ECCS rulemaking hearing now going on. Sources said there is a growing feeling within the commission that it will have to direct the 15-man ACRS to testify in person, as demanded by National Intervenors, the environmentalist grouping participating in the hearing.

These sources said that AEC is in a damned-if-you-do and damned-if-you-don't position over ACRS. "If they [ACRS members] are not subjected to cross-examination there will be a hole in the record large enough to drive a truck through," a commission source said. On the other hand AEC is under pressure from the Joint Committee on Atomic Energy to protect ACRS and keep it out of the hearing. JCAE feels that ACRS would collapse as an institution if its members were forced to testify. In its rule barring ACRS appearance at the hearing, AEC set up a formula for submitting interrogatories through the hearing board to ACRS. However, National Intervenors' attorney Myron Cherry has threatened to challenge AEC in court on grounds of due process if ACRS is not produced to face cross-examination. Meanwhile, it was learned this week that ACRS itself is divided on the issue of testifying, some of its members believing that no practical purpose can be served by establishing a hearing record that does not include direct examination of the bodies charged by Congress with watchdogging reactor safety.

Three other subjects also are awaiting AEC rulings and they, too, are expected to generate controversy. The commission must: 1. rule on whether it is going to produce witnesses asked for by the intervenors, such as members of the ECCS task force who are not part of the panel of 10 AEC witnesses at present on the stand; 2. endorse or reject slippage in the hearing schedule (the participants already have agreed—without endorsement of either the hearing board or commission—to delay introduction of their testimony from today [Feb. 17] to Feb. 24; 3. hand down guidelines on the scope of the hearing, a definition being sought by both intervenor environmentalists and reactor vendors. Sources say the commission would like to be liberal on the issue of witnesses and the ACRS but rigid in insisting on adherence to the hearing schedule and in confining the hearing to matters related directly to ECCS.

INDUSTRY FEELS ECCS DISSENT HEALTHY; OPPOSITION SEES ITS CASE PROVED

The facts revealed in the emergency core cooling papers released by AEC last week mean different things to different people. The documents (*see story below*) are mainly memoranda from AEC staffers to each other or to the task force that produced the ECCS interim criteria last June. To National Intervenors, the environmentalist coalition group participating in the rulemaking hearing now being conducted by AEC on the interim criteria, the ECCS papers mean confirmation of their case. This is that the interim criteria are inadequate and that plant licensing should be slowed down or stopped while ECCS safety is improved; some of the AEC memos take a similar line. But to the nuclear industry and nuclear engineers closely following ECCS development, the documents reveal a healthy measure of dissent. The vendors—particularly Babcock & Wilcox, Combustion Engineering and Westinghouse, who are mentioned in the memos—take the dissenting documents as simply a part of the AEC's decision-making process.

Robert Lowenstein, the Washington attorney representing Combustion Engineering in the rulemaking hearing, said: "What they [the documents] say to us is that the AEC staff has been particularly conscientious in reviewing the criteria and has listened faithfully to every view. Over-all, the documents only show that two men disagreed with the majority of their colleagues. I believe that when the record is complete these documents will buttress the position taken by the staff rather than detract from it." A similar view was expressed by Barton Z. Cowan, a Pittsburgh attorney appearing for Westinghouse in the ECCS hearing. Cowan said that the presence of some dissent within AEC was inevitable and probably healthy. Other industry representatives at the rulemaking reflected the same position: that some dissent was a good, natural thing.

NO UNANIMITY IN MATTERS OF JUDGMENTS

Sources close to the Advisory Committee on Reactor Safeguards also felt it is a healthy sign that there is disagreement among those responsible for developing ECCS standards and criteria. They stress that these dissenting views were fully considered in formulating AEC's position on ECCS. This position is that plants can continue to be built while ECCS design and code development progress, since the likelihood of a loss of coolant accident happening to the relatively few plants under construction in the next few years is extremely small, and the likelihood of the ECCS not working in such an accident is also extremely small.

Said one source: "If all AEC people agreed with each other [on ECCS criteria] they wouldn't be doing their job. You cannot get 20 or so competent people going along in lockstep right down the line. These are judgment matters. These memos just had to show substantial differences. Whether or not, in the long run, it is good for society to have all these internal disagreements aired, I don't know. But it is certainly a healthy sign that these are people in there fighting over whether this is better than that."

He said that the dissenting points of view of Morris Rosen, chief of the systems performance branch, AEC Div. of Reactor Standards, Robert J. Colmer of his staff, and others were rejected by the task force on ECCS, "but only after agonizing consideration of their points of view. The staff group tried very hard to see whether there was some sort of consensus view, but there wasn't." Rather than shut down nuclear licensing while ECCS improvements are achieved, the task force decided to "make a sort of rolling change," in which plants could continue to be licensed while the ECCS improvements were effected. And in fact ACRS recently wrote to AEC formally calling for such improvements for future plants. Instead of taking the absolutist view of reactor safety that some environmentalists take, said one source, the task force allowed for economic factors such as the needed power to be generated by the plants and the huge utility investment in the plants.

Many industry and AEC persons express concern about the long term effects of the precedent now established by publication of the internal documents. Already, the David Comey-led intervenors in the Bailly (Northern Indiana Public Service) and Zion (Commonwealth Edison) licensing cases have requested the release of AEC internal documents. The requests, based on the Freedom of Information Act, could result in a serious problem in the commission's internal work.

Mused an AEC staffer: "That's the end of the memo. If every thought, however extraneous, that is committed to paper is going to be the subject of cross-examination in a hearing, then no one around here is going to want to put anything in writing that is not classified. Worse, what really is going to hurt is that you are going to be obliged to make a written reply to any written suggestion with which you do not agree to avoid being accused of ignoring it in making a decision. If the commission makes internal documents available in every case, then we have a serious problem in our day-to-day workings."

As for the ECCS documents, one reactor-vendor executive felt that their release "amounts to an airing of internal dirty linen. Therefore it should be of more concern to them [AEC] than to us as vendors." He felt it was unfortunate that the papers were released, and that the intervenor's attorneys were following their usual pattern of "asking for documents and using them for delaying and embarrassing rather than getting at the information in an objective way. I think, they will use the information in such a way as to stall the proceedings and try to delay any findings of the board (if not to prevent them altogether) that AEC's criteria are adequately conservative. By pointing out internal divisions of opinion within AEC they will slow things down."

AEC Internal Documents on ECCS Reveal Staff Qualms

Study of the recently released AEC internal documents on emergency core cooling reveals a strong measure of staff concern that 1. the interim criteria on ECCS are not conservative enough; 2. that accident-condition factors such as coolant-channel blockage are not sufficiently understood or allowed for; 3. that experimental tests conducted so far have little or no relevance to the large reactors now being built; and 4. that computer codes used for calculating the results of a hypothetical loss of coolant accident (LOCA) are relatively crude, lack much needed data, involve too much "patching" between one code and another, were intended for 1965 and 1967 reactor designs, and should be replaced by much more sophisticated codes as soon as possible.

Wherever a specific reactor type is mentioned in the documents it is almost exclusively the pressurized water reactor (PWR). The boiling water reactor (BWR) hardly appears at all.

The documents were demanded by National Intervenors, a combination of several environmental organizations taking the opposition role in the AEC rulemaking hearings on ECCS. The hearing board refused to release the papers but the AEC commissioners reversed the ruling. Of the 61 documents originally demanded, only four were not released for reasons of proprietary or national security interests. The released papers date from May 1968 but most of them were prepared in 1971, especially the last three or four months. The great majority of them are memoranda from regulatory staffers to each other or to the AEC task force on ECCS which produced the interim criteria last June. None of the documents released records the opinion of the Advisory Committee on Reactor Safeguards on the interim criteria. However, one of the four documents retained by the commission is an ACRS review of the criteria, dated Dev. 12, and another is concerned with ACRS consideration of a computer-code model. ACRS has told AEC it must develop design changes and improvements to enhance ECCS performance but ACRS has refused to testify at the rulemaking hearing.

URGE MORATORIUM ON POWER INCREASES

Two of the AEC staffers making the strongest stand against present ECCS criteria are Morris Rosen, chief of the systems performance branch, Div. of Reactor Standards, and Robert J. Colmar, Rosen's deputy. In a memo to the ECCS task force, dated June 1, 1971, (shortly before issue of the interim criteria) they recommend a 6–12-month moratorium on reactor power increases to provide a "breathing spell" to allow time for further understanding of computer code limitations and capabilities. In talking about ECCS codes, tests, and conservatism, the pair wrote—in capital letters—that they took exception to this current approach and had consistently pointed out that it is too limited for the task at hand. It will have unforeseen pitfalls, they said. ". . . This approach will not be technically defensible in the final analysis as a basis for selectively derating multi-million-dollar plants on a plant-by-plant basis should code-generated numbers indicate such a course. We are further concerned because the task force is not adequately emphasizing the need to identify the current urgency of new system development and the need for experimentation to justify the adequacy of present designs in a timely way. We believe that the consummate message in the accumulated code output is that the system performance cannot be defined with sufficient assurance to provide a clear basis for licensing," they wrote.

Rosen and Colmar went on: "On the basis of these observations and the indicated views of many experts in the field we take exception to the simplistic argument of doing business in the best way we know how within the framework of the current state of the art as embodied in the present codes imperfect as they may be. We feel that the task force should realize that these may not be good enough for present safety analysis and may be, in fact, detrimental to an orderly and comprehensible licensing process."

They attacked the computer codes and noted that their views are supported substantively by critics of the reactor vendors' codes such as Wayne A. Carbiener of Battelle Memorial Institute member of the former Idaho Nuclear Corp. (now Aerojet Nuclear Corp.), Amir N. Nahavandi, doing AEC research work at Newark College of Engineering, Newark, N.J., and C. G. Lawson of Oak Ridge. Both Nahavandi and Lawson have ECCS papers among the released documents. Wrote Rosen (and it was co-signed by Colmar): "Cooling by narrow margins would have to be recorded by me as an essentially uncoolable situation." They told the task force that it is foolish for the vendors to continue preparing massive calculations based upon their ECCS computer codes and deluging AEC staff with them. It would be better, they said, to take an entirely new approach—for AEC to call for entirely new emergency core cooling systems to be developed, including the injection of water directly into the fuel core.

PWR FUEL ROD TEST DATA CITED

Many of the released documents refer to the PWR–FLECHT (Full Length Emergency Cooling Heat Transfer) tests of full-size, 12-foot-long fuel pin assemblies at General Electric and Westinghouse facilities under subcontract to the former Idaho Nuclear Corp. The electrically heated assemblies simulated decay-heat generation in reactor fuel pins cooled by sprays (BWRs) and flooding (PWRs).

Colmar discussed the PWR-FLECHT results in a memo to the task force dated Dec. 1, quoted here in full.

"The attached figure represents some of the PWR-FLECHT data showing the sensitivity of the heater rod performance to the bundle flooding rate. It is clear that the coolability of the rods, as measured by the maximum-clad-temperature-increase parameter, is a threshold phenomenon; that is to say, below a certain value of the flooding rate the coolability of the core deteriorates extremely rapidly.

"For these data, for example, the brink of this deterioration is somewhere in the region of 1 to 2 inches per second flooding rate, and that coolability below these rates becomes rapidly uncertain.

"It is important to note that current safety evaluations under the AEC interim policy statement on ECCS indicate that the reactor cores are flooding at the rate of 0.9 in./sec (i.e., Point Beach, Ginna, McGuire). Even though these calculated flooding rates represent results predicated on the multiplicity of conservatisms stated in the interim policy statement it must be recognized that there is implied in this a measure of absolute certainty on the part of the AEC task force on ECCS in finding such low flooding rates acceptable. This degree of certainty does not seem to be warranted. The margin for error for as yet unknown effects is measured by the difference between a presently acceptable flooding rate of 0.9 in./sec and an uncoolable situation at approximately 0.6 in./sec. At this point in the technology concerning the LOCA and ECCS there may be enough uncertainty in the effects of channel blockage due to clad swelling, uncertainties in the use of 'transition' boiling correlations by Westinghouse, or in the general FLECHT results themselves, to potentially overwhelm this narrow available margin of error.

"Judging from the FLECHT results the reactor should only be permitted to operate in the 'stable' or flat portion of the flooding curve which is attached. For example, best-estimate or realistic flooding modes should be required to be at no less than 6 inches per second. For deteriorated operation, representing a reasonably conservative approach (such as a modified interim policy statement on ECCS) the flooding rate should not be permitted to fall below 3 or 4 in./sec to allow for any residential phenomenological uncertainty that cannot yet be characterized for this difficult and incompletely understood phenomenon.

"It is suggested that the ECCS task force members reconsider the acceptability of the very low flooding rates and attempt to reformulate a position which reflects a greater margin of error than is presently accepted by interim policy."

CHALLENGES APPLICABILITY OF DATA

In another memo to the task force nine days later (Dec. 10), Colmar attacked much of the usefulness of the PWR–FLECHT test data. He noted that the fuel pins were contained in a housing which is "artificial with regard to the open-lattice core structure of a pressurized water reactor, so that some consideration must be given to the design of the housing in order for the test results to be meaningful. The thermal-hydraulic behavior of the housing must be such that the performance of the bundle is essentially the same as it would be in the realistic environment of additional rows of rods [in a real PWR]." Colmar said that there is no evidence that the temperature assigned by Westinghouse to the housing simulated the energy input of an additional row of rods in an open-lattice core. The radiation heat transfer to the relatively cold housing had not been adequately accounted for in the final reduction of the FLECHT data, said Colmar. He went on:

"This feature contributes a non-conservative element to the use of the FLECHT heat transfer coefficient data which is of unknown magnitude. Furthermore, the thermal-hydraulic behavior of the housing and its effect on the heat transfer coefficient is also *an unknown* at the present time. There is some indication that the steam generation associated with the thermal-hydraulic behavior of the housing may also contribute to nonconservative FLECHT heat transfer coefficients.

"These considerations are significant elements in the proper evaluation of the FLECHT data, yet the nature and extent of

these effects on the FLECHT heat transfer coefficients are *unknown* to the regulatory staff. Nonetheless, the PWR–FLECHT data has been accepted in safety evaluations, as prescribed by the interim policy statement on ECCS, with these deficiencies not clearly understood. It seems imperative that the ECCS task force members resolve these uncertainties at the earliest possible time inasmuch as present licensing procedures are predicated on the acceptability of the PWR–FLECHT heat transfer coefficients for flooding rates as low as 0.9 inch per second; the FLECHT data indicates an uncoolable reactor situation at about 0.6 inch per second, so that the margin is extremely narrow and can possibly be overwhelmed by the existing uncertainties."

CALLS DECISION INSUFFICIENTLY CONSERVATIVE

Colmar also said: "It seems important to note that, in addition to the regulatory staff not having any clear evidence from Westinghouse that the housing performed properly in these FLECHT tests, members of the Aerojet Nuclear Corp. connected with this project have expressed concern that the proper behavior of the housing has, indeed, not been accomplished." Colmar added that the softness of the data on the housing and the radiation heat transfer to it "suggest the magnitude of the potential errors involved at the low flooding rates and should *serve to alert the regulatory staff* to potential nonconservatisms in presently acceptable analyses that may have serious consequences. The essential point is that the radiation heat transfer component should be properly accounted for in the reduction of the FLECHT data, particularly for the low flooding rates, as was done in the BWR–FLECHT program wherein these effects were found to be quite significant. This evaluation has not been accomplished in the PWR–FLECHT program. Further, there does not appear to be any substantive basis on which to conclude that these effects are insignificant at present; yet the results of the PWR–FLECHT program are prescribed in the interim policy statement on ECCS for the safety evaluation of current reactor systems for licensing purposes."

In a third memo to the task force, dated Jan. 13, 1972, Colmar stated that the PWR-FLECHT tests suggested blockage of the coolant channels between fuel pins, caused by swelling of the cladding, is actually beneficial in emergency cooling. However, he said, because FLECHT did not represent an open-lattice core the test results "may be misleading if taken at face value. . . . There are indications . . . that elements exist in the blockage configuration which are clearly deleterious to bundle cooling during reflooding. The indications are that this phenomenon may have a serious effect on core cooling," he said.

However, despite all of Colmar's memos, the task force concluded, at a meeting on Dec. 11, that the inadequacies of the PWR–FLECHT tests "could for the time being be dismissed when considering the interim evaluation models," said Momis Rosen, Colmar's chief, in a memo to the task force dated Jan. 12. The task force felt that arguments refuting Colmar's contentions should be developed by the reactor manufacturers. Rosen mentioned another memo, apparently also to the task force, by G. Norman Lauben of the Div. of Reactor Standards, in which the later continued to "raise serious questions as to the usefulness of the interim criteria for licensing purposes." He also quoted from a letter by J. C. Maire of Aerojet Nuclear Corp. which said: ". . . as reflooding rates approach 1 in./sec. [acceptable within the interim criteria] bottom flooding is relatively ineffective in preventing clad damage for many postulated LOCA conditions."

ASKS BETTER COMPUTER PROGRAM

An undated report by Nahavandi, a research professor at Newark College of Engineering, prepared under AEC contract, concluded that the current ECCS analytical capabilities are inadequate for predicting a plant's dynamic behavior during a LOCA. He wrote: ". . . under the present conditions, the core fluid flow and heat-removal capability and effectiveness of the ECCS in maintaining the fuel cladding temperature within allowable limits cannot be established." To overcome this problem, the report proposes the development of a more reliable computer program. The effects of flow oscillations on heat transfer should be determined by analytical and experimental studies, and then factored into the new computer program. "The program should be designed to eliminate the need for external coupling or 'patchwork' between component programs." Nahavandi wrote, adding "the computational volume of the new computer program is one order of magnitude larger than that of the present programs. Therefore, new computational techniques must be introduced to reduce the running time of the program."

This theme was echoed by Edson Case, director of the Reactor Standards Div. In a memo to Milton Shaw, director of the Div. of Reactor Development & Technology, dated Aug. 16, Case wrote: "Current efforts on the development of a more sophisticated thermal-hydraulic LOCA code should be substantially increased both in priority and funding. What we have in mind is not 'patching' or adding to existing codes, but development from basic principles of a new code, better able to handle the complex physical problems realted to a LOCA and to ECCS performance. In particular, potentially disadvantageous phenomena observed in recent experiments, such as nonequilibrium mixing and chugging, should be realistically treated in the new code. This is a difficult task, at the frontier of presently available technology, but it is urgently needed to permit correlation of existing and new experimental data, including that to be obtained from LOFT [Loss of Fluid Test], with large power reactors. We suspect that adequate LOFT design may also depend upon development of a sufficiently realistic thermal-hydraulic code, of the type here proposed. Short-term efforts should be continued to make specific modifications to Relap-3 and Theta-1B [codes] in order to better model thermal and hydraulic phenomena in PWRs (e.g., the degree of mixing during ECC injection) and to permit the use of Relap for BWR LOCA calculations. Improvement in the Theta code with the goal of improving running time and continued development of a three-dimensional version of Moxy which includes a rate of heat transfer model representative of the BWR heating code should be developed." (The codes mentioned were developed by Aerojet Nuclear.)

PRESSESKY CALLS CODES OUTDATED

A plan for development of a new code was presented on Oct. 21 by A. J. Pressesky, assistant director for nuclear safety, Div. of Reactor Development & Technology, in a memo to Case. The code proposal was prepared by Aerojet Nuclear. Pressesky noted that nuclear safety codes used by the nuclear industry are based upon codes for plants built between 1965 and '67. The codes have been updated since then to take account of the larger plants under construction, but . . . "A point has been reached where the present codes cannot be effectively modified to meet future needs. Specifically, the difficulties which would inhibit the use of present codes for future problems are: 1. inability to describe important physical phenomena and subsequent lack of ability to define the marign of safey with confidence; 2. inconsistent treatment of common phenomena in codes; 3. difficulties in interfacing and modifying codes; 4. over-emphasis on empirical correlations."

Pressesky said that the plan proposed establishing three principal code components: 1. A basic loop code structure capable of describing slip flow, unequal-phase temperatures, variable flow area, and volumes with three or more junctions. Some 11 man-years would be required to develop this code. 2. A core thermal-model code, to better determine core flow and its distribution. It would determine the type and magnitude of flow oscillations, among other things. Nine man-years would be necessary to develop the code. 3. An executive code designed to link together the other codes, to keep them up to date, and allow their use on any of the present computers and the new large-capacity scientific computers. This would take four-man-years to develop. The plan also proposed several additional subroutines and auxiliary codes.

QUESTIONS KNOWLEDGE OF BLOCKAGE EFFECT

Colmar took up the matter of coolant channel blockage in a memo to the task force on Dec. 1: "The entire question of channel blockage, its extent and its effects, in a reactor core during the reflood phase of the LOCA does not appear to have been resolved adequately. The interim policy statement on ECCS contains no explicit consideration of channel blockage although the effects can conceivably add several hundred degrees to the calculated clad temperature. It is recommended that the task force consider the question of flow channel blockage due to clad swelling and formulate a properly conservative modification to the interim policy statement on ECCS."

He went on to make several points: "1. The existing basis for establishing the effects of channel blockage is extremely limited; the analytical studies are somewhat outdated and the only experimental studies on full length bundles is limited to one program, the PWR-FLECHT tests. 2. Channel blockage acts as an increased resistance to flow and causes a redistribution of the normal flow which results in a flow reduction into the regions affected by the blockage. 3. An attempt to interpret the PWR-FLECHT data to account for some effects of radial flow indicates that blockage tends to degrade the local heat transfer and reduce rather than increase cooling as suggested by previous interpretations of the published FLECHT data. The temperature increase due to blockage appears to be dependent on the amount of blockage and may be in the order of several hundred degrees for 50% blockage. 4. At low flooding rates, in the order of 1 in./sec, the successful performance of the ECCS may be very sensitive to any additional degradation of the local flooding rate. The effects of flow channel blockage may be very critical in this regard.

"It seems essential, therefore, to carefully re-evaluate the basis for the present regulatory position on the effects of channel blockage in the current safety evaluations," Colmar urged the task force. He recommended careful re-evaluation of the FLECHT data, "which forms the principal basis for presently estimating the effects of blockage for a bottom flooding system. . . . If the FLECHT uncertainties cannot be resolved readily and blockages on the order of 50% seem probable the ECCS task force ought to consider amending the interim policy statement on ECCS appropriately." Colmar reminded the task force that the "effect of channel blockage has not been implied or explicity delineated by the existing conservatisms. Therefore a discrete conservatism to account for the effects of flow channel blockage should be formulated. This effect should be explicitly stated in the interim policy statement as applicable to all reactor types so that the burden of demonstrating any benefits, experimentally or analytically, to reduce this conservatism would be placed with each of the reactor vendors or the applicants. This would seem to be prudent from a technical point of view as well as from the standpoint of improving the position of the regulatory staff

at future public hearings on licensing matters."

TEMPERATURE MARGINS LISTED

The matter of peak clad temperatures was taken up in a memo to the task force, by Richard C. DeYoung, assistant director of the Div. of Reactor Licensing, dated March 16. He wrote: "The problem of ECCS performance must be considered in terms of the criteria established for licensing. To date LOCA analysis has used the computer codes discussed and peak clad temperatures have been predicted to be below the criterion of 2,300 degrees F. The following results are listed to indicate margins in clad temperature before exceeding the clad criterion for the large cold leg break.

"Westinghouse plants: Indian Point-2, 2,015 degrees F; Indian Point-3, 2,215; Zion, 2,040; D.C. Cook, 2,240; Turkey Point, 2,465 (reduced to 2,315 after charges [sic] to decay heat generation); Prairie Island, 1,955; Aguirre, 1,990 (both of which are for intermediate cold leg break).

"Babcock & Wilcox plants: Oconee, 2,204.

"Combustion Engineering plants: San Onofre-2 and -3, 1,850."

The results of the semiscale ECCS tests conducted by Idaho nuclear were discussed in several memos. One, on the applicability of the tests to PWRs, was prepared by D.F. Ross, Div. of Reactor Licensing, in September. He concluded that there were several mechanisms that were responsible for ECC rejection in the semiscale tests that would not exist in a PWR "to the extent necessary for complete ECC rejection." He listed these mechanisms as: "1. Semiscale continued to blowdown in a negative direction in the core during and after ECC delivery. This was due to the single loop feature, the discharge to atmospheric pressure, and the additional steam generated from heat transfer from hot metal surfaces. In a PWR there are multiple flow paths which will permit core bypass. Heat transfer from hot metal surfaces was found to be of lesser significance in a PWR. 2. Semiscale had an oscillatory behavior in the latter stages of blowdown which contributed to ECC loss. Similar analysis for a PWR indicates a small oscillation prior to core recovery in relation to the height of the PWR downcomer. 3. The core frictional resistance of steam generated during the latter stages of semiscale blowdown was sufficient to lift water up the inlet pipe and out the break. This will not occur in a PWR because the core pressure drop is less; the annulus/core area ratio is 1/2 instead of 1/9 on semiscale; and the downcomer is five times higher on a PWR. The experimentally observed phenomenon of oscillation in the latter stages of blowdown is being incorporated into PWR analysis. Preliminary results show that this mechanism will cause ECCS loss, although not sufficient to prevent core flooding."

Colmar, in another memo, stated that the semiscale test results could not be construed as a failure or applicable to a full-scale reactor. Aerojet Nuclear (the successor to Idaho Nuclear, conductor of the semiscale tests) concluded that pressure oscillations caused the ECC water loss in the tests. But, Colmar told the task force in a memo of Oct. 1, ". . . the view is that steam binding was the cause. . . ."

HANAUER EXPRESSES CONCERN

Leader of the task force was Stephen Hanauer, AEC technical adviser to the AEC director of regulation. He wrote many memos to the task force, discussing its forthcoming or just-past meetings, among other things. One of the memos, written on Nov. 5, told the members: "I expect to be grilled by the Advisory Committee on Reactor Safeguards about future research and improvements in ECCS." Writing about Babcock & Wilcox's computer codes, he said: "I am not enchanted with my first book at BAW 10034. Note the horrible oscillations in fig. 7-2, less horrible in fig. 7-8. See the spikes in figs. 7-12, -13, -35, -49, -53, -64. Do we have to buy this . . . ?" And he added: "I expect the same problems with the ACRS."

In an earlier memo to the task force, on July 28, he wrote: "We are getting too much help from intervenors and environmental groups in establishing the technical basis for ECCS effectiveness and performance. Rather than rebut such papers as the recent ones by [David] Comey [environmental director of Businessmen for the Public Interest, a component of National Intervenors now participating in the rulemaking hearing] and the Union of Concerned Scientists [also with National Intervenors] one by one, we should instead accelerate publication of the AEC technical paper on this subject."

The AEC technical paper was never released separately by the task force, but was incorporated into the commission's testimony for the rulemaking hearing.

Hanauer later said, in the same memo, "It is sad but true that neither Babcock & Wilcox nor Combustion Engineering will be in satisfactory shape, I now envisage, for getting out this report. There are various possibilities for handling this difficulty: a. tell it like it is with all our present qualms about the present codes; b. leave a hole, acknowledging that codes are under development and no description or review is possible at the time of publication and issue a supplement. Neither of these is very appetizing but we will have to decide something fairly soon," he wrote.

In another Hanauer memo to the task force, dated July 7, he talked about a meeting planned for July 12. Combustion Engineering "will be in to tell us lots of good things about their present effort. I plan to tell them that what they are doing may look pretty good for the interim, but it will leave them a year from now in the same shape they are in today, namely, with calculational tools based on obsolete technology. They need a program aimed at acquiring or developing *better* [Hanauer's emphasis] calculational tools so that a year from now they will be able to continue justifying their designs."

STRENGTH OF ECCS HEARING INTERVENORS' TECHNICAL CASE QUESTIONED

As the emergency core cooling rulemaking hearing creaks slowly along, observers close to the situation are speculating that National Intervenors—the grouping of environmentalist organizations forming the opposition—has a slim technical case. National Intervenors, represented by Myron Cherry, contends that the AEC interim criteria on ECCS are inadequate, that all operating nuclear plants should be substantially reduced in power, and that there should be a moratorium on licensing new plants until ECCS improvements are effected.

Observers point to the fact that so far Cherry has been relying for technical assistance during the hearing on 24-year-old Daniel Ford, a coordinator of environmental projects at Harvard Univ. with no formal education in nuclear engineering. Ford's credentials were seriously questioned when he entered the hearing. John Buck, one of the two technical members of the hearing board, said: "Mr. Ford has stated that he got into this area less than a year ago. The staff and vendors here have experts in the various fields that have been in the fields for many years." Buck said that some determination should be made of Ford's expertise. "I cannot under any circumstances consider that a man with nine months' intermittent experience in a field in which he has no formal training whatsoever could meet that qualification," he added. One AEC staffer commented: "He [Cherry] has promised us an affirmative case but the nature of his questioning indicates that his case is one of rebuttal. He is making it as he goes along."

Nevertheless, Cherry points to the facts that he intends to bring five expert witnesses (so far unnamed) to the hearing and that his expert testimony amounts to some 600 pages. And the Union of Concerned Scientists, the Boston-based group of which Ford is a principal member, published two weighty documents last year detailing its case against the ECCS interim criteria. Cherry has plenty of time later in the rulemaking hearing to develop his technical case.

The feeling among AEC and nuclear-industry people participating in the proceedings is that the hearing is producing a good record but the intervenors have not made an effective contribution so far—with or without the internal ECCS documents the commission released last week. The papers reveal a measure of AEC staff dissent from the official AEC position on ECCS. One utility lawyer said: "If Mr. Cherry were to have taken the trouble to read the original [AEC] staff testimony he would have found that the dissent that has come to light in the internal documents was mentioned in that." A Westinghouse source added that the only effect the internal documents would have on his company would be to force its lawyers to do more work on its testimony, which hasn't been presented yet.

However, Cherry is using the documents as a source for relentless cross-examination of AEC's 10 technical witnesses. Quoting passages from the AEC memoranda which reveal qualms about the adequacy of the interim criteria and computer codes, among other things, Cherry has been mercilessly questioning AEC witnesses such as Stephen Hanauer, chairman of the AEC task force which established the interim criteria. Hanauer, technical adviser to AEC's director of regulation, has taken a torrent of barbs from Cherry. When he appeared not to be familiar with a piece of paper that was known to other members of the witness panel, Cherry snapped at him: "What is the reason for your solitude, Dr. Hanauer?" On another occasion, Cherry told him: "Go back to sleep, Dr. Hanauer." Sometimes Hanauer has been rattled by the verbal battering and has answered shortly or argued with Cherry. But by and large he has given the impression of a man laboring genuinely to tell all. Most of those attending the hearing have felt for him—especially since he may be on the stand for many weeks.

Armed with the internal documents, Cherry was able to catch Hanauer in some minor inconsistencies of testimony. But generally he was unable to shake the witnesses with his new material, although he drew some disagreement with the rest of the panel from Norman Lauben of the Div. of Reactor Standards. Lauben apparently shares some—although by no means all—of the reservations of two of his superiors whose memoranda compose the bulk of the controversial documents. They are Morris Rosen, head of the systems performance branch of the Reactor Standards Div., and his deputy, Robert J. Colmar. Some of Lauben's reservations were elicited in this series of questions directed by Cherry to Hanauer and later to Lauben:

CHERRY. "Are you sufficiently satisfied that the codes predict accurate results at this point?"

HANAUER. "I'm sufficiently satisfied with the conservatism of the evaluation models which include the codes when used with the criteria of the interim policy statement."

CHERRY. "Mr. Lauben, do you agree with the statement made by Dr. Hanauer?"

LAUBEN. "No, because I think that I would include some more conservative requirements on reflooding heat transfer.

CHERRY. "Dr. Hanauer, in the area in which he stated that he thought that the codes ought to be more conservative, can you state, sir, whether you believe that in that area you or Mr. Lauben possesses a

greater understanding of the problem, in your judgment?"

HANAUER. "I think Mr. Lauben does."

CHERRY. "Thank you, Dr. Hanauer."

At another point, Cherry again found Lauben responsive to his questions, in this exchange.

CHERRY. ". . . Would you say that for a specific area or for a general area, that the [AEC] regulatory staff testimony is not sufficient to support the interim criteria and that the interim criteria in and of themselves are not the approach to take in licensing of reactors?"

LAUBEN. "I would have to say that there are certain portions of the testimony that I would have to consider personally as not being sufficient."

CHERRY. "Please tell me what they are, Mr. Lauben?"

LAUBEN. "If you don't mind, I feel the necessity for carefully wording this."

CHERRY. "Yes, sir, please take all the time you wish, if you wish to confer or take a two minute break——"

LAUBEN. "No, sir."

CHERRY. "It is an important answer."

LAUBEN. "I have a certain amount of difficulty with the FLECHT [Full Length Emergency Cooling Heat Transfer tests] with respect to the heat transfer as being a sufficient way to calculate coefficients during a reflood phase."

CHERRY. "Could you be a little more specific, Mr. Lauben?"

LAUBEN. "Yes, I believe that the FLECHT heat transfer—or I could say heat reflood transfer—is a very important part of the loss-of-coolant accident. I would even say that it's the most important part, in my judgment, now. I am not convinced that the way that it is spelled out to be done in the interim policy . . . has been demonstrated to be sufficiently conservative, in my view."

A few questions later, Lauben said he had not quantified the amount of conservatism that he would add to the calculations as they are presently constituted, and it would depend on the fuel-clad temperatures reached in an accident.

THE COPPER INDUSTRY AND POLLUTION CONTROL

Mr. FANNIN. Mr. President, the copper industry has long been a mainstay of the Arizona economy. Recently it has become the center of the controversy over pollution control.

What happens in Arizona and other copper-producing States is of vital interest to the entire Nation. Copper is used in a great variety of products, and it is essential to our national defense.

Proponents of immediate and harsh antipollution regulations contend that the copper companies are bluffing, that they can meet the high costs of new commission control equipment, that they will not be driven out of business in America, that they will not abandon their mines and smelters to shift their operations to other areas of the world.

Mr. President, I do not believe that they are bluffing.

I believe that the risk of forcing them out of business is too great, and that the risk is unnecessary.

I believe that new regulations should be imposed in a manner which will enable the companies to meet the standards.

A recent editorial in the Arizona Daily Star, of Tucson suggests that the copper industry is being made a scapegoat in the pollution fight. The editorial likens environmental extremists to a lynch mob which attacks the first person it comes upon.

Copper companies are large, visible targets. The pollution they cause is concentrated and thus easy to criticize.

Certainly every effort should be made to cut down on this pollution. Restrictions should be imposed which will require the firms to move as rapidly as is economically possible in pollution-control work.

But a misjudgment in this area would be extremely harmful. We could lose thousands of jobs, millions of dollars in tax revenues, and worse, our domestic sources of this very important metal.

Mr. President, I would like to share the Arizona Daily Star editorial with the Senators. I also would like to bring to their attention an enlightening article published in the February 10 Wall Street Journal. I ask unanimous consent that these articles be printed in the RECORD.

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

[From the Arizona Daily Star, Feb. 11, 1972]

TOWARD CLEANER AIR

Every responsible citizen is concerned about air pollution, and favors taking measures to keep the air over the Tucson metropolitan plateau, as well as elsewhere in Arizona, clean and safe. Tucson must not be allowed to slip into the situation of Los Angeles, New York, and other large cities in various parts of the nation.

The problem is not one of whether or not the air should be kept clean, or be made cleaner than it is. It is how to achieve that end. Involved in the discussion of pollution control and preservation of a clean environment are numerous emotional arguments that seem to be impervious to all presentations of fact.

In this respect, the speech of George B. Munroe, president of Phelps Dodge Corp., in Tucson last week is worth analyzing. Munroe made a good case for a reasonable, measured approach to the pollution problem—an approach that would neither demand impossible haste nor tolerate unnecessary delay. His company is prepared to spend $120 million between now and 1974 on such an approach. Munroe indicated that, granted time and technology, Phelps Dodge would take every step to reduce pollution to the absolute minimum.

He also pointed out some economic realities of the Arizona pollution situation. Demands that will break even a company of the size of Phelps Dodge cannot be met. Insistence on the impossible will force Phelps Dodge and other copper companies to mine copper elsewhere. Not as a threat but as a fact, Munroe told how as a matter of economic life or death Phelps Dodge might have to move elsewhere, and already had begun exploring in Australia and South Africa.

That assertion alone should be the answer to the argument used loosely by many people—that the copper companies have to have Arizona, but Arizona can do without the copper companies. Arizona produces 53 per cent of the United States' copper because this state has large ore bodies and the industrial climate thus far has enabled development and production.

Make development unattractive, or mining and smelting virtually impossible, and some other area will produce not just 53 per cent of the copper this nation uses, but a larger percentage. Munroe indicated the national undesirability of forcing America to rely on sources of copper outside its boundaries.

The Star believes that preservation and protection of clean air is a goal that should be achieved. The Star also believes that the mines have become scapegoats for all sorts of other polluters. The big mining companies have pledged more than $200 million toward clean air, at a time when there is little concerted move or financial commitment by any other segment of the Arizona economy to do its share to clean up the air.

The protection and preservation of clean air must occur in the proper perspective of economic and social realities of the present day. Jobs are involved. The movement of citizens properly from one place to another in automobiles is a considerable factor. The limits to which municipal and county governments can go to spend money on dusty thoroughfares is another factor.

Only last week John Ensdorff, director of Pima County environmental control services, attributed the steady rise in smog over Tucson to "more people, more cars." People and cars, he said, cause dust pollution which is responsible for the haze that frequently hangs over the city.

County officials said that city and county governments should accept as much responsibility for cleaning the air as they insist industry take.

For extremists to attempt to twist or distort the situation, to blame mining companies when numerous other factors are involved, and to insist on the impossible, is neither right nor wise.

Yet, as Munroe recognized, the political climate prevents proper consideration of reasoned presentations.

As an example, take the controversial committee report to the board of health. It unfortunately was enveloped in secrecy. When it became public it proved to contain numerous assertions questionable on the basis of other information available.

The emotions aroused by public speculation over what a private document contained have not calmed down. Anyone who argued, no matter on what grounds, that the committee report was worthless might well be shouted down, his facts drowned in the general ecological din.

Environmental extremists can be like a lynch mob. The mob sometimes lynched the first person it came upon, without regard to guilt or justice.

Neither the mines, nor the big public utilities that must generate electricity should be lynched. They are only fractionally as guilty of air pollution as most of the people attacking them. Someday, Arizonians should hope, moderation and sanity again will rule. There should remain a firm and sure demand that whatever pollution exists be eliminated as fast as the means develop to end it.

BITING THE HAND—SOME MINING STATES OUTDO U.S. STANDARDS IN AIR-POLLUTION WAR

(By Barry Newman)

PHOENIX.—Fred A. McKinney, 96 years old, scratched out a note to Arizona's Gov. Jack Williams.

"I have lived in Bisbee since the smelters were built in Douglas and endured the smelter smoke when the wind was right" for the past 65 years, he wrote. "We believe Phelps Dodge is doing what it can to remedy the situation, and we are sure that a smelter and a little smoke are far preferable to no smelter and no smoke."

But Arizona disagrees. The state's board of health says Phelps Dodge will have to do more—much more—to control the smoke that spews from its aging smelter in Douglas and, when the wind is right, smothers the towns nearby where the copper workers live.

In fact, Arizona and some other Western states whose economies were built on the bedrock of the mining industry are coming to believe that no smelters and no smoke may indeed be preferable to the white haze the

industry casts over nearby towns, pristine desert and virgin forest.

These and other states have just about finished submitting to the Environmental Protection Agency their plans to implement the federal fair quality standards issued last spring and made final at year-end. The federal controls cover emissions such as sulphur dioxide (the main pollutant from copper smelters), carbon monoxide, hydrocarbons and particulates.

SOME STATES OUTDO UNCLE SAM

Since the federal rules were formally adopted, some Western states, including Texas, Utah and Nevada, have begun loosening their tougher standards to bring them closer to the federal rules. But other states are adopting standards that go well beyond the federal guidelines.

Arizona and Montana, the two states that have long relied msot heavily on mining and smelting, are biting down hard on the hand that both feeds and smothers them. They have imposed shorter deadlines to meet lower levels of sulphur dioxide contamination than the federal standards require; they are demanding that 90% of the sulphur dioxide be removed from all emissions before they leave the smokestack.

The copper companies have exerted all the political muscle they can muster within the state governments and in Washington. But despite the mounting pressure to change the rules—even from their own governors—the boards of health in Arizona and Montana appear at this point to be rolling with the punches.

The two states are sticking with their basic, tough regulations. About all the health boards are willing to do is grant the companies more time for meeting the standards. In Arizona, the rules are already in effect, but most companies have sought and received conditional permits to keep operating. But they must comply with the rules by the end of next year. Montana, likewise, has a procedure for issuing variances from its rules, which take effect in mid-1973.

For some companies already reeling from expropriations in Chile, Zambia and the Congo, the effect of the domestic blows may be nothing short of disastrous. U.S. producers had been talking of expanding operations in this country because of the threat of still more nationalizations abroad, but the environmental movement now is beclouding their plans.

SOME SMELTERS WILL CLOSE

Instead of expansions, the state regulations appear certain to force the closing of some smelters. Phelps Dodge Corp. says it will have to close the old Douglas smelter, and it naturally laments Arizona's stance. "It's clearly the wrong way," says George B. Munroe, president. "It would put the very people the law seeks to help in a condition of substantial hardship."

Bringing each of its three Arizona smelters into compliance with the standards by the 1974 deadline would cost Phelps Dodge $240 million, Mr. Munroe says. "That amount represents more than one-third of the total net worth of the company. To make expenditures of this magnitude prior to 1974 for construction and equipment which will not increase our production is simply not possible, even for a company the size of Phelps Dodge."

A copper industry analyst in New York says the high cost of pollution control will force the closing of some copper mines as well as smelting operations. In Montana, he says, Anaconda Co. "is sweating blood" because "it just doesn't have the money" to meet the tough pollution regulations. "The copper companies," he adds, "are fighting for their lives."

The company's argument against the strict rules is solely economic, says David Swan, vice president for technology at Kennecott Copper Corp. "The regulatory agencies have a single mission—improving air quality. They aren't concerned if anyone loses his job, and they don't have the tools to measure these and other possibilities."

Arizona's board of health agrees its emphasis is on air quality rather than economics. Says Elaine McFarland, chairman of the Arizona health board, "The industry is seriously threatened, but our entire way of life is seriously threatened, too."

Joseph Sturtz, Arizona's health commissioner when the strict standards were drafted, echoes Mrs. McFarland's sentiments: "If I must choose between the margin of profit on old copper installations and the health and beauty of Arizona, then I choose the health and beauty of Arizona. I know that copper contributes to the general welfare. But profit at the cost of poisoning the air we breathe is too high a price to pay."

But the economic impact of the tough controls wasn't entirely lost on the Board of Health—and thus the extensions of deadlines. After all, Arizona produces 40% of the copper consumed in the U.S. In 1970, $1.2 billion of copper was dug from Arizona's soil. Seven of the country's 15 copper smelters are in the state. And although the seven smelters are responsible for putting a million tons of sulphur dioxide into the state's air every year, they also contribute hugely to the state's economic health.

The economic realities are brought closest to home in the smelter towns. After driving along the Dripping Springs mountains and into the valley of the Gila and San Pedro rivers, the visitor comes to the town of Kearny (population 3,000) in the "copper basin." The basin is full to the brim with white haze, most of it from the Kennecott smelter in nearby Hayden, which has the highest sulphur dioxide concentration in the state.

At the weekly meeting of the Kearny Rotary Club (whose membership includes Kennecott division manager I. G. Pickering), the talk turns naturally to pollution. But to most of these men, the problem is with the regulators rather than the polluters.

"I had TB in 1937," says Mike Smith, who heads the adult-education program at Central Arizona College. "I've been here since then, and the air has never hurt me." Adds Ron Stockstill, a real estate broker, "You can't deny they put out a little smoke. But it's pretty clean smoke as far as I can see."

The logic of the Kearny Rotary members is hard to miss, even in the pervasive haze. Kennecott pays 93% of the school taxes in the town. The company built and staffed the town's hospital, and about 80% of the population works for Kennecott. In other words, what's bad for Kennecott is bad for Kearny. The town council said just that in a resolution it sent to the state board of health asking that the state pollution standards be toned down. Hayden and other smelter towns made similar appeals.

Such exhortations from civic clubs, Chambers of Commerce merchants and copper workers and their families deluged the state's board of health late last year. All warned of possible economic catastrophe. "It's been said that smoke kills," wrote the owner of a department store in the smelter town of San Manuel. "I'll tell you this—I'd die without it."

Louis C. Kossuth, the state's new health commissioner, told the Arizona press that public opinion in favor of the companies appeared just as strong as the opposition from vocal environmentalists whose organizations are in areas less economically dependent on copper smelting.

Environmentalists had feared the state would succumb to the industry's pressure and ease the requirement of removing 90% of sulphur dioxide emissions. After the board of health early this year suggested a possible alternative method of control, the Phoenix press was filled with charges of secret meetings and conflicts of interest, and members of the board's technical staff threatened to quit. But the board ultimately backed the tough pollution code, so the companies' only hope now is for a subsequent modification or legislative action to change the rules.

In Montana, the pollution-control issue is equally intense. Anaconda is clearly the economic anchor in a state that has little other industry, but the company has encountered extremely rough going. Expropriation of its mines in Chile has left it with only a quarter of the earnings power it once had, and the company was planning major expansions in Montana to help compensate for the loss.

The state, also floundering with a 7% unemployment rate and a stagnant tax base, could clearly use the impetus of an Anaconda expansion. "People can't live on air, mountains and trees," says an aide to Gov. Forrest H. Anderson. "It takes money."

But Anaconda is hinting that the strict pollution rules may force a cutback of the planned expansion. Appealing for a relaxation of the standards in December, Anaconda's president, John B. M. Place, told a hearing that he knew of "no meteorological, health or other reason" why the Montana rules should be stricter than those of the federal government. Spending the extra $22.1 million needed to meet the state standards, he argued, would be a waste "just as surely as if we built a bonfire of $22.1 million in currency."

The board of health, however, countered that Montana's air is much cleaner than required by the federal standards, so the federal rules alone would represent a permit to pollute in Montana. "What the federal standards really do," says Ben Wake, the state's hard-jawed air-pollution chief, "is to make the country uniformly dirty."

Anaconda gets little sympathy elsewhere, either. Its image in the state it once dominated politically as well as economically is now so poor that its pleas for leniency are sneered at.

"The company is the largest industrial organization in Montana," says a New York analyst, "and everybody seems to hate them." An Anaconda official in Montana concedes that "our employes distrust us tremendously, too."

Montana's Gov. Anderson, a small, feisty man who has decided not to run for a second term, doesn't attempt to mute his bitterness toward the company. "I've heard Anaconda use the same argument a thousand times," he says. "They said they'd walk out on Montana before. It's the old wolf story. The wolf never comes. This is the way they practiced their business in the past—by threatening."

The governor, however, doesn't deny the economic importance Anaconda holds for the state. In fact, he is now hearing the cry of wolf, authentic or not. At final hearings on the state's implementation plan held last week, he sided with Anaconda in attacking the 90% emissions control standard as too strict. But the health board stuck firmly to its rules despite the governor's new stand.

With the writing on the wall becoming clearer, the copper companies are looking for new avenues. Some producers are said to be studying the feasibility of a smelter in Mexico, just over the border from Arizona.

Says Lehman Bros. analyst John R. Bogert, only partly tongue in cheek, "The answer is to get together an international consortium of copper companies and build a huge smelting complex on an island in the Pacific. Then you could let the pollution go all over the ocean."

THE GENOCIDE CONVENTION AND U.S. DISCRETION

Mr. PROXMIRE. Mr. President, there are some men who argue that American ratification of the Genocide Convention will bind our Government hand and foot to the treaty's articles. Their contention is that such an international agreement

would subject American citizens to prosecution and perhaps persecution from foreign powers. In addition they fail to see any safeguard against such outside intervention.

However, once again the implementing legislation is crystal clear on this point. It reserves great powers of discretion for the Secretary of State. It is he who serves as the ultimate check and safeguard. In the words of the legislation:

It is the sense of the Congress that the Secretary of State in negotiating extradition treaties or conventions shall reserve for the United States the right to refuse extradition of a United States national to a foreign country . . . where the United States is competent to prosecute the person whose surrender is sought . . . or where the person whose surrender is sought has already been or is at the time of request being prosecuted for such offense.

As is prudent, the United States would never consent to any international agreement which would allow foreign states a free hand in American jurisprudence. The articles of the Convention and the subsequent legislation allow our Government to retain jurisdiction over our own affairs. American citizens have the full protection of their Government in all instances.

The argument of foreign intervention and unjust extradition treaties is unjustified in light of the provisions of S. 3182. Again I urge the Senate to unhesitatingly ratify the Genocide Convention.

DR. MARIA GOEPPERT MAYER, NOBEL PRIZE WINNER

Mr. McGOVERN. Mr. President, Dr. Maria Goeppert Mayer, the first woman physicist to win the Nobel Prize since Marie Curie in 1903, died on the night of February 20 at the age of 65. Let us pay tribute to this extraordinary American woman who had proven again that sex is no barrier to intellectual accomplishment.

She was awarded the 1963 Nobel Prize in physics for her elucidation of nuclear shell structure. Hers was the uncemented, unchained mind of the eternal researcher constantly in quest for the more logical, more perfect solution to the problems of nuclear physics.

Nothing that I could say to voice my deep admiration for this woman would so nearly console her family. America has lost a dedicated researcher and teacher.

SENATOR MUSKIE AND THE WAR

Mr. CHURCH. Mr. President, Stephen S. Rosenfeld, writing in the Washington Post recently, expressed his agreement with another of that newspaper's distinguished columnists, David Broder, as to the necessity for opening a debate, at the Presidential level, on the issue of the Vietnam war.

Rosenfeld wrote:

The debate on Vietnam tactics which MUSKIE has carried to the President, is essential to the health, or the recovery, of the American political system. . . . This is so not only because debate is the method by which a democracy educates its citizens and obtains their knowing consent, but because debate is the method by which a democracy explores alternatives.

The most conspicuous failure of the American political process during the 1960's was the craven way presidential candidates permitted the issue of Vietnam to be muted in national elections. Our Presidents managed to intimidate their opponents on the war, with the result that the American people were deprived of any choice on the one matter that concerned them most. By removing Vietnam from the arena of Presidential debate, the peoples' franchise was restricted to secondary issues. In a word, the American people were cheated out of their sovereign right to decide, for or against, the war.

Now the same old ploy is being attempted once more—this time against the man who appears most likely to win the Democratic nomination for President this year—ED MUSKIE.

Administration spokesmen are castigating the Senator for criticizing the President's latest offer for a political settlement, Mr. Nixon's chief of staff, H. R. Haldeman, in a manner reminiscent of Joe McCarthyism at its worst, has gone so far as to intimate that MUSKIE is "consciously aiding and abetting the enemy."

But Senator MUSKIE has refused to be hushed, and if he continues to speak out, he may well become the first presidential nominee in a decade willing to offer the American people an alternative to the war in Vietnam. The voters may find, after being ignored so long, that ED MUSKIE has at last given them more of a choice than that between tweedle-dee-dum and twiddle-dee-dee.

I commend to the attention of the Senate three excellent articles on the subject, written respectively, by Stephen S. Rosenfeld, Marquis Childs, and Don Oberdorfer, and ask unanimous consent that they be printed in the RECORD.

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

HOW FOREIGN POLICY IS FASHIONED IN A DEMOCRACY

(By Stephen S. Rosenfeld)

The onset of vivid political debate over Vietnam negotiating tactics and the coincidental release of Mr. Nixon's annual "state of the world" message point up the fundamental problem of how a democracy goes about putting together its foreign policy. The problem is not simply whether policy should be made at one end of Pennsylvania Avenue or the other, by the Executive or the Congress. It's whether policy should be made by "the people" or, in their name, by an expert corps or elite.

"The people," of course, speak most clearly in a national election when opposing candidates offer them alternatives. The fact is, however, that in the last two decades, the electorate has not been offered real alternatives. Candidates have vied with each other to demonstrate their devotion to peace or freedom, whichever was more in demand that year, and their knowledge of the ways of the world. But they have not come forward, as Edmund Muskie, a serious presidential contender, has now come forward, to suggest a specific different way to solve a particular problem in foreign affairs.

On the contrary, under the banner of "bipartisanship" a generation of opposition politicians largely surrendered in foreign policy the option they rightly prize in domestic policy: the option to criticize the President, to hold him to account, and to offer alternatives. It is no accident that presidents of both parties have lionized Arthur Vandenberg, the Republican senator whose conversion from "isolationism" made it possible for a Democratic president to carry out an "internationalist" policy after the war. It is not Vandenberg's insight that is celebrated but his example of permissiveness: "leadership" and "responsibility," admirers of presidential powers call it.

It is debatable whether the "bipartisan" foreign policy which the Vandenberg tradition made possible served the nation for good or ill; indeed, it is hotly debated. It is not debatable, however, that its practical effect was to give presidents far more authority in foreign affairs, and this in turn meant that presidents would make policy not by consulting the people or Congress, least of all their political opposition, but by consulting specialists and experts.

In past administrations, most of these experts tended to be professional diplomats. Llewellyn Thompson, who died this week, was among the best known of them, a man respected for his special knowledge of the ways of Soviet power. In this administration, the leading expert, Henry Kissinger, is a former academic respected for his special knowledge of the ways of American power. But he is in the familiar postwar pattern of being very much the President's man.

To read the new "state of the world" report, which is largely Kissinger's handiwork, is to recognize at once the extent to which Presidential policy is the work of an elite. The report has a technical excellence, a consistency and a seriousness that the public—necessarily less well informed and less attentive, more varied in outlook, often capricious in mood—can never hope to attain. Moreover, the report is, in terms of popular appeal, essentially unreadable: too long, too abstract, too technical. Although it is billed as a report to the Congress, that is, to the people, it is in fact more of a guide to the bureaucracy—to let it know what the President has on his mind.

But is the presidential policy set out in this report good policy? What is good policy in a democracy? One can reply that it is policy which serves the nation's "interests." That begs the basic question of who is to define the nation's interests, and to oversee the pursuit of them.

My colleague, David Broder, argued on the opposite page the other day that the debate on Vietnam tactics which Muskie has carried to the President is essential to the health, or the recovery, of the American political system. I would agree and add that such debate, necessarily focused on a few litmus issues, is essential to the composing of good policy. This is so not only because debate is the method by which a democracy educates its citizens and obtains their knowing consent but because debate is the method by which a democracy explores alternatives.

No doubt Henry Kissinger performs brilliantly in seeing that the President has available the relevant facts and possible options. But can facts and options provided by officials who owe their positions to Mr. Nixon be as germane and varied as those provided by legislators or politicians with their own base of power? Can debate within the bureaucracy be as rigorous as debate between political rivals? Can anyone seriously claim that a George Ball, the most celebrated Vietnam critic of the 1960s inside the government, could have the same influence as an Edmund Muskie, whose challenge to the Executive consensus is braced not merely by logic but by political power?

We can all think of cases where an issue of public policy was fully debated and where a "bad" choice, by our particular lights, was

made. But the rationale for submitting tight hard questions to the public, even—perhaps one should say, particularly—in the pressure-cooker atmosphere of a presidential campaign, is not that the public is more likely to make a wise choice than the elite. The rationale is that public policy is the public's policy: its to make, its to accept the consequences of, too.

Just as Muskie was entirely justified in giving his views on the President's negotiating tactics, so the President is justified in criticizing Muskie. Whether either is wise is something else again but what question can possibly be worthier of debate, more central to the health of the nation, than the prospects of our exit from the Vietnam war? Mr. Nixon may have hoped that "bipartisanship" would spare him serious partisan challenge. By going public with his settlement proposals, however, and then by responding as he did to Muskie's attack on them, he has improved the chances that the people finally will make policy on Vietnam.

HALDEMAN STIRS VIET WAR ISSUE

(By Marquis Childs)

If anything could guarantee keeping the Vietnam war alive as an issue it was H. R. Haldeman's charge that critics of the Nixon peace plan are consciously aiding the enemy. This outrageous charge, so reminiscent of the Joe McCarthy era, was capped by the White House disclaimer that this was Haldeman's own personal point of view.

Haldeman is the Nixon chief of staff. This former ad man controls the access to a President who shelters himself behind the powers of the office more than any chief executive in recent times. To say that he does not reflect the views of his superior is to strain credibility to the breaking point.

The Nixon peace plan unveiled with such fanfare after months of secrecy was no perfect model for ending the war. It was an inevitable target for critics pointing out the weaknesses almost certain to bring about its rejection.

On the timing of the attack by the President's Democratic opponents there is room for doubt. When Sen. Edmund Muskie, the front-runner, spoke out, the Communist side had not formally rejected the Nixon plan. That is largely irrelevant, however, since elements in the seven-point plan were bound to get a Communist no.

The concept of free elections, regardless of how they may be hedged around by mixed commissions, is unacceptable. A free choice by the individual is alien to communism.

One of the demands made by Xuan Thuy in his interview on "Face the Nation" is just as unacceptable to the United States. That is the demand for withdrawal of all material supplied to the South Vietnamese and an end to future economic or military assistance. It is a call to turn over the Thieu government to the Communists.

Whether that demand is negotiable no one can say. However low the esteem for the Thieu regime may be, no President—whether Democrat or Republican—could accede to that demand. The Thieus and the Kys and their immediate followers might escape the country to refuge in Switzerland or some other well-banked neutral haven. For thousands of well-meaning South Vietnamese who staked their future on American support, even as the American force winds down in Vietnamization, this would be naked surrender.

WHY, one must ask, did Haldeman choose this particular moment to charge critics of the peace proposal with treason, for the charge was no less than that? It could be that the White House is anticipating in the near future a testing time when with a new flare-up in the war the President will want support for a drastic step-up in retaliation.

Secretary of State William P. Rogers says the enemy has made extensive preparations for a Tet offensive which would coincide with the Nixon mission to Peking. With American combat forces reduced close to the vanishing point in the Vietnamization program, the brunt of the attack would be borne by the South Vietnamese army. And it is here that the test may be critical.

In the Laos "incursion" a year ago the vital flaw was largely concealed. It was not as widely reported at the time that South Vietnamese forces in the operation, on the "Let's you and him fight" principle, were routed and fled in panic. The painful truth, as this reporter has learned from intelligence sources, is that the South Vietnamese command committed only a fraction of the divisions planned for the operation. In an effort to sustain the greatly outnumbered South Vietnamese forces the United States took heavy losses in helicopter gun ships.

Fighting for their own country and not in foreign territory, the outcome, if a serious Communist offensive develops, may be different. But if the Laos incursion is a precedent the President might have to resort to bombing of the North on a far more massive scale than any since the halt in 1968.

PEACE TALK AND POLITICS

(By Don Oberdorfer)

While running for president in 1968, Richard Nixon pledged to end the war and win the peace, but refused to say how he would do it—on the ground that any statement of his might interfere with the peace talks Lyndon Johnson had begun. Four years later, Mr. Nixon has removed most of the American troops but has not been able to end the war. Now he is asking his potential rivals to remain silent on how they would end the war—on the ground that any statement of theirs might interfere with the peace talks which still continue.

At first glance, the Nixon position sounds fair enough—what is sauce for the goose, is sauce for the gander. But this argument merits closer examination. This year's is quite different from 1968. And it is doubtful in retrospect that the 1968 Nixon position served the nation as well as it served Mr. Nixon.

In recent days Mr. Nixon and his associates have said over and over in dozens of ways that his Vietnam speech of Jan. 25 sets forth an offer which could bring peace—unless subsequent statements by Democratic candidates encourage Hanoi to wait for a better deal after the November election.

They make it sound as if the Democratic views developed out of nowhere after Mr. Nixon's "most generous peace offer in the history of warfare." In fact, the Democratic views developed long before this campaign year began, and long before the President and Henry Kissinger let it be known that they were engaging in secret talks in Paris.

Sen. Edmund Muskie's call for a "date certain" for complete U.S. withdrawal from Vietnam, contingent on safety for the withdrawing troops and release of American prisoners, dates back at least to Feb. 23, 1971. Sen. George McGovern's call for a definite withdrawal date goes back at least to Oct. 9, 1969. While there have been refinements and changes in their positions—as in the President's position—the fundamentals were announced many months before the recent Nixon speech.

For Mr. Nixon to warn such Democrats now to keep quiet—lest they reap the blame for a Hanoi decision not to bargain—is unrealistic at the very least. Even if Democrats said not a word after Jan. 25, Hanoi is well aware of their views. Their position, shared by a large segment of the public, is that the United States must terminate a mistaken war, with or without a favorable conclusion.

There is no indication whatever that Hanoi is preparing to settle on anything like the terms which Mr. Nixon has offered. With American troops withdrawing and the American public sick to death of the war, there would seem to be little or no incentive for Hanoi to agree to any risky bargains. Moreover, the President on Thursday announced a veto power for the Thieu government over any further peace proposals. This would would seem to reduce his own maneuvering room to the vanishing point—if he really means it.

By refusing to say in 1968 how or when he would terminate the war, Mr. Nixon insulated himself against a potential Lyndon Johnson charge that he was interfering—a possibiilty very much on the mind of the Nixon campaign team that year. More important, the Nixon "no comment" stance deprived the American voters of a chance to judge the details or even the essence of his policy on the war, the greatest problem before the country.

We know now that Mr. Johnson's peace proopsals had virtually no chance of success in 1968, and that Mr. Nixon had virtually no peace policy at all. There were no Nixon details because there was no Nixon plan, beyond the misplaced hope that the Soviet Union would pressure Hanoi to make a deal.

Should the Democrats in 1972 follow the route Mr. Nixon has opened for them, they will tell the people, "I will end the war, but I won't say how." The public would not—and should not—accept this.

President Nixon will have had four years to deal with a war which the nation had rejected months before he took office. He will be judged in November on what he has accomplished and failed to accomplish. Casting blame on his critics is not likely to work.

One of the wisest things he ever said about Vietnam as a political issue was in his Nov. 3, 1969, address. "I have chosen a path for peace. I believe it will succeed," he told the nation. "If it does succeed, what the critics say now won't matter. If it does not succeed, anything I say then won't matter." It is still true.

DEATH OF FORMER REPRESENTATIVE JOHN MURDOCK, OF ARIZONA

Mr. FANNIN. Mr. President, during the past month two of the grand old men of Arizona politics have died. We were saddened first by the loss of our former Senate colleague, Carl Hayden.

Last week we learned of the death of John Murdock, a fine gentleman and scholar who served in the House of Representatives for 24 years. His record as a Member of Congress and as a professor in our colleges was outstanding.

Mr. President, the Arizona Republic on February 16, 1972, published an editorial paying tribute to John Murdock, I ask unanimous consent that the editorial be printed in the RECORD.

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

PROFESSOR TURNED POLITICIAN

An observer of Arizona politics once said, "The idea is to pick a good man, send him to Congress when he is young, and keep him there until he acquires enough seniority to be chairman of an important committee." Sen. Carl Hayden was an outstanding example of that strategy.

Another example was John Murdock, a college professor who had taught at all three state universities. He went to Congress from Arizona in 1937 (we had only one representative then) and remained there until 1952, by which time he had become chairman of the House Interior Affairs Committee. He was never able to get the Central Arizona Project through the lower House, but his

position of influence advanced the bill down the path to eventual passage.

John Murdock threw his hat into the political ring when Arizona was a one-party state and elections were decided in the primaries. In 1936, Professor Murdock, then dean of students and professor of political science at ASU, ran against eight veteran politicians in the Democratic primary. He won, and his victory in the general election was assured by a registration something like eight-to-one in favor of the Democrats and against the Republicans.

Murdock's election was frequency attributed to support from his students and former students. That was before the day of student demonstrations and 18-year-old enfranchisement, but the students were willing workers, and the alumni were eager voters.

Professor Murdock's specialty was constitutional law. He is largely responsible for the requirement that the Arizona Constitution be studied in Arizona's schools. He also is credited with the passage of the Navajo-Hopi rehabilitation bill, providing $80 million and the first big boost for the development of the two Arizona reservations.

John Murdock died in a Phoenix nursing home Monday at the age of 86. He left the political scene in 1958, but his contributions to the state and to the nation have outlived him.

ANNOUNCEMENT OF POSITION ON A VOTE

Mr. HUGHES. Mr. President, last week while I was necessarily absent, the Senate unanimously adopted a measure which may well save us from some future shock at revelations of secret agreements with other nations. Since I wholeheartedly support Senator CASE's bill, S. 596, I ask that the permanent RECORD indicate that, if present, I would have voted "aye" on rollcall 48 Leg.

The PRESIDING OFFICER. The RECORD will so indicate.

JOE KENNEDY III

Mr. McGOVERN. Mr. President, one of the Nation's most remarkable and talented young men is Joseph Patrick Kennedy III—the son of Ethel Kennedy and the late Senator Robert Kennedy.

In his 19 years of life thus far he has experienced both more tragedy and high adventure than most of us will experience in a lifetime.

But through it all, he has met the test of courage defined by his uncle, the late President John F. Kennedy—"grace under pressure."

I shall never forget the gallantry and poise of this young man when at the age of 15 he went through the funeral train carrying his father's body to extend a word of warmth to each passenger on that sad trip.

Today's New York Times carries an interesting account of Joe Kennedy's life. I ask unanimous consent that it be printed in the RECORD:

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

YOUNG ADVENTURER: JOSEPH PATRICK KENNEDY III

WASHINGTON, February 22.—Joseph Patrick Kennedy 3d has probably seen more adventure in his 19 years than most men see in a lifetime.

He has been a mountain guide on the glaciers of Mount Rainier in the State of Washington, herded antelope on horseback in Africa, tried his hand at bullfighting in Spain and worked as a crewman aboard a sailboat across the Atlantic. Joe Kennedy has also had more than an average share of misfortune. His father, Senator Robert F. Kennedy, died from an assassin's bullet in June, 1968, as did his uncle, President John F. Kennedy, in November, 1963. He suffered through the aftermath of the tragic accident in which another uncle, Senator Edward M. Kennedy, was involved at Chappaquiddick, Mass., in July, 1969. Joe himself has broken a leg once in skiing and again playing football, and has required surgery on knees bashed in football.

Young Mr. Kennedy had another taste of adventure today aboard a German airliner hijacked by Arab commandos.

The young man had been with Senator and Mrs. Kennedy on a visit to Bangladesh and then took an unpublicized motorcycle tour through the central states of India before boarding the plane for Athens in New Delhi, presumably on his way home.

HE'S A KENNEDY

This afternoon, one of his former teachers said he was sure that Joe was handling himself with poise. "I wouldn't worry about Joe at all," the teacher said. "He's a Kennedy, and they have a style about them that comes through in a crisis."

A friend of the Kennedy family described Joe, who is just over 6 feet tall and weighs close to 200 pounds, as "a brave kid" and "a gentle kid." He said: "Joe's been the man of that family ever since his father died. He's been the great with his younger brothers and sisters. There's a lot of horseplay and Joe is the leader. But he's also the protector of the little one."

Another friend said that young Mr. Kennedy's finest hour may have been aboard the train carrying his father's body from the funeral at St. Patrick's Cathedral in New York to his resting place in Arlington Cemetery here. Then 15 years old, he went through the train holding his tears back, shaking everybody's hand and saying things like: "I'm Joe Kennedy. You were a friend of my father's. I'm very grateful that you are here."

ONE OF 11 CHILDREN

Joseph Kennedy 3d was born in Boston on Sept. 24, 1952 after his mother, Ethel, had been out campaigning in Fall River the night before for John F. Kennedy's election to the Senate. He was named for his grandfather, the late financier and former Ambassador to Britain, and for an uncle who was killed flying a dangerous mission during World War II. Young Mr. Kennedy is the second child and eldest son in a family of 11 children.

He attended Our Lady of Victory School and Georgetown Preparatory School in Washington and in 1966 went to the Milton Academy, in Milton, Mass., where his grandfather had studied. He was not a particularly good student there, which teachers ascribed to the distractions of a glamorous family and its fortunes and tragedies. Young Mr. Kennedy failed to graduate but earned his high school diploma from the Manor Hall Tutoring School in Cambridge.

He left Milton in 1970 to work in Senator Kennedy's re-election campaign as an advance man, arranging speaking engagements and drumming up crowds. He was said to be deeply interested in politics and to be considering a career in public service.

Right now, said a family friend, "he's trying to sort things out for himself. He had a lot put on him as a young kid but he's finding his way."

EXTENDED UNEMPLOYMENT COMPENSATION RATES

Mr. RIBICOFF. Mr. President, late last year the Senator from Washington (Mr. MAGNUSON) and I cosponsored legislation to extend unemployment compensation benefits in States where unemployment rates are high. As finally enacted, the measure provided an additional 13 weeks of benefits to workers who have exhausted their regular and extended unemployment compensation eligibility in those States where unemployment rates exceeded 6.5 percent.

According to a recent New York Times article, the salutary effects of this legislation are beginning to be felt.

I commend Senator MAGNUSON for his leadership in the enactment of legislation to aid unemployed workers. I ask unanimous consent that the New York Times article of February 22, 1972, be printed in the RECORD.

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

LONG-TIME JOBLESS PRAISE NEW U.S. PROGRAM EXTENDING BENEFITS

(By Robert A. Wright)

SEATTLE, February 21.—For Arnold Smith, a 40-year-old electronics engineer who had exhausted his unemployment benefits, the new Federal program providing added aid for 13 weeks is a "lifesaver." But he and many other long-term jobless who now are getting the new benefits in 13 States still worry that it will be a long time before can they take home a real paycheck.

Mr. Smith, who came here from Britain four years ago, is one of more than half a million workers in the United States who have been jobless for at least 27 weeks. The plight that he and others like him face underscores the persistence of long-term unemployment at a time when the Nixon Administration's economic program is seeking to create new jobs.

"The new benefits are appreciated," remarked Ray Lavender, 56, a Boeing employe for 25 years before he was laid off last July. "But 13 weeks or 26 weeks is not enough time to retrain for anything. But it might give the Government more time to do something else."

That "something else" has already become a major issue in this Presidential election year. While more Americans are employed—80.6 million—than ever before, the unemployment rate continues to hold close to 6 per cent of the national work force, or 5.4 million persons seeking work but unable to find jobs.

Like half a million other workers in the United States, Mr. Smith has been unemployed for 27 weeks or more, and with a wife and two young children to support he had been living from day to day, unsure where to turn for help.

"We really couldn't do without it," said Mr. Smith.

Ray Lavender, 56, a Boeing employe for 25 years before being laid off last July, agreed as they sat talking at a Social Service center funded by the Office of Economic Opportunity in suburban Woodenville.

But neither man was optimistic. "The new benefits are appreciated," remarked Mr. Lavender, "but 13 weeks or 26 weeks is not enough time to retrain for anything. But it might give the Government more time to do something."

More significantly, in terms of measuring hardship, 24 per cent, or almost two million persons, among the unemployed have been consecutively without jobs for 15 weeks or longer, according to seasonally adjusted Government figures for January.

While the over-all unemployment rate has improved slightly in recent months, the percentage of people out 15 weeks or longer has remained fairly constant. The figure averaged 23.7 per cent of the jobless in 1971,

compared with 16.2 per cent in 1970. And 11.1 per cent, or 562,000, of the people without jobs last month had been out of work 27 weeks or longer. A year before, the percentage was 10.4 per cent.

Many of these hard-core unemployed—no exact total is available—will qualify for the new Federal program, the so-called Magnuson Extended Benefit Program, after the legislation's sponsor, Warren G. Magnuson, Democrat of Washington.

The program provides Federal funds to 13 states, including New York, New Jersey and Connecticut, where the unemployment rate is 6.5 per cent or more. It furnishes up to 13 weeks of additional unemployment compensation to the jobless who have exhausted their benefits under previous programs.

Regular unemployment compensation programs vary in terms and maximum payments from state to state.

In Washington, for example, the state pays up to 30 weeks and up to a maximum of $75 a week, scaled to the unemployed person's pay from his last job. Like other states where unemployment has remained high, Washington paid up to 13 additional weeks under a special program financed equally by the state and the Federal Government.

Under the Magnuson extension, a Washington state resident who has been unemployed 26 weeks or longer and has exhausted benefits under both previous programs is entitled to the full 13 weeks of additional benefits at the same rate he received under the earlier plans.

MORE THAN 60,000 IN NEW YORK

In New York State, more than 60,000 persons who have used up 39 weeks of unemployment insurance benefits have signed up since becoming eligible for the program on Jan. 31.

In Massachusetts, 28,049 persons have so far applied for the Magnuson benefits. In California, 40,138 of about 200,000 who may be eligible have applied.

Last year, 193,000 Californians exhausted 39 weeks of benefits under the state program and the 13-week extension jointly financed by state and Federal funds.

More than 37,000 applications were filed in Washington in the week ended Feb. 7, the beginning of the new program.

State officials here estimate that about 90,000 persons will be eligible for the new benefits through June 30. That number will have collected benefits for 43 weeks of joblessness.

"Lifesaver" is the word expressed repeatedly by beneficiaries of the extended benefits in interviews across the country. But the hard core unemployed, particularly those once used to steady, well-paid jobs, worry about what they will do when the extensions run out.

A 53-year-old Boston engineer who declined to give his name was typical. Laid off from an aerospace company in January, 1970, and unemployed since, this man has been living off $75 unemployment checks and savings. He was forced to sell his home and move his wife and son into an apartment.

"It's a lifesaver," he said about the Federal extension. "Any benefits are a boon. But the crunch is getting by day to day. The mental stress is harder than the financial."

A similar kind of sentiment prevails around the Woodenville Social Service Center, an operation funded by the office of Economic Opportunity and run by Charles Eberhardt, a 50-year-old aerospace industry veteran who himself went through *two one-year* periods of joblessness, losing his house in the process.

Mr. Eberhardt, who considers the bedroom community around Woodenville "an area of benign neglect," now makes $8,900 a year, compared with his last aerospace pay of $16,000. His operation provides the needy with transportation, job sources and counseling on such programs as food stamps, welfare and veterans assistance.

Both Arnold Smith and Ray Lavender make it a point to get out of their houses each day, and usually go to the center to lend a hand. "After the month sitting in the house, I met Chuck Eberhardt and learned how important it is to get out every day," said Mr. Smith. "It's a way to keep your sanity, to keep your mind active," Mr. Lavender remarked.

Still, Mr. Lavender sees himself being "back where I started pretty soon. By summer, he said, "I'm going to have to mortgage my house and start a business with others with his mortgage money."

Mr. Smith believes he will soon have to turn to the British consulate for help. "I don't want to move back. The kids are doing so well in school, it seems a shame to uproot them again. I've decided to stick it out to the bitter end. If we do go to England, we will have lost everything."

THANK YOU AMERICA—FROM A CANADIAN

Mr. FANNIN. Mr. President, it is fashionable these days to run down America. We are bombarded with material which questions the basic goodness of American society and the American people. We see altogether too little discussion of what is good about America.

On this Washington's birthday anniversary, it might be enlightening to consider all the great things about our country. We might start by observing what a Canadian thinks of the United States.

A good friend in Phoenix sent me an article written by Patricia Young of Vancouver, British Columbia. 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:

THANK YOU, AMERICA

Permit me, a Canadian, to express a long overdue "Thank you, America"—not only for putting a man on the moon, but for almost two hundred years of contributing to the betterment of mankind; for the airplane, radio, cotton gin, phonograph, elevator, movie machine, typewriter, polio vaccine, safety razor, ballpoint pen and zipper!

No other land in all the world has, in so brief a history, contributed so much and asked so little—only that we live together in peace and freedom.

From the days of Washington and Lincoln you have demonstrated the creativity, invention, and progress of free men living in a free society where ideas and aspirations may be promoted to the extent of a man's willingness to work and build a "better mousetrap" with commensurate rewards.

Thank you for upholding the principles and rights of freedom; for the American Constitution and Bill of Rights, and for protecting those rights even when it results in the burning of your flag and the murder of your President.

Thank you for those who helped defend freedom on foreign soil in two World Wars—a debt we have been able to pay in small measure by way of some 10,000 Canadian volunteers who stand and fight with you in Vietnam; for the Foreign Aid you give even when your hand is bitten and your motives impugned; for keeping your dignity in the face of insults from nations still wet behind the ears; for your patience with those who seek to steal the world and enslave its people; for keeping your "cool" even when the Trojan horse mounts the steps of the White House to insolently spew forth its treason.

Thank you for keeping alive the concept of individual liberty and faith in God in a world wallowing in humanistic collectivism.

For those reasons and so much more, I say: "Thank you, America, and God bless you."

SECRETARY BUTZ AND THE STRAW MAN

Mr. McGOVERN. Mr. President, Secretary of Agriculture Earl Butz is running around the country boasting about high meat prices. While I do not believe our cattle producers are receiving too much for their livestock, the tactics of Secretary Butz are particularly obnoxious to consumers who only know that prices have gone up. The Secretary's statement that costs are higher because Mrs. Jones is competing with Mrs. Smith at the meat counter is economic nonsense. The Secretary's statement that food stamp customers were contributing to the price increase is sheer demagoguery.

If Mr. Butz were the spokesman of agriculture he pretends to be, he might tell the consumer that according to the latest reports, our Nation's farmers only receive a return of 1 percent on their investment, while the large chainstores get a return of 22 percent. Mr. Butz' shameful tactics in a meat price investigation in the 1950's were documented by the Senator from Montana (Mr. METCALF) during the debate on the Secretary's nomination.

At the moment, various farm and ranch groups are suing the Nation's three largest food chains for alleged monopoly practices in meat pricing. Needless to say, these organizations do not have the cooperation of either the Department of Justice or the Department of Agriculture.

Apparently, Mr. President, Secretary Butz is attempting to put a freeze on raw agriculture products by the back door method of stirring up consumer resentment. On February 22, Tony Dechant, president of the National Farmers Union, said:

What the Secretary should be talking about is the farm-retail spread. For every extra penny the farmer gets, someone else gets a nickel or more.

I ask unanimous consent that Mr. Dechant's statement be printed in the RECORD. I call special attention to his observation that excess stocks of wheat and feed grains now flooding the market could destroy our Nation's livestock producers.

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

Secretary Butz is evidently trying to conduct his farm program through the news media instead of facing up to the hard choices of removing surplus commodities from the marketplace, helping farmers recoup 1971 economic losses, and preventing disastrous overproduction again in 1972. No amount of "spending money like a drunken sailor," or willingness to "fight like a wounded steer," will help farmers out of the troubles created by the disastrous set aside land retirement plan. The problem is simply one of overproduction.

The feed grains purchase program is a pitiful half measure. The extra incentives to

wheat and feed grains producers offer practically no hope of reducing production to levels which will result in substantial reduction in excess stocks now flooding the market. Worse, these excess supplies are now a time bomb ticking away to shatter the livestock industry. The number of cattle and hogs are building up. It is only a matter of time till prices fall leaving economic ruin for many farmers.

Secretary Butz' talk of "fighting like a wounded steer" to keep ceilings off farm products is absurd. Parity is only 72 percent. No one in his right mind would even consider ceilings. It is a cynical attempt by Secretary Butz to erect a straw man so that he can be a hero when he knocks it down. What the Secretary should be talking about is the farm retail price spread. We need a ceiling on mark-up. For every extra penny the farmer gets, someone else gets a nickel or more.

AID TO FIREFIGHTERS PLEDGED

Mr. McINTYRE. Mr. President, there are few occupations in the United States in which the employee is asked to crawl from his slumber at 3 a.m., jump onto a rolling truck and fight a raging blaze that may take his own life and the life of his fellow workers.

Firefighters face this threat each and every day of their lives.

They are constantly subjected to injuries and hospitalization from simply "doing their job." They face these hardships with the knowledge that when it is all over they will not be heroes, for their heroism is all in a day's work.

In some of our big city departments, men are called upon to fight as many as 20 alarms in one night's work. In rural areas volunteers from one unit often travel several miles in all kinds of weather to help a companion unit of volunteers fight a blaze. Clearly, the men who make such a contribution to our health and welfare deserve our support.

And yet, Mr. President, the large amounts of Federal money that have been spent on the tremendous problem of crime in the streets have not been matched by any aid specifically designed to help the firefighter.

For that reason, I have decided to submit an amendment to present legislation, authorizing the Department of Housing and Urban Affairs to provide funds for our Nation's firefighting units, both big city and rural departments.

The funding includes an allocation for the expansion of present facilities, the construction of new facilities and the authority to provide funding to update present equipment.

Mr. President, I ask unanimous consent to have printed in the RECORD a New York Times editorial written by a battalion chief of the New York Fire Department. I know that it will dramatize the plight of firemen to which I have attempted to respond legislatively. We need to make this long overdue effort to help those who stand by 24 hours a day to guarantee our safety.

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

[From the New York Times, Jan. 20, 1972]

NOW LISTEN TO A FIREFIGHTER'S PLEA

(By Joseph E. Galvin)

During my firefighting career I've been blown from the roof of a blazing pier, have had the man next to me on a hose line gasp and die as we tried to advance into a burning tenement, have had a woman relieve herself as we carried her down an aerial ladder from a blazing Harlem tenement in a snowstorm.

I've worked seven hours in a blizzard while soaked to the skin, and had to be taken to a hospital as a result; I once literally tore the arms from a dead firefighter who was trapped beneath a truck.

I've saved lives and have had mine saved several times by my brother firefighters. I've suffered injuries ranging from scalds and burns to a form of "combat fatigue." I've been taken to the hospital, unable to walk, due to the swelling in my heels resulting from sliding the firehouse pole over twenty times during one single night tour in Harlem. I've been in building collapses to assist in the removal of victims when the building was threatening to collapse over our heads and bury us.

I've also been cursed, punched, assaulted and insulted by so-called "toughs" so many times that, incredibly, I'm almost inured to it. I've fought off a group of hoodlums who had surrounded our apparatus and were attempting to steal our tools and equipment. However, and this is quite important, I am not alone nor am I unique. Many other professional firefighters have endured much more than I, and will carry terrible physical and emotional scars to their graves.

To be a member of a ladder company crawling around the smoke-filled rooms of an occupied tenement, searching for possible fire victims, while three or four rooms are afire in the apartment directly below, is one of the most demanding tasks required of a human being. To be given the assignment of cutting a hole in a building's roof to effect ventilation so that the engine company down below can advance its line, when every enlargement of the hole allows superheated smoke and gases to blast into one's face, demands the ultimate in dedication and raw guts.

The human body is subjected to such a high level of punishment during the performance of these tasks that no one, and I mean no one but a firefighter, would place his body in close proximity to the immediate area. You see, professional firefighters as a rule have life spans approximately seven years less than the average male.

Few of this city's citizens realize that some fire units respond to over seven thousand alarms during the year, and that each time they do the firefighters are subjected to tremendous emotional strain—not knowing whether the alarm will be a tragedy or a false alarm. I've seen some of my men leave their firehouses after the completion of their tour of duty almost disoriented from fatigue and the effects of noxious gases. To respond to over twenty alarms during one night tour and get three or four tough fires, back to back, is a terrible experience. What motivates men to perform this task?

After almost twenty years of working with and observing firefighters in every conceivable emergency, I've concluded that the glue which holds this great department together is a combination of brotherhood and love. The misery, suffering and pain which we firefighters share creates a bond which those outside the fire service cannot comprehend. Wives, mothers, sweethearts—none can intrude into this unique fraternity that comes from being truly brothers. This spirit of comradeship grows from the development of mutual respect and admiration which each man has for another; and is a form of love. And that special love which men in combat develop for one another is indeed a wonderful thing to share in, or even to observe. We firefighters endure hardships and share experiences which we'll never forget even if we live to be 200. The crucible of arduous fire duty welds us into a tough steel-like chain, which may be strained, but never parted.

In recent years we have all but been inundated by television shows, newspaper and magazine articles, movies and books describing the problems of the law-enforcement officer (all valid) during this era of "crime in the streets." This has resulted in hundreds of millions of dollars being granted by both state and Federal agencies to police departments throughout this country.

Doesn't "crime in the streets" and the Safe Streets Act relate to malicious false alarms, arson, assaults on and shooting at professional firefighters? Cannot we in the fire service acquire the aid of someone to forcefully bring to the attention of our citizens a truly honest picture of the firefighter's life? And death? Does it have to be left to a nonerudite individual like myself, so obviously out of my element, to attempt to get across the message that this noble calling—the saving of lives—takes a terrible toll?

What is needed is the effective * * * of the firefighter's problems; the unique skills required of the job and the need for aid—new equipment, research and development programs, a newer type of lightweight mask (the mask widely used now, developed for World War II, weighs thirty pounds and can be used up in less than ten minutes).

It should be just as easy for a firefighter to attend a course at a university as it is for a policeman, but the work schedules now in effect in the New York City Fire Department make it very difficult for a fireman and almost impossible for an officer.

Won't someone please come forward to help us?

NORMAN CARLSON

Mr. PERCY. Mr. President, I would like to call to the attention of my colleagues in the Senate the nomination of Norman Carlson to receive the Arthur S. Flemming Award. This award is given in recognition of Mr. Carlson's leadership in the area of Federal corrections in his capacity as Director of the Bureau of Prisons of the Department of Justice.

He has contributed to the development and implementation of a long-range master plan to improve correctional facilities. In spite of a lack of overwhelming public support in this area, Norman Carlson has toiled long and hard to improve corrections. In large part, he deserves the credit for many of the innovative programs which have characterized the Bureau of Prisons during his tenure there.

Mr. President, the direction of correctional institutions is a vital part of the overall problem of crime. Norman Carlson deserves our respect and gratitude for the part he has played in helping to relieve the problem of crime in our society. For my colleagues and for myself, I offer congratulations to Norman Carlson for having earned the Flemming Award in recognition of his contributions to this Nation's system of corrections.

GROWTH OF THE REPUBLIC OF CHINA

Mr. DOMINICK. Mr. President, at a time when the country's attention is properly fixed on the President's trip to Peking, it is only fitting that we remind ourselves of the tremendous progress made by the Republic of China, so unhappily, and in my mind illegally, ousted from the United Nations. It is even more fitting to compare its way of life with that of the Mao followers graphically

depicted on the recent TV films over channel 5 in the Washington area, where the regimentation, militarism, and forced indoctrination of the mainland Chinese were clearly revealed.

Now that the emotional climate which pervaded United Nations decisions on the membership of Taiwan has subsided, it might be enlightening to look at the tremendous growth and progress made by the Republic of China in the last quarter century, in further assessing those factors which have and continue to foster friendship and alliance between our two countries.

Economic growth in the Republic of China has been miraculous. Two decades ago, the island of Formosa was hardly the dream of those who sought new outlets for foreign industrial expansion. Yet today, an island of 15 million people, Taiwan has created not only an attractive climate for such foreign investments and capital, but has, also, a gross national product which enables it to help other developing countries significantly.

Foreign investments on Formosa have risen from an annual average of $2.5 million prior to 1960 to approximately $140 million in 1970 and again in 1971. This is not the track record of a country which sits back as it smilingly rakes in U.S. aid, but is rather the accomplishment of a country which recognized at an early stage in its industrialization that it could not depend on U.S. aid indefinitely. Indeed American economic aid to the Republic of China assisted the Chinese greatly during the early years, but in June of 1965 this aid terminated. Rather than being stifled by the lack of former assistance from the United States, the Republic of China stepped up its efforts toward more international cooperation, seeking the necessary technical support and new sources of capital which could lead toward sustained growth.

Efforts were made by the Republic of China to improve the balance of payments, create jobs and find new ways to attract foreign investors. Basic innovations contributing to the success of these efforts included new statutes to encourage investment—permitting 100 percent foreign ownership, offering tax incentives, and providing for repatriation of capital. As a result of growth-oriented planning and expansion-conscious business policies, Taiwan increased its gross national product 11 percent in 1971 over 1970. Two-way trade brought a gain of 31 percent over that same period, representing a favorable balance of payments of $157 million. Again, hardly the track record of a country willing to rest comfortably on the cushion of foreign aid.

In addition to economic accomplishments at home, the Republic of China has exported the agricultural expertise of its people by helping some 28 developing countries rise to new levels of agricultural planning and efficiency through training in management, rice culture, marketing, and water utilization. Twenty-one teams numbering 1,000 farm specialists are working in African countries. It goes without saying that the work of these Chinese specialists helps our own aid programs in these areas.

By wisely placing its emphasis on those areas of expertise which were most marketable and most beneficial to developing countries, the Republic of China moved forward with major programs aimed at the serious food shortages caused by population growth and declining per capita food production in these areas. The Chinese Government initiated several major programs, including the Land Reform Training Institute, established jointly in 1968 by the Chinese Government and the John C. Lincoln Foundation of the United States. The institute's major goal was to share with developing countries knowledge and benefits gained from the land reform program implemented in the Republic of China. Establishment of the Food and Fertilizer Technology Center, set up to pool regional resources to help increase food production in Asian countries is another example of Taiwan's efforts to help her neighbors. Programs such as these, combined with bilateral project-by-project steps have not only stimulated agricultural gains in developing countries, but have spurred the growth of industries which depend on agriculture for raw materials.

Mr. President, we are embarking on what can only be a new and important era in U.S. relations with the countries of the Far East. Yet it would be a grave mistake to forget the value of our alliance with the Republic of China, and the Republic of China's contributions to the world economic and political community.

While Senators have been upgrading the Government of mainland China, downgrading the Government of Taiwan, and speaking generally about the need for the United States to avoid assistance to dictatorial regimes, it is interesting to see that they ignore the fact that Taiwan operates under a constitution with elections at all level while mainland China operates under total executive order interpreted and enforced through one man. It is time that we noted publicly that the dictationship of the left can and does destroy the lives and dignity of people at a truly fearful rate as the dictatorship of the right has done in the past. These countries like Taiwan which operate peacefuly in the middle of the spectrum should be applauded for their contributions.

SOME SHORT-TERM CONSEQUENCES OF A NUCLEAR POWER MORATORIUM

Mr. GRAVEL. Mr. President, earlier today I introduced a bill which would stop the licensing and operation of nuclear powerplants on a temporary basis. The premature doubling of nuclear power capacity this year, with machines averaging almost twice the size of the present models, represents a danger to life and property of unprecedented magnitude.

Perhaps other Members of Congress will soon introduce a bill with the opposite purpose, namely to accelerate the licensing and operation of additional nuclear powerplants. This would be seeking legislative relief from recent court decisions which declared that the Atomic Energy Commission has been making a mockery out of the National Environmental Policy Act of 1969, and which forbid the Commission to grant nuclear operating permits until compliance with the law is completed.

The threat of some summer blackouts if nuclear licenses are not granted was presented by the utilities last November to the Senate Interior Committee Energy Task Force.

As summer approaches, we can expect more obvious activity, and if it includes villifying environmentalists and citizen intervenors, the situation will be just what AEC Chairman Schlesinger predicted last October in his maiden speech.

I would not be surprised if debates between the extremes—stopping nuclear power and accelerating it—become important in the primaries and subsequent elections.

The threat of blackouts is a major concern which needs full and advance examination by the economic committees of Congress, but I shall offer certain facts right now.

THE CONSEQUENCES IN 1972

In 1970, nuclear power contributed only 0.3 percent of the country's total energy consumption. In 1971, it was an estimated 0.8 percent. If all 15 nuclear plants nearing completion were in operation by the end of 1972, the contribution from nuclear power would still be only a grand 1.6 percent of the Nation's energy consumption.

I submit that the nuclear risk is all out of proportion to the nuclear contribution, and that shutting off 1.6 percent of the country's energy is no proper cause for hysteria and recklessness anywhere.

Furthermore, not all 15 of the nuclear plants will be operable in time for this summer's crunch. According to the AEC's own list dated January 28, 1972, seven of the 15 will not even be ready for loading nuclear fuel until April, May, June, and September. After fuel loading, sometimes many weeks are necessary to bring a nuclear plant into reliable baseload operation.

If all 15 nuclear plants come into full power operation by the end of 1972, they would provide an additional 10,600 megawatts of nuclear electricity. This would approximately double the 1971 nuclear generating capacity, which was 10,041 megawatts.

It might be noted for comparison that the AEC's own electrical consumption in 1972 will tie up at least 6,000 megawatts of electrical generating capacity, mostly for making more nuclear fuel. By shutting down the AEC's nuclear fuelmaking operations, approximately 20 percent of the effect of a nuclear power moratorium would be instantly eliminated.

The net result of a nuclear moratorium in 1972 would be the absence of 16,000 electrical megawatts. While this is less than 1.5 percent of our total energy consumption as presently projected, it is approximately 4 percent of our electrical energy capacity for 1972.

THE CONSEQUENCES IN 1975

If you assume that the nuclear moratorium continues through 1975, then we are talking about the absence of 59,000 nuclear megawatts, which would be about 4.8 percent of the country's 1975 energy consumption, or about 12½ per-

cent of the country's projected 1975 electrical consumption. If one calculates the liberation of 6,000 electrical megawatts through the nonproduction of more nuclear fuel, the percentages go down somewhat. The figures are nothing more than approximations in any case, including the common estimate that electricity accounts for one-fourth of our energy consumption.

NUCLEAR CAPACITY 1970-80

Year	Number of nuclear plants operating	Nuclear electrical megawatts	Total U.S. electrical capacity	Percent nuclear	Percent nuclear in total U.S. energy	Number of nuclear plants being built [1]	Their electrical megawatts
December 1970	20	7,498	334,986	2	[2] 0.3	53	44,038
December 1971	23	10,041	357,122	3	[3] 0.8	54	45,779
December 1972	38	20,630	382,000	5.5	[4] 1.6		
December 1975	[3] 80	59,000	475,000	12.5	[4] 4.8		
December 1980		150,000	665,000	22.5	[2] 7.0		

[1] An additional 52 nuclear plants with an electrical capacity of 51,571 megawatts are "planned" (reactors ordered) according to the Atomic Energy Commission., Jan. 17, 1972.
[2] Source: Paul W. McCracken, Council of Economic Advisers, 1971, "National Energy Problems and Prospects." All other figures from the Atomic Energy Commission.
[3] Estimate.
[4] High estimate.

WHAT ARE THE LOAD FACTOR CURVES?

Some perspective on these figures is provided by a description of how electrical need is calculated.

Generally the peak or the very highest demand is estimated. Then it is thought prudent to assume that 10 percent of the generating capacity of any large electrical system is out of operation for routine overhaul and maintenance at any particular time. So the Federal Power Commission adds 10 percent need to the peak demand. Then it is thought prudent to add another 10 percent reserve for malfunctions and accidents which put more equipment out of operation.

So the alleged need for electrical generating capacity equals the peak demand plus 20 percent reserves.

A more interesting calculation seldom surfaces in public presentations, though it is not secret. It is the load factor curve, or the curve which shows the percent of generating equipment in use versus the number of days per year it is used.

It turns out that some utilities use a third of their equipment only 10 percent of the time or less. In other words, after you subtract 20 percent for reserves, only two-thirds of the remaining equipment is needed 90 percent of the time.

Some of this is explained in an article entitled "Southland Facing Electrical Power Crisis in Next Two Years," which appeared January 23, 1972, in the Los Angeles Times.

According to that article, the so-called electrical crisis in southern California is caused by only 18 days a year, when it is very hot or very cold. "About one-third of the available power is idle the other days," it says.

If 33 percent of electrical capacity were idle 90 percent of the time, would it not be absurd to court nuclear catastrophe in return for a technology which at best could provide only 5.5 percent of electrical generating capacity in 1972 and 12.5 percent in 1975?

I do not know how the load factor curves look for the country as a whole, or for the regions of alleged "critical need" for nuclear power plants. While I must assume the curves are less astonishing than the ones for southern California, it may be that the need for nuclear plants is far from critical.

I strongly suggest that we look at the load factor curves and also verify the figures before we are stampeded into the premature licensing of nuclear plants and the automatic production of permanent radioactive waste.

WHO REALLY WILL USE THE POWER?

In addition, it is time to take a very tough look at the alleged demand for electricity, especially for the years 1972 through 1975. We are seldom told who the projected customers are, or what they will use the extra electricity for.

In Oregon during 1971, Portland General Electric and the Bonneville Power Administration put out reports entitled respectively, "Why Oregon Needs More Power" and "Everything You Always Wanted to Know About BPA." Using these sources and others, Dr. Wilbur McNulty wrote an article on Northwest power needs which appeared in the Sunday Oregonian on October 17, 1971.

He considers the familiar claim that massive amounts of electricity will be needed in the immediate future for pollution abatement, and concludes that "the figures do not bear this out."

After adding up possible future automobile shredding machinery, affluent control for Oregon pulp and paper mills, tertiary sewage treatment, electrical mass rapid transit, the biggest need increase Dr. McNulty can generate for pollution abatement is a few percent—trivial in comparison with the alleged "need" for a 100-percent increase in electrical capacity every 10 years.

The real increase, he says, will be used to quadruple aluminum production by 1987, and to heat more homes electrically. His conclusion is quite consistent with the 21st annual electrical industry forecast, which says that electrical sales can treble by 1985 if we drastically increase the production of steel, aluminum, and petroleum processing, increase the use of electricity to heat and air condition, and increase the use of electrically driven appliances.

THE MYTH ABOUT JOBS, PROSPERITY, AND COMFORT

While the electrical industry is trying hard to increase sales, others are figuring out ways to reduce per-capita energy consumption without reducing our comforts or standard of living or employment opportunities at all. They shoot holes right through the line that prosperity and jobs and comfort all depend on greater use of electricity.

I particularly recommend two papers on this subject which are available in the RECORD.

One is a paper entitled "Electrical Power, Employment, and Economic Growth," presented at the American Association for the Advancement of Science meeting in December by Professor Herman E. Daly of Louisiana State University. It was placed in the RECORD by Mr. HART on February 8, pages 3079–3084.

The other is a paper entitled "An Assessment of Energy and Materials Utilization in the U.S.A." presented by A. B. Makhijani and A. J. Lichtenberg in September 1971 at the college of engineering at the University of California, Berkeley. I placed this paper in the CONGRESSIONAL RECORD, volume 117, part 34, pages 44629–44635, and reprints are available from my office.

In this paper, the authors show how we could reduce per capita energy consumption to 62 percent of our 1968 levels without sacrificing our standard of living at all.

HEAT AND AIR CONDITIONING

Would our standard of living be reduced by better building insulation? About one-sixth of the country's energy consumption is devoted to heating buildings. It is estimated that better insulation could reduce that share by 30 percent.

As for the power consumed by air-conditioners, the amount could probably be reduced by 15 percent with the addition of a new thermal energy storage device being tested this spring at the University of Pennsylvania National Center for Energy Management.

This is also a peak shaving device, which means it reduces the need for building peak generating capacity which stands idle most of the time. The air-conditioning system was developed with the help of the National Science Foundation's RANN program, according to the story "System Stores Coolness" in the January 10, 1972, issue of Chemical and Engineering News.

FUEL CELLS, HYDROGEN, AND FOSSIL FUELS

Another way to reduce per capita energy consumption is to produce more electricity from a constant amount of fuel. Commercial fuel cells, which will be on the market in 1975, are expected to produce 30 percent more electricity per unit of fuel than do steam-cycle plants.

Furthermore, fuel cells produce no pollutants at all, only carbon dioxide and water.

As for the supply of fuel for fuel cells, there need be no shortage. Commercial gas made from coal, of which this country has at least a 400-year supply, will start reaching the market in 1973, according to the February 7, 1972, Wall Street Journal.

Fuel cells run even better on hydrogen, which can be separated from fresh or

salt water by electrolysis using such simple and familiar machines as windmills. Additional peak shaving could be accomplished by using idle electrical capacity to produce hydrogen for use in fuel cells.

If fuel cell production is too limited to make up for the nuclear deficit in 1975, there should be no problem making up for it with clean geothermal and fossil-fuel boilers.

For instance, in October 1971, Commonwealth Edison announced that a 840-megawatt coal-burning plant whose construction will begin in mid-1972, will be completed in 1975. Furthermore, "the new unit will be environmentally acceptable in every respect," promises J. Harris Ward, chairman, according to the Wall Street Journal, October 7, 1971.

HOW TO REFUSE BLACKOUTS

In other words, we certainly do not need nuclear fission in a rush, if ever. We can afford the time to consider the alternatives, including solar power, much more carefully.

A nuclear moratorium does not have to mean blackouts or an energy crisis. These threats are self-serving and perhaps self-fulfilling slogans used by the utilities, and their counterparts in the Federal Power Commission and the Atomic Energy Commission.

It is time for us to reject the idea that, in case of a peak demand which cannot be met a few days per year, the first things to go must be the things we cherish most, such as lights, air conditioning, elevators, transportation, hospital equipment, and sewage treatment.

That kind of punishment is not necessary.

For instance, in New Zealand, what are called "ripple signals" are widely used. Nonessential electrical equipment is provided with a special switch which responds to a low-power signal from the utility. When a peak-power period is approaching, the utility sends the signal, which shuts off the nonessential load.

Ripple systems are not expensive to install, but American utilities have not suggested them, perhaps because they have been trying instead to increase electrical consumption and justify increases in their capital investment for new equipment.

In the absence of ripple systems, we can still cope with any peak demand which exceeds capacity without blackouts. We can simply poll the public democratically, and shut down some of the big loads which people do not consider essential to their daily happiness. After all, we are talking about just a few days per year.

PUBLIC HARDSHIP NOT NECESSARY

I have been stressing the fact that a nuclear moratorium need not mean hardship. However, I believe that the public and Congress, once they understand more about present nuclear dangers, would favor a nuclear moratorium even if it did mean temporary hardship and inconvenience.

But it does not. Public hardship can be prevented altogether during a nuclear moratorium, providing Congress does not leave its implementation solely to the utilities.

PROPOSED RECONCILIATION BETWEEN WEST GERMANY AND EASTERN EUROPEAN NATIONS

Mr. TALMADGE. Mr. President, the late West German Chancellor Dr. Konrad Adenauer was a great political leader who brought West Germany to a great economic prosperity and to a secure position among the nations of the Western World. He carried out the reconciliation with France and Britain and has always been a great friend of the United States. He has kept the positions of the free world in an uneasy situation at the border of the free and the Communist world in Europe.

The present West German Federal Government under Chancellor Willy Brandt has used a false logic when stating that Mr. Brandt, in the same way as Dr. Adenauer did vis-a-vis the free nations, will now bring about a reconciliation between Germany and its Eastern neighbors. The Eastern neighbors are not free people; they are represented by the Communist regimes, and a German reconciliation with the Communist regimes of Eastern Europe which have been suppressing their people, is not and cannot be equal to the reconciliation Dr. Adenauer reached with the West.

In her Ostpolitik, West Germany has brought many sacrifices and given many concessions to the Soviet Union and other Communist countries. These sacrifices have been unnecessary and will bring the Germans no friendship whatsoever, because the subjugated nations of Eastern Europe will reject such German policies as being hostile and detrimental to their vital interests, and the Communist rulers of those nations will not be satisfied and grateful until Germany surrenders everything including her own freedom.

THE LOYAL LEGION AWARD

Mr. PERCY. Mr. President, every year the Loyal Legion, a patriotic organization made up of descendants of the original group of men who formed the Loyal Legion at the time of the assassination of Abraham Lincoln to prevent the overthrow of the Government, gives an award on Lincoln's birthday to the college student submitting the best paper on some phase of the Lincoln administration.

The award this year was given to Miss Mary Sand, a student at Dakota State College, Madison, S. Dak., who wrote on the subject, "Foreign Relations and Diplomacy Between Great Britain and the United States During the Civil War, 1860–65."

As part of the award, Miss Sand was given a trip to Washington, D.C., to participate in the ceremonies at the Lincoln Memorial on February 12. I ask unanimous consent, Mr. President, to print the copy of Miss Sand's report in the RECORD.

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

FOREIGN RELATIONS AND DIPLOMACY BETWEEN GREAT BRITAIN AND UNITED STATES DURING THE CIVIL WAR, 1860–65

(By Mary Sand, Dakota State College, Madison, S. Dak.)

Ephraim D. Adams ably summarized England's dilemma when he wrote, "The difficulty of England in regard to the Civil War was the difficulty of reconciling sentiments of humanity long preached by Great Britain, with her commercial interests and her certainty that a new State was being born."[1] Great Britain was thoroughly awakened to the seriousness of the growing rift between the North and the South in relation to British foreign trade.

On April 12, 1861, the Southerners opened fire on Fort Sumter, and in two days forced the Northern fort to surrender. President Lincoln promptly called for 75,000 militiamen; and four additional Southern states seceded from the Union. Civil War had erupted. With the fall of Fort Sumter, European countries recognized that a civil war was actually under way in the United States. For the period previous to April 1861, British official attitude may be summarized in the statement expressed by the British Minister at Washington, who, wishing that some solution might be found for the preservation of the Union, but at the same time, looking to future British interests and possibly believing also that his attitude would tend to preserve the Union, asserted vehemently the impossibility of any Northern interference with British trade to Southern ports.[2]

According to the historian Thomas A. Bailey, when the Civil War broke out relations between England and the United States were more friendly than they had been at any time since the turn of the century.[3] He substantiates his statement by the fact that the Isthmian controversy had just been settled and no serious dispute divided the two nations. With the bombardment of Fort Sumter, England would be the focal point of American diplomacy and the greatest diplomatic problem facing the Republican administration was to keep England neutral.

According to J. G. Randall and David Donald, neither the South nor the North wanted England to remain strictly neutral. What the North desired was a denial of belligerent status to the Confederacy. In reality, the North wanted sympathy, not cold neutrality. On the other hand, the Confederacy wanted "unneutral assistance, recognition and intervention." Most upper-class Englishmen sided with the Confederate cause. For years the Old South had been close to Great Britain in both business and society. Southern planters were the equivalent of the English gentry. In the eyes of the British aristocrat, they detested the "demon democracy" and had long expected the collapse of the democratic form of government which was largely supported by the "gibbering mob" derived from the scum of Europe. A subtle reason for this attitude of the English gentry was the fear that if the North triumphed, the disenfranchised masses of England would clamor more loudly than ever for democracy. Other reasons for the attitudes of the English ruling class were the fact that the United States was a growing world power, a formidable commercial competitor, and a potential menace to Canada and other British possession in the Western Hemisphere.[4]

Economic reasons also influenced the thinking of the British ruling class. In 1861, Congress had enacted the highly protective Morrill tariff. Most of Britain's leaders, men like Prime Minister Palmerston, and Foreign Secretary Russell favored the South. They were convinced at first that the South's independence was inevitable. But the British economic interests were opposed to intervention. British shippers realized that their business would be ruined by Yankee privateers if England and America clashed.

Britain's liberal humanitarians from the first to the last favored the Union. British liberals such as John Bright and Richard Cobden saw the Civil War as the test of democracy and shared the desire of the working class for a Northern victory. The profound

Footnotes at end of article.

pro-Unionism of the English masses was a decisive factor at the outbreak of the Civil War. The masses close affiliation to the Northern masses helped keep the London government neutral. *Uncle Tom's Cabin* by Harriet Beecher Stowe made a profound impression. The English masses regarded the North as the haven of free labor and democracy to which thousands of their countrymen had emigrated. The British government sensed that the English workingman would never willingly consent to intervention on behalf of slavery. Although the upper classes controlled the press, the attitude of the English masses could not be ignored.[5]

President Lincoln wished to regard the Civil War as a "mere domestic struggle or quarrel", one that would not involve foreign nations and thus would avoid the question of neutral rights. With the bombardment of Fort Sumter, President Lincoln retaliated with his proclamation of the blockade of Southern ports. Lincoln's proclamation of a blockade, however violated his own theory. According to International Law, a blockade without a state of war and without placing restrictions of neutral shipping imposed by the Union would give the Confederacy belligerent rights. England immediately recognized the flaw in the Union's theory. England viewed the situation as hypocritical since the Union wanted England to recognize a state of war by admitting their blockade but at the same time deny a state of war by treating the Southern vessels as pirates. The British government decided to treat the civil conflict as a full-fledged war. On May 13, 1861, Queen Victoria issued a proclamation of neutrality recognizing the belligerency of the Confederacy.

In other words, England recognized the South as having a responsible government capable of conducting a war.[6] President Lincoln and Secretary of State Seward objected to England's proclamation of neutrality first as unfriendly and then as "premature". Ambassador Charles Francis Adams considered the proclamation of neutrality as a first step toward recognition of the Southern Confederacy which it was not. The proclamation of neutrality was merely a customary proclamation of impartial neutrality, similar in principle to the position the United States had taken during the Canadian rebellion of 1837. Other European countries considered England's action proper. Thus, other European nations followed the example of Great Britain and also accorded the South belligerent rights.[7]

According to Alexander De Conde, the Civil War raised the old questions of maritime rights between belligerents and neutrals. The Civil War reversed the traditional positions of the United States and Great Britain. For the first time, England was the major neutral and, for the first time, the United States insisted on the rights of a belligerent rather than on the privileges of a neutral.

Another interesting and unique feature of the diplomacy of the Civil War was that the European nations for the first time could apply a body of international law covering maritime rights that had been adopted at the end of the Crimean War. The principles adopted in the Declaration of Paris, April 1856, abolished privateering, stated that a neutral flag covered all enemy goods, except contraband, were free from capture under an enemy flag, and that a blockade was binding only if strong enough to prevent ships from entering ports.[8]

The Declaration of Paris embodied most of the neutral principles that the United States had upheld since the achievement of independence. Yet, when the European Nations had asked the United States to adhere to the Declaration, United States had refused because it would not give up the right of privateering. The rationale behind this refusal was the fact that United States believed that in a time of war with a stronger naval power, the United States would need privateers to supplement the striking power of its small navy.[9]

In the Civil War however, privateering gave a decisive advantage to the South which had no navy. A week after Jefferson Davis said that he would commission privateers, secretary Seward offered to adhere unconditionally to the Declaration of Paris since it would now benefit the Union and its cause. In reality and in practice, privateering did not help the South. European nations closed their ports to both Northern and Southern ships of war and their prizes. The Confederacy, with its own ports blockaded, had no ports where it could send prizes of war. The South tried privateering in 1861, but after that year, the South gave up the effort, since blockade-running proved to be more lucrative.[10]

Secretary of State William Seward had refused the offer of the European powers for a conditional adherence to the principles of the Declaration of Paris, but told the British that the Union would follow them in practice.

After the South's unsuccessful efforts at privateering, it also followed those principles during the Civil War.

Agreement on the maritime principles did not solve the major diplomatic question of the Civil War: would Europe, primarily England and France, the two most powerful countries in Europe, recognize the Confederacy as an independent nation? The North's primary objective was to prevent such recognition. The South's primary aim was to win the recognition through European intervention. Although recognition depended more on the success of Confederate arms than on diplomacy, the material advantages to be reaped from such recognition were considered important enough to bring victory to the South. Northern diplomacy under the brilliant guidance of Charles Francis Adams and intelligence as well as battle victories helped thwart such recognition. Europe's recognition of the South's belligerency had given the Confederacy the status of a nation for the purpose of fighting a war.[11]

From the beginning, Southern statesmen hoped that England and France would take the next steps and aid them in the same way France had helped the fighting colonies in the American Revolutionary War. "England will recognize us" Jefferson Davis had stated on the way to his inaugural, "and a glorious future is before us." [12]

With high hopes, the South tried to aid its armies through diplomacy. The Confederacy sent agents, without official status, to Europe to work for recognition, to float loans, to spread propaganda, and to buy ships and supplies. From March 1861, to January 1862, the South scored several points but was unsuccessful in its main undertakings by the Yancey-Rost-Mann mission. The commissioners found entree' into London society, seized the attention of a considerable public, and obtained recognition of belligerency; but they failed to secure full recognition of the Confederacy, sought it in vain for a treaty of amity and commerce, met disappointment in their demand that England denounce the Northern blockade, were denied the use of foreign ports for Confederate privateers, and saw their hopes deferred in the matter of intervention.

Though Lord Russell granted interviews to the Southern commissioners, the conversations were unofficial. Later the Southern diplomats were requested to put their communications in writing. Yancey developed a feeling of bitterness toward England and asked to be relieved of his duties. The Southern commissioners differed among themselves, and they had the feeling that they had been officially snubbed. With the arrival of new commissioners in January 1862 (Mason and Slidell), their mission came to an end.[13]

The Confederate government selected two distinguished men. It sent James Mason of Virginia to London and John Slidell of Louisiana to Paris to represent the Southern government in two most important foreign capitals. Slipping through the Northern blockade, the commissioners took passage on the British merchant ship, *Trent*. The day after leaving port (November 8, 1861) the *Trent* was stopped by the conventional signal, a shot across the bow, by a warship of the United States, the *San Jacinto* under Captain Charles Wilkes. The two commissioners and their secretaries were arrested and removed to the *San Jacinto*. The searching party met with some difficulty as stated by Captain Wilke's report and force was necessary to search the ship.

Though the envoys were treated with every possible courtesy by Captain Wilkes and his officers, the Southern commissioners were political prisoners and were placed in confinement in Fort Warren, Boston Harbor. The effect of the seizure was immediate and sensational. The act of Captain Wilkes was vociferously applauded in the United States but the act was more than a breach of International usage, it was an affront and challenge to England's honor. When Lord Palmerston heard about the incident, he declared in a cabinet meeting; "You may stand for this but damned if I will."[14]

The mass of English people appeared to share his rage. War preparations were carried to the point of sending 8,000 troops and war materials to Canada, putting a steam fleet in readiness and prohibiting the exportation of munitions. On the American scene, the Northerners rejoiced over the capture of the two important Southern diplomats and the insult that Captain Wilkes had given England. Cheering crowds in Washington serenaded Captain Wilkes. The House of Representatives voted to give him a gold medal. The Secretary of the Navy commended him for his "brave, adroit, and patriotic conduct."

The *New Times* said, "Let the handsome thing be done, consecrate another fourth of July to him." [15]

European statesmen, French, Italian, Prussian, Danish, and Russian all agreed that the United States had done the wrong thing. Captain Wilkes' act smacked of impressment, a practice that the United States had always denounced as in conflict with International law.

President Lincoln realized his country held a weak position. Lincoln did nothing to encourage the public rejoicing. "One war at a time," he told Secretary of State Seward.

The British cabinet insisted that a "gross outrage and violation of international law had been committed," and Prime Minister Palmerston and Lord Russell drew up an ultimatum threatening war. When Prince Albert, Queen Victoria's dying consort, read the dispatch he cautioned restraint and toned the dispatch down. The revised instructions, demanded the release of the two Confederate prisoners and a suitable apology. If the United States did not indicate compliance within seven days, the minister in Washington had orders to break off diplomatic relations and return to London, but he also had the private instructions not to threaten war.

Lincoln's cabinet met on Christmas Day to consider the British demands. Finally after a long discussion, all eight members agreed that the government must release Mason and Slidell. It was a wise decision. Failure to meet the English demands probably would have meant war and a victory for the South.

Nevertheless, Lincoln feared the political consequences arising from the public anger over the surrender of the two Southerner diplomats, but the public reaction, except for the anti-British press, was less violent than Lincoln and his advisors had expected. Despite the furor that the *Trent* affair created, neither the British government nor its people really wanted a war wtih the United States.

Footnotes at end of article.

Such a war would have opened Canada to an invasion, would have placed the British merchant marine at the mercy of the American privateers and would have aligned Britain, the leader of the world crusade to stamp out slavery, on the side of the slaveholding South. To the satisfaction of both England and the United States, Lincoln's government peacefully overcame its first major diplomatic crisis of the Civil War.

The crisis brought no benefit to the South. When Mason and Slidell arrived in England at the end of June 1862, public interest in them had almost disappeared. In referring to them the *London Times* had once said, "We should have done just as much to rescue two of their own Negroes." [16]

The South's main diplomatic weapon was the coercive economic power of cotton, on which English and French textile industries were critically dependent. In England, some five million people (one fifth of the population) in one way or another relied on the textiles industries for a living. The South supplied about 80% of England's raw cotton. The *London Times* said that "so nearly are our interests intertwined with America that the Civil War in the states means destruction and destitution in Lancashire." [17]

Southerners believed that England's and France's dependence on their cotton would force those countries to recognize the Confederacy as independent and to end any long war by intervening on the South's side. Without the South's cotton, a South Carolina senator had claimed, "England would topple headlong and carry the whole civilized world with her, save the South. No, you dare not make war on cotton. No power on earth dares to make war upon it. Cotton is King." [18]

This Cotton King theory had several fatal flaws which consisted of the fact that bumper crops in the 1860s filled the brokers' warehouses and England found other sources of cotton in Egypt and India. At first the South actually welcomed the Union blockade, since it was to create a cotton famine.

At the beginning of the Civil War, state and local officials in the South prevented the export of cotton. Southerners refused to plant a new cotton crop and before the end of the war as a patriotic duty had burned some two and half million bales of cotton. Later, as its forces blockaded and occupied Southern ports, the North strangled the cotton export. Yet neither England nor France or any other foreign nation recognized the Confederacy. The war itself, South's self-blockade and the North's enforced blockade came as a boon to British and French cotton brokers; for the brokers profited from the high wartime prices that the cotton brought. The war, in fact, saved England's cotton industry from severe panic and turned the impending ruin into a glowing prosperity. Therefore, the long Civil War worked to the advantage of the cotton industrialist. As the British and French textiles manufacturers exhausted their cotton supply, they found substitutes in cotton from Egypt and India and linen and woolen goods. Also, as the Union armies captured cotton, strenuous efforts were made to ship the captured cotton to England to alleviate the shortage.

Despite the hardships Englishmen suffered as thousands of English and French cotton spindles stopped, the starving British workers did not agitate for intervention at any time during the Civil War mainly because the millions of workers believed in the Union cause and, because poor relief both public and private, and some supplied by Northern philanthropists helped ease their suffering.

Also, Northern wheat was more vital than Southern cotton. If Britain had intervened, it would have meant war with the United States and the consequent cessation of the flow of wheat during the bad harvests. Since the British needed Northern wheat more than Southern cotton, the English dared not to intervene.[19]

Another theory, centered on economic motivation, held that England's swollen war profits weakened the coercive power of King Cotton. Both North and the South bought most of their war supplies from England, giving enormous profits to her munitions makers. Britain's shipowners profited from the South's destruction of the Union's merchant marine, their main prewar rival. Some English shipowners even rejoiced over the Civil War. According to the "war profitteer" theory, England profited from the Civil War to such an extent that England did not want to intervene and thereby kill prosperity.[20]

After the crushing Northern defeat in the Second Battle of Bull Run, England became more convinced than ever that the Union cause was hopeless. By September 1862, Lord Russell, the foreign minister, wrote in his opinion that the time had come "for offering mediation, with the view to the recognition of the independence of the Confederacy." Lord Russell added that in failure of mediation, England should on her part recognize the Confederacy. Secretary of State Seward insisted that forcing intervention would mean enlarging the war and that the Union would reject all offers of mediation. If Europe intervenes, Seward stated "this Civil War will, without our fault, become a war of the continent—a war of the world." [21]

For such a mediation plan to have developed into the official program in Great Britain would have probably have meant a severance of relations between Washington and London; had this proposal been followed by intervention to stop the conflict, war with the Union would, according to all indications, have resulted. But at this critical point, various factors acted as a brake upon this proposed British policy.

Lee's repulse at Antietam and Lincoln's Emancipation Proclamation were having their effects. Fundamental in Secretary of State Seward's foreign policy was the conviction that England dreaded war with the United States. Secretary Seward sent to the Union ambassador, Charles Francis Adams, the instructions to inform England that the proceedings relative to outfitting of ships (Alabama, Florida and the Shenandoah) for the Southern Confederacy complicated the relations between the two countries in such a manner as to render it difficult to preserve the friendship between the two countries.

British shipowners outfitted armored steamers mounted with an iron ram, known as Laird rams. Potentially more powerful than any ship in the Union Navy, the Laird could crush the wooden blockade ships, smash the blockades and perhaps turn the tide of the Civil War. As the rams became ready for delivery to the Confederates in 1863, Lord Russell ordered the rams held, because of Charles F. Adams' vigorous protests and because of the fear of retaliation by the North.[22]

Napoleon III of France was always ready to recognize the Confederacy if England would support him. Napoleon dared not risk a long intervention because of divided French opinion. Therefore, the South's hopes for direct foreign intervention rested with England. Shortly after the collapse of the British mediation scheme, Napoleon made his most determined bid to intervene. He proposed a six-month armistice and the suspension of the blockade, if Britain and Russia would act jointly with France. This plan would have assured independence for the South but would have been rejected by the North. Britain and Russia would have nothing to do with the proposed mediation plan.

The issue of slavery profoundly affected the diplomatic maneuvers during the Civil War. Southerners realized that a main obstacle to obtaining foreign intervention was the question of slavery. As early as May 1861, the first Southern commissioners in England had reported that "the public mind here is entirely opposed to the government of the Confederate States of America on the question of slavery, and that the sincerity and universality of this feeling embarrass the government, in dealing with the question of our recognition." Anti-slavery sentiment in France and England was a "deep-rooted antipathy, rather than active hostility." [23]

Although the Battle of Antietam was more of a draw rather than a victory, President Lincoln used it to herald his Emancipation Proclamation. Since his armies had failed and the fear of foreign intervention haunted him, Lincoln believed that a definite stand against slavery would greatly strengthen the Union position in Europe. Union victories of Gettysburg and Vicksburg revealed the power and strength of the Northern armies, The influence of Lincoln's Emancipation Proclamation gained moral support. Finally, with defeat appearing certain, the South itself offered to abolish slavery if England and France would offer recognition. For England, the offer came too late, even in the opinion of pro-Confederate Englishmen.

The difficulties between England and the Confederacy in 1863 led to the break of diplomatic relations later in the year. The detention of the ironclads by Lord Russel and the failure of recognition had much to to do with this cessation of foreign relations between England and the Southern Confederacy.

When General Robert E. Lee met General Ulysses S. Grant in the village of Appomattox Courthouse on April 9, 1865, to discuss terms of surrender, the Union had already won the diplomatic war. American diplomacy really lost only the prosperity of the American merchant marine during the Civil War, despite the desperate nature of the conflict and the singlehanded fight the Union had to wage. According to Samuel Flagg Bemis, the nation's safety and the perpetuation of the Union were not only assured by the faithful efforts of the very capable diplomat like Charles F. Adams but was won on the battlefields of Gettysburg, Vicksburg where millions of young men lay down their lives that a nation might live undivided.[24]

FOOTNOTES

[1] Douglas E. Adams, *Great Britain and the American Civil War* Russel and Russel, New York, New York. 1958 page 59.

[2] *Ibid.* page 73.

[3] Thomas A. Bailey *A Diplomatic History of the American People* 3rd Edition 1946 Appleton-Century-Crofts INC. New York, page 342.

[4] *Ibid.* page 344.

[5] *Ibid.* page 347.

[6] Alexander De Conde *A History of American Foreign Policy* Charles Scribner's Sons, New York, New York. 1963 page 243.

[7] *Ibid.* pages 243–244.

[8] *Ibid.* page 244.

[9] *Ibid.* page 244.

[10] *Ibid.* page 244.

[11] *Ibid.* page 245.

[12] J. G. Randall & David Donald *Civil War and Reconstruction* D. C. Heath & Co. Boston, Mass, 1961, page 359.

[13] *Ibid.* page 360.

[14] *Ibid.* page 360.

[15] Samuel Flagg Bemis *A Diplomatic History of the United States* 4th Edition 1957 Henry Holt and Co. New York, New York. page 364.

[16] Alexander De Conde *A History of American Foreign Policy* Charles Scribner's Sons, New York, 1963, page 247.

[17] De Conde page 247.

[18] *Ibid.* page 247.

[19] De Conde page 249.

[20] De Conde page 250.

[21] De Conde page 251

[22] De Conde page 259.

[23] De Conde page 253.

[24] Samuel Flagg Bemis *A Diplomatic History of the United States* 4th Edition 1957 Henry Holt & Co. New York, page 382.

CLASSIFICATION OF INFORMATION

Mr. McGEE. Mr. President, much has been said and written in the past few months about the conflict between the need for a government to safeguard certain information from unauthorized disclosure and the right of citizens to be informed concerning the activities of their government.

Much of what has been said has been shrouded in the cloak of emotionalism with very little thought given to striking a rational balance between the citizen's right to know and the Government's need to maintain confidentiality.

Kenneth Crawford comes to grips with this problem in a column published in yesterday's Washington Post. In his article, entitled "Secrecy and Negotiation: Some Questionable Precedent," he discusses the ramifications that could ensue should governmental confidentiality not be maintained under certain circumstances.

Crawford asks:

How frank does Chou En-lai, for example, feel that he can be with Mr. Nixon, knowing that what he says may soon be the subject of a column by (Jack) Anderson, or even of a briefing, on or off the record, by Presidential advisor Henry Kissinger.

Crawford's point is well taken.

A letter written by William Florence appeared in this morning's Washington Post. Florence, a retired Air Force officer who spent 26 years as a security policy specialist, offers a sensible approach to the subject of classification of information.

I ask unanimous consent that both Mr. Crawford's column and the letter written by Mr. Florence be printed in the RECORD.

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

WHAT DISCLOSURES DO TO THE CONDUCT OF FOREIGN AFFAIRS—SECRECY AND NEGOTIATION: SOME QUESTIONABLE PRECEDENTS

(By Kenneth Crawford)

Where have the diplomatic secrets gone? Into the public prints and onto television screens, that's where. What secrets Daniel Ellsberg and Jack Anderson don't give away, the Nixon administration does. There is, to be sure, a time lag between secret events or discussions of them and their exposure. But the lag is getting shorter.

The Pentagon Papers dealt with events several years past. The Anderson Papers brought the lag down to weeks and days. Secret negotiations on Vietnam have been going on for months but President Nixon's broadcast brought them up to date.

All this exposure violates a sacred tradition of international diplomacy. President Woodrow Wilson talked about open covenants openly arrived at but this was a political slogan tarnished almost as soon as it was minted. Secrecy has always been the way of the diplomat when important issues were under negotiation and even at times, after they were resolved. It used to be taken for granted that almost every publicly announced treaty dangled secret commitments.

These days a secret commitment would likely be front page news before ink dried on signatures to the public treaty, or even before the signing, if the United States were a party to the agreement. Even the intimate discussions of foreign policy-makers in the supposed privacy of their own quarters are no longer secure in Washington.

What this does to the business of conducting the country's foreign affairs is a question—perhaps an important question. President Nixon is involved in negotiations not only with the North Vietnamese and the Vietcong but with the Chinese this week, and with the Russians, the Japanese, the Europeans and countless other nations on a continuing basis. Presumably the success of all these encounters will depend, in part at least, upon the frankness of the talk on both sides. And the degree of frankness will depend, in turn, upon confidence or lack of confidence that what is said will not become public property.

How frank does Chou En-lai, for example, feel that he can be with Mr. Nixon, knowing that what he says may soon be the subject of a column by Anderson, or even of a briefing, on or off the record, by presidential adviser Henry Kissinger? Maybe he will be no more guarded than he would be talking with, say, President Pompidou of France. But this is doubtful. The French still conduct their foreign affairs in the traditional fashion, as does almost everybody else.

The utility, some say necessity, for secrecy in the formulation of U.S. foreign policy was thoroughly hashed over in the course of the Pentagon Papers flap. The Washington Post, The New York Times and other newspapers challenged the laws against revelation of classified documents on the ground that the public's right to know was an overriding consideration, especially as the revelations gave away no secrets useful to a potential enemy.

Ellsberg readily, indeed triumphantly, confessed that he had turned over the documents. He said he considered it his civic duty to inform the public that it had been duped by the Johnson administration—that the war in Vietnam had been escalated in such a devious way that the public couldn't know what was going on. That was one way of reading the Pentagon Papers. The other way was to find in them only documentary confirmation of facts already known or guessed at.

In any case, Ellsberg was indicted and awaits trial. Debate over the effect of his disclosures has died down. The question whether Ellsberg set a healthy or unhealthy example remains unresolved. The only generally accepted conclusion is that government documents have been over-classified—that too much innocuous information has been stamped secret or top secret.

Nobody now argues that information about secret weapons should be handed out or published, though a few in the know once thought that the Soviet Union should be given atomic secrets just to even things up. But who is to decide whether a secret should remain secret? As matters stand, any government employee with access to classified information can make the original judgment and any writer or editor to whom he hands information can make the second judgment.

When the first installment of the Pentagon Papers appeared, the Justice Department undertook to impose prior restraint on further disclosures but it was overruled by the U.S. Supreme Court in a hasty and narrowly applied decision. Since then, there has been no effort to prosecute the newspapers for violation of laws against disclosure. The position of the newspapers in question is that they are competent to judge what secrets should be kept and what shouldn't. It is up to the government, they say, to police its employees and protect its own vital secrets.

The Anderson Papers came and went without much controversy or challenge. This may have been because everybody was tired out by the hassle over the Pentagon Papers. Having learned from experience, the government made no effort to stop publication of the new documents or to deny their authenticity. Intelligence agencies tried to find the source of the leaks, apparently without much success because almost everybody and his secretary with access to the papers also has access to duplicating mahines.

Now the government is giving away its own secrets and that is a different matter but it may be more dangerous than unauthorized leakage. President Nixon has unilaterally disclosed the details of secret negotiations with the North Vietnamese and Vietcong. Kissinger has elaborated the President's revelations both in one off-the-record and one on-the-record press conference. Communist spokesmen have called this a pernicious breach of faith.

The President's move would seem to be justified by the duplicity of the Vietnamese in publicly charging that the Nixon administration had never made the proposals it in fact had made in private. Since the North Vietnamese seem to have no intention of substituting negotiation in good faith for the pursuit of military victory, the tension created by the President's disclosure probably will do no immediate harm. It may even do some good.

Yet the precedent could prove damaging in future negotiations with more willing and more reliable negotiators.

AN APPEAL FOR A SENSIBLE POLICY ON NATIONAL DEFENSE SECRECY

The Washington Post recently published news of a National Security Council recommendation that the existing secrecy policy in Executive Order 10501 for safe-guarding national defense information be reissued in a new order. Measures currently imposed to keep Congress and the people from knowing what the Executive branch is doing would be continued.

We can all be thankful for the opportunity to explore this subject with the President and express our own views. Excessive secrecy has developed into one of the most critical problems of our time. The court cases and other events of 1971 show that the more secret the Executive branch becomes, the more repressive it becomes. It has already adopted the practice of honoring its own secrets more than the right of a free press or the right of a citizen to free speech.

The NSC "final draft" revision, as obtained by The Washington Post, claims that an Executive Order is required to resolve a conflict between (a) the right of citizens to be informed concerning the activities of the government and (b) the need of the government to safeguard certain information from unauthorized disclosure. Of course, *that simply is not true.* The Constitution did not create and does not now contain a basis for any such conflict. The interests and the power of the people are paramount in this country.

The only conflict about this matter is the President's failure to recognize the citizens' rights and ask Congress for legislation, in addition to existing law, that would provide the protection he wants for information bearing on the *active defense* of this nation. The information could be called National Defense Data. A specific definition for the data could be similar to the one already recommended in the report submitted to the President and Congress last year by the National Commission on Reform of the Federal Criminal Code. The President should take guidance from the fact that the Atomic Energy Act has been quite effective in controlling Atomic Energy Restricted Data without objectionable impact on the citizens' right of access to government activities.

If the President still insists on having an Executive order on the subject of safeguarding information, here are some comments that could be helpful:

1. *Updating.* The procedures in Executive Order 10501 for classifying defense information as top secret, secret or confidential are substantially the same as the Army and Navy used before World War II to classify military information as secret or confidential. The policy was suitable for small self-contained military forces. All of the secret and confidential material held by some of the large Army posts could fit in a single drawer of a

storage cabinet. Circumstances are completely different today. The strength of our national defense is not limited to military effort. It stems from the vast politico-social-industrial-military complex of this country. A commensurate interchange of information is essential. Therefore, such Executive order as the President considers to be required should be *radically* updated.

2. *Definition.* A fatal defect of Executive Order 10501 was the absence of a definition of "national defense information." That comparatively narrow term was an improvement over the broader terms "national security" and "security information" which were discarded in 1953. However, it is imperative that the designation used be limited severely by specific definition to information which the President really believes would damage the national defense and which leads itself to effective control measures.

3. *Categories.* Consistent with the urgent need to narrow the scope of protection, there should be only *one category* of defense information. Internal distribution designators could be used to limit distribution of a given item, but there need be only one classification marking. Experience proves that three classifications invite serious confusion, promote uncontrollable overclassification, and reduce the effectiveness of the security system.

4. *Authority to Classify.* The President's assumed authority to impose a defense classification ought to be exercised by only a tiny fraction of the hundreds of thousands of people who are now classifying. The new definition and great importance of the information involved would permit limiting classification authority to persons designated by the President and to such others as they might designate. (Individuals who put markings on documents containing information classified by someone else do not need classifiers.) As a new procedure, anyone who assigns a defense classification to material which does not qualify for protection should be made subject to disciplinary action as a counterfeiter.

5. *Declassification.* The millions of classified papers currently gushing forth cannot possibly be kept under review for declassification on a document-by-document basis. But that is no reason for perpetuating assigned classifications as the NSC proposed. The President should take the insignificant risk and cancel the classification on historical material by appropriate order. As guidance, this writer authored DoD Directive 5200.9 in 1958 which canceled the classification on a great volume of information under the jurisdiction of the Secretary of Defense that had originated through the year 1945.

As for the smaller number of items that should be produced in the future, declassification by the originating authority would be practicable and enforceable. Exceptional classified items, if any, sent to records repositories could be declassified automatically after the passage of a period of time such as 10 years.

6. *Privately Owned Information.* It is estimated that at least 25% of the material in this country which bears unjustifiable classifications was privately generated and is privately owned. The Executive order should specifically exclude privately owned information from the defense classification system.

7. *Misrepresentation of Law.* The NSC draft revision would continue the existing misrepresentation of the espionage laws by warning that disclosure of information in a classified document to an unauthorized person is a crime. The law applies only if there is intent to injure the United States, with no reference to classification markings. Falsification of the law should be eliminated.

The President could do the country a great service if he would seek advice from Congress and others outside the Executive branch regarding Executive Order 10501. It is hoped that many concerned citizens will help influence the adoption of that course of action.

WILLIAM G. FLORENCE.

WASHINGTON.

SENATOR HAYDEN SERVED WELL

Mr. PROXMIRE. Mr. President, Senator Carl Trumbull Hayden had more time in Congress than any other man before him. He had more time on earth than most men. Now he has gone to eternity with the respect of more persons than most men ever attain.

Carl Hayden was the first man ever elected by the citizens of the new State of Arizona to represent them in Congress. He never betrayed that trust, staying in the House for eight full terms and in the Senate for seven full terms before retiring to his birthplace, which he loved as few men love their native soil.

His service began when Arizona was still a territory—the last within the continental United States. Member of the Tempe Town Council, treasurer of Maricopa County, sheriff of Maricopa County, officer in the National Guard of Arizona, Carl Hayden had earned the right to seek the new State's only congressional seat.

From the beginning, he worked for his State. Within his first month he helped to win more funds for firefighting in national forests. In the year he announced his retirement, he finally won for his State a massive water project. His was a continuum of service to Arizona.

He was not parochial, however. Among his achievements nationally was the legislation authorizing the Farmers Home Administration.

Senator Hayden's greatest contributions to the country were made through his chairmanship of the Senate Appropriations Committee.

During his tenure in Congress, Senator Hayden saw the Federal budget climb from just over $1 billion to more than 200 times that amount. A 1967 article published in the Arizona Republic summarized in one paragraph Senator Hayden's viewpoint on Federal spending:

Congress, Hayden contends, was never supposed to function as a rubber stamp for the executive branch in money matters. He can cite notable skirmishes he fought to preserve the congressional prerogative.

Carl Hayden was always the kind of man who knew how to accomplish a goal, once having set it. As a youth, he went to Stanford University weighing 130 pounds. Determined to build his physique, he worked in the gym and raised his weight to 180 and made the football team. This spirit of competition remained with him.

After his retirement, he told the Arizona Gazette:

We need a resurgence of that old spirit that imbues the individual with the conviction that he can accomplish anything.

Senator Hayden did accomplish much for his State and for the Nation. He was truly a great man. He will rest in peace.

SENATOR CARL HAYDEN

Mr. SPONG. Mr. President, the recent death of former Senator Carl Hayden brings back memories of the first days of my career in the U.S. Senate. Senator Hayden was a quiet and thoughtful man and an interesting personality. I once had the pleasure of hearing him recount his days as sheriff when Arizona was still a Territory.

He later told me:

In the Senate, there are show horses and work horses. I always look for the work horses.

Senator Hayden spent 56 years in Congress, more than any other man. Forty-one of those years he served in the Senate. He retired 4 years ago at the age of 94 after serving his State and the Nation with great distinction. Senator Hayden was a good man. I am glad to have known him and to have had the privilege of serving with him in the Senate.

Mr. PERCY. Mr. President, I recently read a copy of Senator Carl Hayden's last newspaper interview in which he said in reference to his service under 10 Presidents, "I got along with them all." This quiet understatement was typical of Carl Hayden and it serves to explain much more than his congenial relationships with the Presidents, Taft to Johnson.

It is said, Mr. President, that with the exception of one filibuster in 1937, Carl Hayden made only three floor speeches during his first 50 years in Congress. We must acknowledge that such a taciturn man is a rarity in this august body. But then Carl Hayden was a rare man. Few Senators have ever equaled Senator Hayden's grasp of the multitude of issues that came before him. Few have ever received such esteem from their colleagues. Few have ever wielded such power with such grace.

Carl Hayden was serving his last few years in the Senate by the time I arrived as a freshman Senator. He was elderly by that time, but it was not difficult to recognize him as a giant of a man. His service to his beloved State of Arizona was lengendary by then. Beginning his service on the Tempe City Council in 1902, Carl Hayden then went on to be elected treasurer of Maricopa County in 1907. He worked in that capacity until 1911 when he was elected the first Congressman from the fledgling State of Arizona. In 1927 he became Senator Carl Hayden, and in that position he did his best work in behalf of his State. Senator Hayden brought the precious gift of water to his State by means of federally funded dams and reclamation projects and he brought roads. It would not be an overstatement to say that by his own hand he brought life to Arizona through his untiring and able efforts in the Senate.

The real stature of Carl Hayden can best be measured in ways other than the powerful positions he held in the Senate, though they were powerful, indeed. Carl Hayden achieved his measure of greatness by being a good man, a kind man, and a fair man. He was courteous to all who came before him as colleagues or witnesses. He was patient with those less familiar with the operations of the Senate than he. He was tolerant of points of view other than his own.

I know, Mr. President, that the citizens of his State of Arizona must feel a nearly overwhelming loss in his passing, for

truly no man did more for that State than Carl Hayden. His love for that State—for its grandeur and its problems—and for all its people were reflected in his unparalleled 56 years of service.

Those of us who remain here feel the loss deeply, too, for Carl Hayden's devotion and service to his native Arizona were simply manifestations of his devotion and service to his country.

COUNTER-ADVERTISING

Mr. BAKER. Mr. President, on January 6, 1972, the Federal Trade Commission filed a statement with the Federal Communications Commission advocating the use of "counter-advertising"; that is, the right of access of the broadcast media for the purpose of expressing views and positions on controversial issues that are raised by commercial advertising to provide the consumer "with all essential pieces of information concerning the advertised product." The FTC recommended that the FCC take this action in order to overcome the shortcomings of the FTC's regulatory tools, thus departing from its historical role as the agency specifically created by Congress to deal with the problem of deceptive advertising.

After studying the FTC proposal and realizing that it had tremendous implications for not only the advertising and broadcasting industries, but for our entire economy as well, I took the opportunity to question FCC Chairman Dean Burch on the probable FCC response at an oversight hearing on that agency held by the Communications Subcommittee. Because the FCC has not concluded part III of its inquiry on the Fairness Doctrine, he was not able to supply me with a definitive answer. At that same hearing and in order to explore the counter-advertising proposal, I recommended a meeting with the subcommittee members and the Chairman of the FTC and FCC.

Last week, Dr. Clay T. Whitehead, Director of the Office of Telecommunications Policy, in a speech before the Colorado Broadcasters Association discussed this subject. His comments are timely and should be of interest to all Senators. I ask unanimous consent that Dr. Whitehead's speech be printed in the RECORD.

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

REMARKS OF CLAY T. WHITEHEAD.

From all the reports I've seen, last year was not a great financial success for broadcasting, but it was not as bad as some expected when a future without cigarette billings seemed to be a very bleak future indeed. That's the business side; nothing very exciting in 1971, but the economic prospects look good for the coming year. On the government, or regulatory side, broadcasters were beset by threatening developments at the FCC and in the courts: license renewals, fairness and access, cable television, spectrum reallocations, and children's programming among other issues. But serious as these developments are, they are being over-shadowed by a new problem.

The problem I refer to is the regulation of broadcast advertising and the conditions the advertiser finds when he chooses the broadcast media for his messages. Try this list of issues: advertising and the Fairness Doctrine; mandatory access for editorial ads; advertising in children's programs; licensee responsibility as to false and misleading advertising; campaign spending limits on broadcast ads and political advertising in general; ads for certain types of products; and counter advertising. The nature of commercial broadcasting depends heavily on how these and other similar issues are resolved. What is commonly called "free" broadcasting is actually advertiser-supported broadcasting, and the regulatory framework for broadcast advertising deals with the economic core of our private enterprise broadcast system. Similarly, advertising is now so dependent on broadcasting that the issues faced by the advertising industry have been transformed into broadcast-advertising issues.

Of course, there were ads before there was broadcasting and, of course, many of the ads in the pre-broadcasting days were crude deceptions. Deceptive and misleading advertising is still an important issue, but now the overall issue is much broader than the traditional concerns about questionable advertising. If it were only a case of advertising taste or excessive "puffery," I think most people would take advertising with the proverbial grain of salt that one relied upon in listening to the "medicine men" at country fairs or reading the back pages of comic books and other popular literature. But now broadcasting, especially TV, has raised the advertisement to a popular art form. TV advertising is not only pervasive, it is unavoidable. That special impact that characterizes the television medium provides a natural attraction for the techniques usually associated with advertising. It seems that the TV advertising spot is the most innovative and almost inevitably appealing use of the television medium.

In these circumstances, it seems that advertising itself has become an issue. Some people tend to view it as the means by which an insidious business-advertising complex manipulates the consumer and leads public opinion to goals that are broader than simply purchasing the products being advertised. Some feel that what is being sold the American people is a consumption-oriented way of life. This becomes a political issue that is a fit subject for government redress—a remedy in addition to the traditional controls on false and misleading advertising.

I think that some of these broader concerns about TV advertising are now motivating the Federal Trade Commission. The FTC filed comments in the FCC's Fairness Doctrine inquiry, proposing that there be compulsory counter advertising for almost all broadcast ads. The FTC's counter advertising proposal would provide an opportunity for any person or group to present views contrary to those raised explicitly and implicitly by product ads. In the Trade Commission's own words, counter advertising "would be an appropriate means of overcoming some of the shortcomings of the FTC's regulatory tools, and a suitable approach to some of the present failings of advertising which are now beyond the FTC's capacity." The Trade Commission wants to shape the Fairness Doctrine into a new tool of advertising regulation and thereby expand the Doctrine's already chaotic enforcement mechanism far beyond what was originally intended and what is now appropriate.

The Trade Commission would have the FCC require responses for four types of ads:

(1) Those that explicitly raise controversial issues, such as an ad claiming that the Alaska pipeline would be good for caribou;

(2) Those stressing broad, recurring themes that implicitly raise controversial issues, for example, food ads that could be taken as encouraging poor eating habits;

(3) Those ads that are supported by scientific premises that are disputed within the scientific community, such as an ad saying that a household cleanser is capable of handling different kinds of cleaning problems; and

(4) Those ads that are silent about the negative aspects of the products, so that an ad claiming that orange juice is a good source of vitamin C may be countered by a message stating that some people think rose hips are a superior source of that vitamin.

The Trade Commission also suggested that broadcasters should have an affirmative obligation to provide a substantial amount of free air time for anyone wishing to respond to product ads. This goes beyond the requirement in the *BEM* case that broadcasters must allow persons or groups to purchase time. In a business sense, that is not too intrusive on the broadcasters' operations, and some right to purchase time for the expression of views on issues would serve an important purpose. But a requirement to provide "free" time in response to paid advertising time would have all the undesirable features of any market in which some people pay and some do not. It is, in any event, misleading to call this free time. There would be a hidden subsidy and the public would end up paying for both advertising and counter advertising messages.

Even if there were no problems with a broad free time requirement, we would be critical of the FTC for suggesting that "Fairness" responses be required for ads involving disputes within the scientific community and ads that are silent as to the negative aspects of products.

We all know that, if an advertiser falsely implied that a scientific claim was well established or failed to disclose a material negative aspect of his product, the FTC could use its own procedures to deal with this type of deceptive advertising. The Trade Commission could even use its new corrective advertising weapon, and require the advertiser to clear up misleading claims in past advertising. This is now being done in the Profile Bread ads.

The FTC, however, doesn't think that these regulatory tools are effective enough or thinks that they are too troublesome to apply. It is disturbing, however, that the agency charged with overseeing the content of advertising in all media has stated that the FCC is better able to achieve the Trade Commission's regulatory goals for the broadcast media. Of course, the Trade Commission would like to bring the FCC into the process and by-pass the difficult job of making factual determinations concerning advertising deception. The FTC is constrained by all sorts of procedures which safeguard the rights of advertisers accused of deception. It is much easier to subject the suspect advertiser to a verbal stoning in the public square, but is it responsible for a government agency to urge this type of approach? This Administration thinks not.

Perhaps private, self-styled spokesmen for the public interest cannot be faulted for advocating compulsory counter advertising without coming to grips with all the complexities and consequences involved. But a regulatory agency cannot afford the private litigant's luxury of dismissing the enormous practical difficulties of its proposal by simply asserting without support that it would be workable. Nor can an agency ignore or dismiss difficult and sensitive First Amendment problems, the underlying economic structure of the industries it is dealing with, or the detailed balancing of competing public interest considerations.

If you have any doubts as to the workability of the FTC's proposals, listen to some typical examples of the type of "negative aspect" counter ads the FTC had in mind:

In response to advertising for small automobiles, emphasizing the factor of low cost and economy, the public could be informed of the views of some people that such cars

are considerably less safe than larger cars. On the other hand, ads for big cars, emphasizing the factors of safety and comfort, could be answered by counter-ads concerning the greater pollution arguably generated by such cars. In response to advertising for some foods, emphasizing various nutritional values and benefits, the public might be informed of the views of some people that consumption of some other food may be a superior source of the same nutritional values and benefits. In response to advertising for whole life insurance, emphasizing the factor of being a sound "investment," the public could be informed of the views of some people that whole life insurance is an unwise expenditure. In response to advertising for some drug products, emphasizing efficacy in curing various ailments, the public could be informed of the views of some people that competing drug products with equivalent efficacy are available in the market at substantially lower prices.

The FTC capped this list of examples—which related to products that alone account for 40 per cent of all TV advertising—by inserting that "the list could go on indefinitely"! Can the FTC be oblivious to the fact that this is precisely the problem with compulsory counter advertising? Without doubt our overriding goal in this area should be to provide consumers with information that will enable them to make intelligent choices among products. But *any* broadcast advertisement could start an endless round of debate and disputation based on opinions regarding the products being advertised. This isn't the kind of information that is most helpful to consumers. Although it may seem that the Trade Commission's counter advertising proposal serves consumers' interests, the public would be done a disservice if all that counter advertising achieves is a bewildering clutter of personal opinions thrust before consumers every time they turn on their radios and TVs. And who is supposed to protect the public from false and misleading material in the counter-ads?

The advertisers will still have the content of their presentations regulated by the Trade Commission to weed out deception, but who is to guard against the excesses of counter advertising by irresponsible or uninformed groups? When this question was raised, the FTC's Director of Consumer Protection indicated that the agency might have to "monitor" counter-ads, but this may become "ticklish" since a First Amendment problem may be involved. Ticklish indeed! One would have hoped that a Federal agency would have been more sensitive to this problem before proposing a requirement of counter advertising.

It is also disturbing to see that the counter advertising position is not unique to the FTC. Others in government seem to be advocating an end to the broadcast ban on cigarette ads just to bring back anti-smoking spots!

The figures show that per capita cigarette consumption in the U.S. decreased when anti-smoking spots were aired in large numbers and increased in 1971, when there were no cigarette ads and a lower level of anti-smoking spots. Bigger increases are predicted for 1972. The Department of Agriculture has attributed the increased consumption to a decrease in anti-smoking spots. This may indicate that advertisers are better off not using the broadcast media when there is a counter advertising requirement. If the cigarette advertising ban were lifted, the advertisers might well choose not to buy time and, thereby, underwrite the anti-smoking campaign. Naturally, there would be some who would respond to this public interest crisis by requiring cigarette companies to advertise on radio and TV. Broadcasters wouldn't mind this at all, but if the FTC had its way you would have to require all advertisers to use TV and even the NAB couldn't pull that one off.

This wouldn't be a very constructive approach to advertising's problems, but one is sorely needed. The public expects to see actual and substantial progress made by the advertising industry's belated efforts at self-regulation. Advertising has made significant contributions to our economic well-being and our material worth. But if advertising is to continue to make these contributions it must reassess its role in our society.

We do not want to see advertisers respond to these problems by fleeing the broadcast media either voluntarily or involuntarily. Advertisers might be able to survive without broadcasting, but broadcasting could not survive without advertising. Advertising revenues make possible all of the public service, news, information, and entertainment programs. I do not agree with those who believe that commercial broadcasting is impervious to the adverse economic affects of regulation. You really can kill the goose that lays the golden egg; and it doesn't matter that it's killed by well-intentioned people.

This does not mean that the abuses and excesses of broadcast advertising should not and cannot be prevented. Broadcasters themselves are moving to correct problems in children's advertising and problems with deceptive and offensive ads. The advertising industry itself is following the broadcasters in the essential route of self-regulation. The record of self-regulation has not always been free of problems; and it never will be. Public vigilance is needed too, and the FCC and the Trade Commission have proper roles in seeing to it that that vigilance is maintained effectively.

The FCC has taken an approach that I strongly support. The FCC believes that advertising should be regulated as a business practice by the Trade Commission and this is not the FCC's job. Product ads should not be regulated, TV or not, as expressions of ideological, philosophical or political viewpoints. On the whole the FCC has recognized this and has implemented its regulatory power over broadcast advertising in a reasonable and responsible manner.

In its area of responsibility, the Trade Commission must use its regulatory tools to preclude false and deceptive advertising. The public is entitled to protection from the unethical business practices and from the occasionally misleading hyperbole of advertising agencies. But the FTC's responsibilities should not be expanded to include the responsibility for finding a solution to the philosophical problem that advertising in general poses for some consumer advocates. I think the FTC realizes that this would be beyond the scope of its regulatory authority; and it should be kept that way. Government agencies must realize that they cannot solve all of society's problems, that the Fairness Doctrine is not a panacea for fairness, much less all of our ills, and that when they go too far with social engineering they do more damage than good.

This Administration does not believe that advertising is inherently evil. We do not believe that advertiser support of commercial broadcasting is polluting the minds of America. This Administration believes in a strong and free private enterprise system of broadcasting for our country and in effective but responsible government. We intend to work to keep it that way.

FORMATION OF FOREIGN POLICY

Mr. McGEE. Mr. President, the Washington Star of Sunday, February 20, contains an article by Walt W. Rostow which defends Presidential foreign policy powers.

Mr. Rostow's article is an excellent analytical piece on the relationship of the President to Congress in the area of the formulation of foreign policy.

As to efforts, past and present, to curtail Executive power in the area of foreign policy formulation, Mr. Rostow made this interesting observation.

In this century, for example, Congressional opposition to two Presidents helped cause the second World War. First, there was the rejection of the League of Nations in which the Senate played a crucial role, and then, in the 1930's, resistance through rigid neutrality acts to President Roosevelt's efforts to deter the Axis by throwing American weight into the balance.

Congressional pressure to pull our forces out of Europe and unilaterally demobilize our military strength helped encouraged Stalin, in 1945–47, making the cold war inevitable.

The foreign policy posture of this Nation should be such that it acts as a deterrent to such holocausts as World Wars I and II. However, congressional opposition to the foreign policy efforts of the Executive prevented the Nation from exercising that responsibility.

Such is the state of the world today. We are witnessing increasing congressional pressure to diminish the Executive powers of the President in the arena of foreign policy formulation and conduct. Are we saying we are willing to pay the price of a third holocaust for curtailing these powers? If we have any sense of history and can learn the lessons of the past, it would be my hope that the answer to this question would be negative.

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

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

IN DEFENSE OF THE PRESIDENT'S FOREIGN POLICY POWERS

(By W. W. Rostow)

Who should make foreign policy in this delicate period when, to use President Johnson's language of January, 1967: "We are in the midst of a great transition: from narrow nationalism to international partnership; from the harsh spirit of the cold war to the hopeful spirit of common humanity on a troubled and threatened planet"?

Foreign policy, is, of course, now made by the President, in a relationship to the Congress more complex, perhaps, than the Founding Fathers envisaged. The austere "concurrence of Senate" in Section 2 of Article II of the Constitution has ramified out into a maze of briefings and consultations, formal and informal.

The "congressional leadership"—the leaders in both houses of both parties—has assumed an almost constitutional role in this consultative process on key issues. In addition, foreign and military policy have become extremely expensive; and congressional control over the purse-strings has become a major factor shaping foreign policy.

The armed services committees play a large role in military policy and the Joint Atomic Energy Committee on issues that, in the past, have set important limits on both military and foreign policy.

In the wake of the war in Vietnam, these relationships are all under examination; and there are evidently those who would dilute the President's powers in various ways and seek a new balance between the President and the Congress in these matters.

I am against such dilution on the basis of both past experience and future prospects.

The Founding Fathers gave much attention to this matter, as we all know. The incapacity of the nation to conduct foreign affairs effectively through congressional committees in the 1780s was, of course, a major

reason for the formulation of the Constitution.

I believe the issue of foreign affairs was decisive to the reluctant acceptance of the Constitution by the individual states. The deep and understandable suspicion of excessive executive authority nevertheless left in the Constitution very great powers in the hands of Congress in foreign affairs.

I would certainly suggest no change to diminish congressional authority in foreign affairs; but we should all face the fact that this authority has not always been used with wisdom.

In this century, for example, congressional opposition to two presidents helped cause the second World War. First, there was the rejection of the League of Nations, in which the Senate played a crucial role; and then, in the 1930s, resistance through rigid neutrality acts to President Roosevelt's efforts to deter the Axis by throwing American weight into the balance.

Congressional pressure to pull our forces out of Europe and unilaterally demobilize our military strength helped encourage Stalin, in 1945–47, making the cold war inevitable.

The conduct of the Korean War was gravely complicated at a critical stage in 1951 by extraconstitutional communications between a general and a senior member of the Congress.

The shifting position of the Congress on Southeast Asia, despite the SEATO Treaty and the Southeast Asia Resolution of 1964, will, I believe, be judged in history as one major factor in prolonging the war in Vietnam.

Why, for almost two centuries, has the collective behavior of the Congress in foreign affairs been quite often less than satisfactory?

The answer is, I believe, two-fold.

First, the President and the members of Congress have different constituencies. The latter are elected from states and district which have strong local interests that demand representation in Washington. They may also have narrow particular foreign policy interest. But no member of Congress is elected with a primary duty to weigh the nation's interest as a whole.

Second, the people do not look to the Congress to make foreign policy and do not hold its members responsible. They look to the President, knowing that his constituency is national and that he is amply checked by the treaty-making powers of the Senate, the congressional control over the purse strings, and other restraints on willfulness or bad judgment.

Every four years the people can and do make their own assessment of the President's performance in foreign as in domestic affairs. And if the President does not run, they make the best assessment they can of the policies, character, experience, and judgment of the candidates, knowing one of them will have to act for all of us in a complex and dangerous world.

If a President passively bowed to the will of the Congress on a major issue of foreign policy and things went badly, the American people would not exonerate the President and vote out the offending members of Congress: they would get themselves a new President.

I understand with sympathy the argument of some that further restraints on the executive might encourage a responsible partnership between the President and the Congress in foreign affairs. Occasionally that kind of partnership has happened; for example, as between Sen. Arthur Vandenberg and Presidents Roosevelt and Truman; Sen. Lyndon B. Johnson and President Eisenhower; Sen. Everett M. Dirksen and Presidents Kennedy and Johnson. But that kind of relationship cannot be legislated.

In the period 1961–69 I had the privilege of observing the process of congressional consultation with the President on many occasions, formal and informal, in large groups and small. I emerged with great respect for members of the Congress and have heard them make wise and helpful observations, both critical of the President's course and supportive.

They often left the room, after such sessions, with authentic expressions of sympathy for the burdens the President carried, one of the most notable such expressions being: "Mr. President, you have more trouble than a dog has fleas."

And, in the end, they are the President's fleas; for when views had been candidly exchanged, the members of Congress walked away from the White House relatively free of responsibility. The President was left essentially alone, with the burden of decision. That is the way the Constitution is written; that is the way the people expect it to be; and that, in my view, is the way it should remain.

In carrying his inescapable responsibilities, the President needs and deserves the limited protection his constitutional prerogatives, as now interpreted, afford. Proposals now being considered would diminish the President's authority without in any way diminishing his responsibilities.

As for the use of armed forces, the record will show, I believe, that on such contentious issues as the Korean War, the Dominican Republic and Vietnam the President's initial commitments were made after congressional consultation and overwhelmingly supported by congressional opinion and public sentiment. The problems—notably, with respect to Korea and Vietnam—came later, as the pain of using limited force for limited purposes over a protracted period weighed down the spirit of a nation whose style lends itself more easily to an allout, uninhibited application of its powers.

I will not argue here whether or not the policies of Presidents Truman and Johnson were wise, once the basic commitments were made. But surely, wars cannot be conducted by recourse to monthly public opinion polls or the changing moods of the Congress.

They will have their effect in our system as elections come around.

Further, I do not believe that an increased congressional role in determining the use of our Armed Forces would, as many believe, lead to a more temperate and reserved application of our military power. The congressional advice President Kennedy received on the eve of his missiles-in-Cuba speech of Oct. 22, 1962, was for example, to go immediately beyond his limited and selective quarantine. That has been and, I suspect, will be the tendency of congressional feeling in crises sufficiently serious to induce a president—always contrary to his basic political interests as well as his human feelings—to engage Americans in armed conflict.

If it is military restraint we're looking for, we're more likely to get it from the President than from the Congress.

Looking ahead to the complex transitional problems of moving towards stable peace in a world of diffusing power—where Cold War impulses are waning but not yet tamed, where raw and violent nationalist feelings have not yet been disciplined by the habits of stable regional partnerships—I believe we shall have to rely on the responsibility and judgment of our presidents at least as much as in the past.

INSPECTION OF FOREIGN MEAT PLANTS

Mr. RIBICOFF. Mr. President, I am releasing a report compiled by the General Accounting Office concerning the Department of Agriculture's inspection program for foreign plants exporting meat to the United States. The report shows that in the past the Department's inspection programs have not given American consumers the protection they have a right to expect. Further improvement of these programs is necessary.

This report is another in a series which I have released revealing the inadequate protection the public receives from our food inspection programs. In September 1969 and again in November 1971, I released reports describing the Agriculture Department's failure to require decent standards in poultry processing plants. In June 1970, I released a GAO report that showed that shocking conditions were being allowed to prevail in domestic meat plants. Now, once again, evidence emerges that casts doubt upon the purity of our food supply. While this report does not reveal the same kind of deplorable conditions that were described in domestic plants in the June 1970 report, there is much that requires improvement.

The Federal Meat Inspection Act provides that no meat or meat food products shall be imported into the United States—if adulterated or improperly marked, labeled, or packaged and—unless produced by foreign meat plants which are approved to export to the United States and which are in compliance with U.S. inspection, sanitation, and facility requirements.

The Department of Agriculture is responsible for determining whether foreign countries' inspection systems and plants comply with U.S. requirements and for inspecting meat upon importation into the United States. During fiscal year 1971, about 1.7 billion pounds of foreign meat products were imported for U.S. domestic consumption and about 25.2 million pounds were rejected.

The report discloses that the Department of Agriculture has failed to assure that meat products are imported only from plants which comply with U.S. health requirements and has failed to conduct thorough inspections of meat at U.S. ports. According to Agriculture Department records, some plants which did not meet U.S. requirements were allowed to continue exporting meat to this country. Procedures for "delisting" plants were slow and cumbersome. An average of 45 days elapsed between the first findings of deficiencies and ultimate delisting of the plants.

More disturbing, however, is the fact that meat from delisted plants continued to be imported into the United States. About 13 million pounds of meat products, processed prior to delisting, were imported from 11 plants after they had been delisted. Even if inspection is required at the port of entry, no meat product from a plant that does not meet minimum standards of cleanliness and hygiene at the time of inspection should be allowed into this country. This point is particularly important in light of the fact that inspections have occurred so infrequently. For plants delisted in 1970, inspections took place on the average of only once every 10 months.

Some people opposed to raising quotas on the importation of foreign meat may seek to use this report as evidence that foreign meat is less wholesome than domestic meat. As previous GAO reports have shown, however, conditions in do-

mestic plants leave much to be desired, and no inference can be drawn about the superior quality of domestic to foreign meat. Inspection programs in both areas must be improved.

I am in favor of relaxing meat quotas and making more foreign meat available to American consumers. For too long, restrictive quotas have protected the domestic meat industry from competition and forced American consumers to pay a subsidy to the domestic meat industry in the form of higher prices than necessary for their meat. This does not mean, however, that we should compromise the standards of purity and wholesomeness required of imported meat.

The Agriculture Department has recently reorganized its Consumer and Marketing Service, the bureau responsible for meat inspection. It has also adopted some of the suggestions put forward by the GAO to improve its program for the inspection of imported meat and the certification of foreign meat plants. If meat imports do increase—as I believe they should—further improvements and expansion of inspection programs will be needed. I urge the Department to take the necessary steps to insure the safety of our food supply.

I ask unanimous consent that the GAO's summary of its report on inspection of foreign meat, a copy of Comptroller General Staats' letter of transmittal, together with a summary of its 1970 report on domestic meat plants, and my speech of November 17, 1971, concerning the Agriculture Department's inspection of poultry plants, be printed in the RECORD.

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

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., February 18, 1972.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Subcommittee on Executive Reorganization and Government Research, Committee on Government Operations, U.S. Senate.

DEAR MR. CHAIRMAN: Enclosed for the use of your Subcommittee is a copy of our report pointing out that better inspection and improved methods of administration are needed for foreign meat imports. The import meat inspection program is administered by the Consumer and Marketing Service, a constituent agency of the Department of Agriculture.

The report includes recommendations to the Secretary of Agriculture that:

1. The Consumer and Marketing Service's foreign programs officers be authorized to provisionally delist those plants that do not meet basic U.S. requirements until corrections are made and to direct foreign inspection officials to suspend the exporting of meat and meat products to the United States at the time of the review, subject to final determination in Washington, D.C.

2. The importation of all meat and meat products produced prior to the date of the plant's delistment be prohibited where, in the foreign programs officer's judgment, the conditions causing delistment are such that the products may have been rendered injurious to health or are for any reason unsound, unhealthful, unwholesome, or otherwise unfit as human food.

3. Additional foreign programs officers be stationed in those foreign countries where necessary to meet plant-review frequency objectives.

Also the report contains several recommendations to the Secretary for improving the inspection program at ports of entry or other destination points to provide increased assurance that foreign meat and meat products receive a thorough and uniform inspection before being imported.

Comments of the Department of Agriculture on these matters have been obtained and are included in the report.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

BETTER INSPECTION AND IMPROVED METHODS OF ADMINISTRATION NEEDED FOR FOREIGN MEAT IMPORTS

(Comptroller General's report to the Congress)

WHY THE REVIEW WAS MADE

The Federal Meat Inspection Act provides that no meat or meat food products be imported into the United States—if adulterated or improperly marked, labeled, or packaged and—unless produced by foreign meat plants which are approved to export to the United States and which are in compliance with U.S. inspection, sanitation, and facility requirements.

The Consumer and Marketing Service (C&MS), Department of Agriculture, is responsible for (1) determining that foreign countries' inspection systems and plants comply with U.S. requirements and (2) inspecting meat and meat food products presented at U.S. ports of entry for inspection before American consumption.

The General Accounting Office (GAO) made this review to determine the adequacy and effectiveness of C&MS practices and procedures in carrying out these responsibilities.

During fiscal year 1971, about 1.7 billion pounds of foreign meat products were passed for entry for U.S. domestic consumption and about 25.2 million pounds were rejected.

FINDINGS AND CONCLUSIONS

To provide greater assurance that foreign meat and meat products (1) are imported only from plants which comply with U.S. requirements for wholesome products processed under sanitary conditions and (2) receive thorough and uniform inspections at U.S. ports before being accepted for entry, C&MS needs to strengthen its administration of the import meat inspection program.

Compliance with basic requirements

Although foreign countries' inspection officials were required to withdraw certifications to export to the United States from many plants that did not meet U.S. requirements (called delisting), C&MS records showed that some plants had been permitted to remain eligible to export to the United States.

C&MS criteria for delisting should be mandatory for plants that do not meet basic U.S. requirements until needed corrections are made to ensure that U.S. consumers are safeguarded. (See p. 14.)

A GAO staff member accompanied C&MS foreign programs officers—veterinarians experienced in U.S. meat inspection—on their reviews of 80 plants in four major meat-exporting countries—Australia, Argentina, Canada, and Denmark. The officers' reports showed that some plants complied with U.S. requirements; others did not.

Because of serious deficiencies at 14 of the 80 plants, C&MS had the plants delisted. (See pp. 16 to 25.)

Delays in delisting plants

Delistment procedures were such that a considerable period of time—averaging 45 days in calendar year 1970—generally elapsed between the dates that the C&MS officers found deficiencies and the dates that the plants actually were delisted. In the interim meat products processed in the plant were eligible for export to the United States unless C&MS determined that the plant constituted a health hazard. Of 327 plants delisted in 1970, two were classified as health hazards.

Such time lapses virtually could be eliminated, GAO believes, if C&MS authorized its foreign officers (1) to delist plants provisionally when they inspected the plants and (2) at the same time, to direct foreign country officials to suspend the exporting of products by provisionally delisted plants, subject to a final determination by C&MS. (See p. 26.)

Products from delisted plants eligible for import

C&MS meat products from a delisted plant (1) to be presented for entry for American consumption if certified by foreign country inspection officials as having been produced prior to the date that delistment took effect and (2) to be imported into the United States if they pass inspection at the port of entry.

About 13 million pounds of meat products were imported from 11 of the plants delisted after GAO's visit. Importation of meat products produced prior to delistment for conditions that could render the products unsound, unhealthful, unwholesome, or otherwise unfit as human food is, obviously, not in the best interest of U.S. consumers. (See p. 29.)

Frequency of reviews

C&MS records showed that it had not reviewed some plants as often as it considered desirable. For plants delisted in calendar year 1970, an average period of 10 months elapsed between reviews which showed conformance with U.S. requirements and reviews which resulted in delistments.

C&MS said that reviews were infrequent because it did not have enough foreign programs officers and because its officers were stationed in the United States and spent only about 30 weeks a year in foreign countries. In May 1971 the agency began stationing some of its officers in foreign countries. (See p. 32.)

Inspections at ports of entry

To improve inspections at ports of entry, the agency needs to:

Establish a sampling plan for inspecting packaged meat products and improve its sampling plan for examining canned products to ensure that the number of items examined is representative of the total lot or shipment. (See p. 39.)

Establish adequate criteria for identifying and classifying defects found during examinations of canned products and inspections of packaged products to ensure maximum uniformity in determinations to accept or reject such products. About 396 million pounds of processed canned meat products were presented for entry during fiscal year 1970. (See p. 39.)

Monitor and coordinate import inspection activities more adequately to reduce variances in inspection procedures and results among inspectors, ports, and inspection circuits. (See p. 44.)

Improve its training program to ensure that import meat inspectors, particularly new inspectors, develop and maintain the skills, knowledge, and abilities needed. (See p. 47.)

RECOMMENDATIONS OR SUGGESTIONS

Foreign programs officers should be authorized to provisionally delist plants that do not meet basic U.S. requirements at the time of inspection and, at the same time, to direct foreign inspection officials to suspend the exporting of meat products to the United States, subject to formal C&MS determinations as to whether the deficiencies are serious enough to sustain delistments.

Importation of all meat products produced prior to the date of a plant's delistment should be prohibited when, in the judgment of the foreign programs officer, the conditions causing delistment are such that the products may have been rendered injurious to health or unfit as human food.

Additional foreign programs officers should

be stationed in those countries where necessary to meet plant-review frequently objectives. (See p. 35.)

Several recommendations to provide increased assurance that imported meat products receive thorough and uniform inspections at ports of entry will be found on page 50.

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Department of Agriculture concurred in nearly all GAO recommendations and said that many of them had already been implemented, as follows:

Inspection requirements for foreign plants had been and were being tightened.

The foreign programs officers had been given authority to provisionally delist unsatisfactory plants and to instruct appropriate foreign country inspection officials to segregate and hold all products prepared after the date of the review pending a final decision of delistment in Washington.

The number of foreign programs officers had been increased from 13 to 18, seven had been stationed in foreign countries, and an eighth soon would be stationed in another.

The appointment of an import inspector correlator, an improved supervisory structure resulting from the recent reorganization of C&MS, an increased emphasis on supervisory training, and the establishment of a training program for inspectors should resolve the problem of variances in inspections and should upgrade the entire import inspection force.

Statistical sampling plans would be implemented at an early date for canned and packaged meat products.

With respect to a proposal in a draft of this report that meat products produced at a plant prior to the date of its delistment be prohibited from entering the United States, the Department said that this practice was followed for plants that were classified as health hazards but that such a policy should not be instituted for delistments irrespective of cause.

GAO recognizes that some plants have been delisted for reasons unrelated or only indirectly related to wholesomeness but also notes that classification of plants as health hazards has been rare. Because a review of C&MS records showed apparently serious deficiencies at some delisted plants which did not result in their being classified as health hazards, GAO believes that the Department may need to broaden its criteria for determining when products produced prior to delistment should be prohibited from entering the United States. GAO believes that, under these broadened criteria, such determinations should be made by the foreign programs officers at the time they provisionally delist plants.

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report is provided to the Congress for its information and consideration in its continuing evaluation of consumer protection programs. Also the Congress may wish to consider matters discussed in this report and in earlier GAO reports on domestic meat and poultry inspection activities (see p. 6) in connection with a number of measures now before the Congress concerning consumer protection.

Weak Enforcement of Federal Sanitation Standards at Meat Plants by the Consumer and Marketing Service

(Comptroller General's report to the Congress)

WHY THE REVIEW WAS MADE

The Congress has determined that it is essential for the health and welfare of consumers to be protected by ensuring that meat and meat food products distributed to them are wholesome and processed under sanitary conditions.

Under the Federal Meat Inspection Act, the Consumer and Marketing Service, Department of Agriculture, has the responsibility for establishing and enforcing sanitation standards in federally inspected meat plants. Inspectors assigned to the plants are responsible for enforcing the sanitation standards. (See p. 6.)

The Consumer and Marketing Service also is responsible for ensuring that sanitation standards are maintained by nonfederally inspected plants that receive Federal grading service—a marketing service provided to meat plants upon request. (See p. 7.)

As of December 31, 1969, there were about 3,200 federally inspected plants and about 140 nonfederally inspected plants which had been approved by the Consumer and Marketing Service as eligible to receive Federal grading service.

The General Accounting Office (GAO) in a report to the Congress (B–163450, September 10, 1969) pointed out the need for the Consumer and Marketing Service to strengthen its enforcement procedures to ensure that standards for sanitation, facilities, and equipment were met by federally inspected poultry plants. Also, the Office of the Inspector General, Department of Agriculture, in 1965 and 1969 pointed out weaknesses in the enforcement of sanitation standards at federally inspected meat plants.

In view of previously indicated weaknesses in the enforcement of sanitation standards, GAO wanted to ascertain the adequacy of the Consumer and Marketing Service's enforcement of sanitation standards at meat plants provided Federal inspection or grading service.

GAO's review was directed primarily to certain of the plants which Consumer and Marketing Service records indicated had sanitation problems.

Conditions found in the plants and reported in this review therefore may not be typical of conditions in all plants receiving Federal inspection or grading service.

FINDINGS AND CONCLUSIONS

The Consumer and Marketing Service needs to strengthen its enforcement procedures to ensure that standards for sanitation are met by plants receiving Federal inspection or grading service.

Accompanied by Consumer and Marketing Service supervisory personnel, GAO visited 40 federally inspected plants and eight nonfederally inspected plants receiving Federal grading service. Evaluations of the plants were made in accordance with Consumer and Marketing Service sanitation standards. (See pp. 14 and 34.)

In calendar year 1969, the 40 federally inspected plants accounted for about 7.7 percent of the cattle and swine slaughtered and about 4.9 percent of meat products processed in all federally inspected plants.

Consumer and Marketing Service inspection personnel were not uniform in their enforcement of sanitation standards and generally were lenient with respect to many unsanitary conditions unless product contamination was obvious.

At 36 of the 40 federally inspected plants and at the eight nonfederally inspected plants, animals were being slaughtered or meat food products were being processed for sale in the consuming public under unsanitary conditions. GAO observed instances of product contamination at 30 of the federally inspected plants and at five of the nonfederally inspected plants. Some of the major unsanitary conditions observed during GAO's plant visits included:

Lack of adequate pest control as evidenced by flies, cockroaches, and rodents.

Improper slaughter operations resulting in contamination of carcasses with fecal material and hair.

Use of dirty equipment and processing of product in unsanitary areas.

Contamination of product by rust, condensation, and other foreign material from deteriorated or poorly maintained overhead structures. (See pp. 15 and 34.)

Examples illustrating sanitation problems at federally inspected and nonfederally inspected plants visited by GAO are located on pages 16 to 30 and pages 34 to 40, respectively.

At the plants visited, Consumer and Marketing Service inspection personnel had not consistently

rejected for use equipment and plant areas or suspended inspection in federally inspected plants when unsanitary conditions were found and

recommended the withdrawal of Federal grading services at nonfederally inspected plants that were found operating under unsanitary conditions.

If Federal inspection service is suspended, a plant cannot slaughter animals or process meat for movement in interstate commerce. The withdrawal of grading service from a nonfederally inspected plant precludes the plant's using any official mark or other identification of the Federal grading service. (See pp. 6 and 8.)

GAO was unable to ascribe to any one cause the failure of inspection personnel to require plant managements to promptly and effectively correct unsanitary conditions. GAO believes, however, that a primary cause of the lack of uniformity and leniency in enforcement of sanitation standards was a lack of clear and firm criteria setting forth the actions to be taken when unsanitary conditions were found.

GAO believes that weaknesses in the Consumer and Marketing Service's system for reporting on plant reviews also contributed to the inadequate enforcement of sanitation standards at federally inspected plants. Because reports generally did not show what action, if any, was taken to correct reported unsanitary conditions, information was not readily available to Consumer and Marketing Service management as to whether appropriate and timely corrective actions were required by inspection personnel. (See p. 41.)

Clear and firm criteria—setting forth the actions to be taken when unsanitary conditions are found—and improved reporting policies can provide a basis for improving the enforcement of sanitation standards at meat plants. In the final analysis, GAO believes that the effectiveness with which such standards are enforced will be dependent on the resolve of Consumer and Marketing Service personnel at each and every level—from the plant inspectors to the Washington officials.

RECOMMENDATIONS OR SUGGESTIONS

The Administrator of the Consumer and Marketing Service should reemphasize to individual employees at all levels their responsibilities for the enforcement of regulations to ensure that meat and meat food products are wholesome and unadulterated.

To assist employees at all levels in carrying out their responsibilities the Administrator should establish

criteria setting forth specific conditions under which inspection and grading services should be suspended at plants in violation of sanitation standards and under which equipment and specific plant areas in federally inspected plants should be rejected for use until made acceptable and

a uniform reporting policy whereby action taken and to be taken will be a required part of all reports pertaining to observed sanitation deficiencies. (See p. 42.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Administrator of the Consumer and Marketing Service (see app. I) stated that:

The conditions described in GAO's report are of deep concern to the Department of Agriculture, and the Department is and has ben determined to eliminate such threats to the wholesomeness of the Nation's meat and poultry products.

The emphasis and objectives of the major inspection improvement program already

under way and now being intensified in the Consumer and Marketing Service are completely in line with an responsive to GAO's recommendations.

Much has been accomplished but much remains to be done.

With respect to specific actions taken and planned, the Administrator stated that:

A letter had been directed to all Consumer Protection Program personnel clearly outlining inspection objectives and procedures regarding sanitation and assuring each employee of full support for his efforts in enforcing sanitation standards.

Meetings would be held with committees from major meat packer organizations for the purpose of reemphasizing meat inspection objectives and developing an educational program for their membership on the whole spectrum of meat inspection, particularly sanitation.

Revised procedures, forms, and instructions had been issued to assist inspectors in carrying out the Consumer and Marketing Service's policy at plants where unsanitary conditions are found, including criteria for withholding or suspending inspection for cause.

The Administrator also provided detailed information on enforcement actions taken as a result of the inspection improvement program.

He stated that, although the record demonstrates progress during the past year, the need for still further action is acknowledged.

The action needed will be determined by a management study now under way to determine improvements needed in administration. This study is expected to have strong impact on carrying out GAO's recommendation relating to improved reporting systems to demonstrate actions taken.

The Administrator provided the following report on the status of the 48 plants visited by GAO as determined by recent Consumer and Marketing Service plant visits.

Federal inspection has been discontinued at five of the 40 federally inspected plants.

Conditions of sanitation in 27 of the federally inspected plants have been so improved as to meet Consumer and Marketing Service sanitary requirements.

Two of the eight nonfederally inspected plants ceased operations following withdrawal of recognition for Federal grading service.

Four nonfederally inspected plants' operating conditions are now acceptable.

In the remaining eight federally inspected plants and the two nonfederally inspected plants, action has been taken to protect the product while the remaining needed plant improvements are being completed.

GAO believes that the actions already taken and the further actions outlined by the Administrator, if fully implemented, substantially comply with its recommendations and will provide greater assurance to the consuming public that meat products are processed under sanitary conditions. GAO believes, however, that, even with the intensified enforcement actions planned by the Consumer and Marketing Service, continuing efforts of all inspection personnel to require compliance with sanitation standards are vital to maintaining the integrity of the inspection program and ensuring the consuming public of a wholesome product.

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report discusses matters of such importance to the consuming public that the Congress may wish to consider the facts revealed and the steps being taken to correct the situation.

POULTRY INSPECTION

WASHINGTON, D.C.—Senator Abe Ribicoff (D-Conn.) today released the names of the 68 poultry slaughterhouses and packaging plants cited in yesterday's General Accounting Office report on poultry inspection procedures together with an Agriculture Department report on current conditions at these plants.

The GAO found that every plant inspected had some deficiencies and that proper sanitary facilities at many were "virtually nonexistent," Senator Ribicoff said.

Senator Ribicoff's remarks in the Senate today are attached as is the list of the plants which were inspected by GAO. Also attached is the Agriculture Department report.

Yesterday I released a report prepared by the General Accounting Office concerning the unsanitary conditions which exist in many poultry slaughterhouses and packaging plants. The GAO inspected 68 plants across the country, about one-fifth of the plants in the nation. Americans ate more than a billion and a half pounds of poultry from these plants last year.

The names of the sixty-eight plants inspected by the GAO between October 1970 and March 1971 have now been made available to me together with a report prepared by the Department of Agriculture giving the Department's description of the current status of the sixty-eight plants.

The GAO found that every plant had some deficiencies when inspected, with sanitary facilities at many being virtually nonexistent. The GAO has declared that it believes conditions in these plants are probably typical of conditions in most poultry factories and slaughterhouses.

The Department of Agriculture, charged with the responsibility of enforcing Federal meat and poultry inspection laws, has found that many of the plants continue to have substantial violations.

I am confident that unless something is done to change our present regulatory system, a GAO report in two more years will uncover the same deplorable conditions once again. Apparently Upton Sinclair's 65-year-old book *The Jungle* is going to continue to be an accurate description of contemporary America.

Something must be done to change this situation. If Federal regulation of food processing is to be meaningful, it must be carried out by agencies whose highest priority is the health and safety of consumers. The Department of Agriculture has come to represent too many other interests to protect consumers effectively. It may be necessary to transfer its consumer protection functions to an agency responsive to consumers, with general responsibility for food plant regulation.

Even reorganizing the Federal food inspection system will not be sufficient, however. Time after time we have seen institutions designed to protect the consumer fail in their mission. I have therefore supported legislation to establish an independent Consumer Protection Agency with authority to represent the interests of consumers before other agencies.

Many who opposed my bill last year, including the Administration, now support the independent agency concept. The dispute this year is over the scope of the Consumer Advocate's right to participate on behalf of consumers in another agency's activities.

My legislation would ensure that the consumer protection agency would have the right to participate to protect the consumer's interest in any agency decision. Under my bill, for example, the consumer agency would be able to participate in all the Agriculture Department's decisions concerning its inspection programs.

The House bill to create a Consumer Protection Agency is also now before my Subcommittee on Executive Reorganization and Government Research. Unfortunately, the House bill fails to give the Consumer Agency adequate authority to protect the interests of consumers. For example, the House bill would not give the Consumer Advocate the right to participate in most of the important decisions taken by the Department of Agriculture with respect to inspection of food plants. The Advocate could not participate in Agriculture Department decisions to close or suspend the operation of a plant; in decisions about the rules for inspectors looking for violations; or in decisions about the resources to be devoted by the Agriculture Department to its inspection programs. The sorry conditions that now prevail in spite of the Agriculture Department's inspection programs graphically illustrate the need for the presence of a consumer advocate in the regulatory process at all of these decision points.

But even if we develop an effective inspection system, we will still have to depend to a great degree on the food packagers and processors themselves to make certain that the system works. Federal inspectors cannot be present every day. Private industry has the primary responsibility to assure that its products are wholesome, safe and clean. This does not seem too much to ask. In the past, however, the only times the industry seems to have shown much interest in cleaning its own house is after the publication of reports by the General Accounting Office. We cannot wait two years between every housecleaning and allow pollution of our food supply in the meantime.

TRANSPORTATION AND THE HANDICAPPED AND ELDERLY

Mr. PERCY. Mr. President, the Senate Special Committee on Aging held hearings late last year on "A Barrier Free Environment for the Elderly and the Handicapped."

The purpose of these hearings was to focus public attention on the unique problems encountered by the handicapped and the elderly, in their daily lives, in simply getting from one place to another. While the majority of Americans can jump into their automobile or hop onto a bus to get where they want to go, a sizable number of Americans—six million physically handicapped persons and a good percentage of the 20 million Americans over age 65—can move around only by overcoming tremendous obstacles. For them, coping with a public transportation system cannot only be difficult, it can also be humiliating. At the Aging Committee hearings, some disabled witnesses testified they could stay at home rather than suffer the embarrassment of making others wait while they attempted to mount high bus steps, or overcome other barriers.

In a recent article in The Chicago Tribune, reporter Sheila Wolfe commented on this problem and discussed efforts which are being made in Chicago to help those with disabilities increase their mobility.

Mr. President, I found Miss Wolfe's article most interesting, and I wish to bring it to the attention of my colleagues by asking unanimous consent that it be printed in the RECORD:

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

[From the Chicago Tribune, Jan. 23, 1972]

MASS TRANSPORTATION POSES BARRIER TO HANDICAPPED WORKER GOING TO JOB

(By Sheila Wolfe)

For the physically handicapped, public transportation is a succession of barriers rather than a means of getting from one place to another.

Able-bodied individuals who ride buses, elevated and subway trains, and commuter

railroads probably give little thought to the setup. But the whole transportation system is designed for them—as long as they stay reasonably fit.

People in wheelchairs and on crutches and those with a wide variety of standing and sitting disabilities are, for all practical purposes, barred.

They cannot get to the station or stop, are unable to penetrate the entrance, cannot find a suitable place to situate themselves for the trip, and are unable to cope with the extremes of traveling movement.

NO TRANSPORTATION, NO JOB

They are constrained by crowds, time pressure, and long walking distances. And, as a result, many are counted out of jobs they might be able to hold if only they could get to and from them.

Estimates by the National Center for Health Statistics indicate there are approximately 6 million physically handicapped persons in the nation whose mobility is limited as a result of a chronic or long-term medical condition. About 800,000 live in Illinois.

Thus far, pathetically little has been done to eliminate transportation barriers for them.

"Public transportation systems are not thoughtful of those who can't leap on," said Dr. Henry Betts, medical director of the Rehabilitation Institute of Chicago.

"What is needed at the outset is an attitude that the physically handicapped and sick exist and ought to be allowed access to the system—transportation and everything," he said.

PERCY WORKING ON PROBLEM

One approach to the problem is being taken on the federal level by Sen. Percy (R., Ill.), who has introduced a bill in Congress which would require that mass transit facilities receiving federal financial assistance be accessible to the handicapped and elderly.

No action has been taken on Percy's proposal.

Altho they consider a more accessible public transportation system highly desirable, some experts have come to the conclusion that, realistically, the cost of making the desire a reality is enormous.

In Milwaukee, one man's inability to get around without assistance led 14 years ago to the founding of a fleet of cabs and buses especially for the handicapped.

"I am confined to a wheelchair, and after graduating from high school I sat around home for 10 years," said John Lovdahl. "Finally I got a job in an insurance company, and my brother and brother in law took turns getting me to work.

"When their hours were switched, I found I had a job and no way to get there. I called the bus and cab companies, and they wouldn't take me when they learned there was lifting involved.

"So I hired a fellow to drive me, and from that came this firm."

Lovdahl is president of Handicaps, Inc., with 90 buses that serve institutions for the handicapped and with 10 special cabs driven by men trained in wheelchair handling.

"THRU DOOR SERVICE"

Cab customers call in for service, which Lovdahl describes as "thru door service," transporting the individual from inside his home and back if necessary.

"In time," Lovdahl said, "I think catering to the mobility of the handicapped will become an industry . . . kind of an adjunct to mass transportation. It's the thing of the future."

In Chicago, a modest beginning has been made toward what its backers envision as an eventual solution.

About 300 persons a month use Li-La-U (a name formed from Lincoln Park, Lake View, and Uptown areas) Handi-Bus, 3940 N. Clark St. A project of Mutual Enterprises of the Handicapped, the little fleet now consists of two buses soon to be expanded to three. It has been operating since July, 1970, as a nonprofit enterprise.

"This is the only bus service of its kind in the United States that we know of," said Miss Frances Even, president of Mutual Enterprises. "It is door-to-door and scheduled on a day-ahead call basis.

SEES GROWTH OF IDEA

Miss Even, who is handicapped, said that before HandiBus, which serves a North Side area, "a majority of our riders were imprisoned in their homes."

Buses are equipped with hydraulic lifts, floor clamps, safety straps, and open space for wheelchairs.

Miss Even is optimistic.

"Really, this is a prelude to what should become a mass handicapped transportation system in any large city," she said.

She pictures a connecting system of handicapped and regular bus fleets somewhere in the future.

"The important thing is mobility," she emphasized, "and getting the disabled into the mainstream of living."

George Conn, executive director of the Illinois Governor's Committee on Employment of the Handicapped, takes a hard-nosed economic view of the situation.

"Illinois spends approximately $300 million annually in public and private funds to aid, educate, and rehabilitate the handicapped," said Conn, who walks with the aid of crutches.

"The state is not getting a good return on this investment, tho, because of existing attitudes," he said. "Not when rehabilitated people cannot get to and from jobs they are capable of holding and when they cannot get to places to shop and spend their money."

FINDS SOME IMPROVEMENT

"Cabs are getting a little better," Conn commented. "It used to be they wouldn't stop for a handicapped person at all."

These would include ordinances requiring the ramping of curbs at intersections thruout the Loop and Michigan Avenue area, making parking easier and more convenient for the handicapped, and requiring cab companies to provide at least 25 per cent of their fleets in a design accommodating the handicapped.

[High curbs along the recently widened stretch of North Michigan Avenue between Randolph and Lake Streets include ramps on both sides of the street.]

One Illinois locale that has done something of a positive nature is Champaign-Urbana, where the University of Illinois' outstanding program for the handicapped has influenced campus planning and the surrounding community.

IS STUDYING THE SITUATION

"There is hardly a curb that is not ramped there, and I got spoiled," said Miss Barbara Black, a handicapped U. of I. graduate who is director of medical records at the Rehabilitation Institute.

Miss Black, who drives herself to work and enters the building from a ramp off the parking lot, said she does not know how she would be able to get about the city if she couldn't drive.

Dr. Richard M. Michaels, director of research at Northwestern University's Transportation Center, has been looking at the travel barrier problem and hopes to secure grant money to delve into it further.

THE BUDGET REPORTING PROCESS

Mr. CURTIS. Mr. President, the time has come for depoliticizing the Federal Government's budget reporting process. It should be done this year, while the deficit is so high and the blame for it so all encompassing that neither political party can point with pride to any success in lowering the deficit spending.

The unified budget which was instituted by the Johnson administration is too political to be credible. It escapes public understanding.

As the distinguished Members of this body know, Mr. President, the unified budget is a system whereby trust funds are lumped together with general tax funds in measuring and reporting the flow of Government income and outgo.

This system has the effect of making the Government's deficit spending look smaller, both in dollar amounts and in percentage of total spending, than the straight reporting system based on general receipts and expenditures.

Trust funds cannot legally be spent for financing the general day-to-day activities of the Government. They are limited to use for the specific purposes for which they are collected, such as social security benefits or highway construction.

When trust funds are lumped with general transaction funds of the Government, a distorted picture results.

For example, in 1970 the unified budget deficit was $2.8 billion whereas the general Treasury deficit was $13.1 billion. In 1971 the difference in deficits was between $23 billion under the unified budget and nearly $30 billion under the general transactions budget.

In 1972 the picture worsened to deficits of $38.8 billion under the unified budget and $44.7 billion in general funds. For fiscal 1973, there is a projected deficit of $25.5 billion under the unified budget compared with $36.2 billion in general transactions.

The time has come to correct this distorted system and report the true budget to the American people.

TRIBUTE TO THE LATE SENATOR CARL T. HAYDEN

Mr. BURDICK. Mr. President, I wish to add my voice to the many others who mourn the passing of a distinguished former Member and friend, the Honorable Carl T. Hayden, for almost half a century a U.S. Senator from Arizona.

Carl Hayden was a man of great heart and charming disposition. He also was a man of many talents, high intellectual attainments, and strong conscience. He was incapable of standing aside, unconcerned, when his fellow man was suffering. He was a man of great insight, with sufficient perception to solve a host of national problems great enough to baffle the majority.

Carl Hayden was the first Member of the U.S. House of Representatives to be elected from the State of Arizona, serving seven terms before his elevation to the Senate in 1926.

As chairman of the Senate Appropriations Committee, he became in time one of the most influential people in Washington and, as a man of sterling integrity, one of the most respected.

A friend of reform and the public interest, Carl Hayden supported the New Deal, Fair Deal, the New Frontier, and

the Great Society with equal vigor and determination. He was largely instrumental in establishing the modern formula for the vast Federal highway aid program so important to the development of the Western United States. He also was vitally involved in the passage of legislation in the fields of mining, public lands, reclamation, and other projects affecting his native Western area.

It was an honor and a pleasure to have known and worked alongside this fine man, and I, personally, am proud to have had him as a friend.

ENVIRONMENTAL THRIFT FOR THE FUTURE

Mr. PERCY. Mr. President, increasingly, environmental proposals are put forth in this Chamber directed toward improving and extending means of energy production in this country. I am especially concerned that we pay at least equal attention to the critical need to improve the utilization of energy sources.

That is to say, both industry and the consumer should give added attention to the concept of environmental thrift which recognizes the importance of minimizing the consumption of energy potential in the attainment of any desired end.

Much of the present dialog in this regard centers upon the recycling of materials which is, itself, a mode of environmental thrift. Another such mode entails extending the useful life of the machines that serve us in our daily needs. Without minimizing the significance of these two principles of environmental thrift, it seems to me most important that, as a society, we concentrate on the adoption of new technologies aimed at better reconciling the accelerating demands for power to bring about a lifestyle more satisfying to us all.

Specific application of this principle has recently been brought to my attention by Prof. R. Stephen Berry of the University of Chicago who serves as a member of an Environmental Advisory Committee which I have set up to advise me on ecological considerations that affect Illinois and the Nation as a whole. Professor Berry recently completed an excellent paper, to be published in the March issue of the Bulletin of the Atomic Scientist—Science and Public Affairs, in which he discusses the relationship of "Recycling, Thermodynamics, and Environmental Thrift." I note that in conjunction with the Illinois Institute for Environmental Quality, Professor Berry is engaged in a detailed study of automobile manufacture, discard, and recycling in order to assist the institute's program for solid waste management. The study involves mining, steelmaking, and other basic industries and problems of scrap recovery which impact directly on considerations of environmental thrift.

Mr. President, so that the outstanding paper that Professor Berry has prepared can be given the attention it deserves, I ask unanimous consent that it be printed in the RECORD.

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

RECYCLING, THERMODYNAMICS, AND ENVIRONMENTAL THRIFT

(By R. Stephen Berry, Department of Chemistry and the James Franck Institute, University of Chicago)

(NOTE.—Figures referred to are not printed in the RECORD.)

INTRODUCTION

As environmental considerations become more important factors in policy decisions and planning, the need becomes more compelling for reliable and precise indices of environmental use. This need becomes particularly apparent when one is confronted with alternative policies, among which some selection must be made. The problems arise at the most commonplace level, such as the housewife's choice between a paper sack or a polyethylene bag, and at the highest level of long-range policy making, such as the choice among means and locations for power-producing plants.

The problems call for the identification of variables that can be reasonably well and unambiguously quantified, that are general enough to compare quite different sorts of processes, that are summary variables rather than overly specific quantities, and that are truly measures of the amount of use to which the environment is put.

To a scientist seeking general quantifiable and unambiguous summary variables, the quantities of thermodynamics are the most obvious and natural. In particular, the change in thermodynamic potential associated with execution of a process fills all the criteria we have just laid down. The change in thermodynamic potential contains within it all the energy exchanges associated with the process and also the effects of changes in organization and structure, as measured by entropy.

Thermodynamic potential is the fundamental measure of the capability of a system to perform work. Every natural process involves the consumption of some thermodynamic potential; the science of thermodynamics tells us how to determine the minimum expenditure of thermodynamic potential, to achieve a given physical change. In other words, thermodynamics tells us how to determine the maximum efficiency of a process, and to compare the expenditures of thermodynamic potential required for different processes.

Thermodynamic analysis may be applied as a global device for studying long-term development of a society, or as a micro-analytical tool for comparing specific processes such as specific manufacturing practices. Following a general discussion of the nature of the analysis, we direct our attention toward the second of these, an analysis of one group of manufacturing processes; we then examine the implications of the analysis for national policy.

WHY A THERMODYNAMIC ANALYSIS?

For the scientist assessing the potential stored in a complex system, or the potential consumed when a complex system undergoes a process, the natural variables with which to describe the system are the variables of thermodynamics. This is true whether one is computing the work that can be done by a physical process or a biological system. The same laws, variables and concepts apply to the burning of a million tons of coal to produce electricity to run the machines of a factory, as also apply to the metabolism of sugar to produce energized molecules of adenosine triphosphate to generate movement and growth.

The two essential forms of stored potential are energy and order. We withdraw and use energy from many forms of storage: gravitational energy provides power for turning millstones and hydroelectric generators; chemical energy is readily available in the form of fossil fuels; solar energy powers electrical cells and the growth of green plants. We find and use the potential represented by order when we obtain minerals from concentrated ore bodies, rather than find them distributed uniformly over the earth's surface, or, in a sense, when we use ice as a refrigerant.

Our present task is to try to analyze the potential stored in the environment and how we make use of it. The world we inhabit contains a vast stored potential, in many different forms. In some of its forms, this stored potential is very accessible; the chemical potential stored in a tree, for example, can be converted to heat energy very easily, just by burning the tree. Other forms of stored potential are less available; it requires considerable work and energy to obtain a useful amount of energy from nuclear fission. We have not yet learned to unlock the potential, at least in a controlled way, that we know is available through the fusion of two nuclei of heavy hydrogen. Yet we can determine rather easily how much potential is locked up in each of the stored forms we know, and how much we receive from our one important outside source, the sun.

Determining the total amounts of stored potential of various forms depends on estimating reserves. Hence there is a degree of uncertainty in trying to evaluate total amounts of potential. However we can do much better, removing most of the uncertainties, if we examine the *changes* in stored potential associated with particular processes. The laboratory sciences have provided us with a rich source of accurate data on the changes in potentials that accompany virtually any chemical or physical process, and even some biological processes. (Strictly speaking, the thermodynamic data are always being improved, and one can find occasional examples for which the data are not yet very accurate. These exceptions are rare enough to leave our sweeping generalization quite valid.)

Knowing the changes in stored potential associated with processes is actually of far more use in choice-making situations than knowing the absolute amount of stored potential, up to the point that the supply of stored potential runs low. By comparing the amounts of potential consumed by alternative processes that achieve the same end, one can choose the more thrifty, the process that uses fewer resources to accomplish its task.

One can easily see how doing "energy economics" gets us to one of the root problems of environmental management, the problem of thrifty utilization of energy. It is remarkable how many of the environmental insults that we now recognize can be traced to the use of large amounts of energy. If we could identify areas in which there were large potential economies to be found in *energy utilization*, then we would begin, perhaps, to find a key to reconciling the technological life style we have so thoroughly adopted with the threat of increasing environmental insults that seem to accompany our technology.

If one looks further along into the future, past the immediate environmental problems of our decade or our century, we can see "energy economics" or "thermodynamic economics" taking a larger role. As the potential stored in one form of natural resource is depleted, we must make choices among alternative responses to the foreseeable shortage. The choices each presumably carry long-term, large-scale implications; one cannot take seriously using a short-term market analysis to decide, say, in the year 2171, whether all the remaining fossil fuel should be reserved for the chemical industry. We must rely on the most long-range, most nearly absolute measures we have to make

such choices; these measures are precisely the variables of thermodynamics, the potentials.

It is not accidental that the parallel between economic analysis and thermodynamic analysis continues to appear. Let us try to identify the essential difference between the two. Economic analysis is associated with a set of values based on shortage, as preceived by the participants in the marketplace. The perception of shortage is itself a recognition of supply and demand for the present instant and for some time in the future. Thermodynamic analysis is the way to measure the absolute supply of the only commodity of which there is a true shortage when one considers an arbitrarily long time scale into the future, the thermodynamic potential.* So long as matter is conserved within the region we inhabit, there is no real shortage of any substance; there can only be a shortage of the thermodynamic potential to do the work required to recover the substance.

Hence, if the economists in the marketplace were to determine their estimates of shortage by looking further and further into the future, these estimates would come closer and closer to the estimates made by their colleagues, the thermodynamicists. In the jargon of the scientist, we may say that economic valuation approaches asymptotically toward thermodynamic valuation, as the time scale of the economic valuation grows arbitrarily long. For the ultimate long-range planner, economic and thermodynamic analyses are equivalent.

Environmental analysis necessarily confronts many problems in which one wants to make long-term valuations. Frequently the time scale one requires is far longer than one would use in market analysis. We are forced to treat the concept of shortage on the time scale, for example, in which some elements are available only through reuse or through recovery from their natural levels of abundance, rather than from ores. At this level, where the only true shortages are those of thermodynamic potential, thermodynamic analysis becomes imperative.

THE THERMODYNAMIC SYSTEM

In the next section, we describe the analysis of a specific set of processes of manufacture, use and disposal. The quantities that enter are energies, entropies and temperature. However it is important to recognize first precisely what the thermodynamic system is, that we describe, and what constitutes the surroundings, the rest of the universe that lies outside the system.

Our system consists of the materials that become the manufactured object, *together with the other resources from our environment that enter directly in the processes.* This means that we include the energy spent *by* the system to prepare the manufactured object, and the potential lost when the object is broken up and ultimately completely dispersed, when we evaluate the real thermodynamic expenditures for manufacture and disposal. To find the real thermodynamic cost of the new object, we evaluate the actual amount of thermodynamic potential that we withdraw from our environment when we make the object and subtract the amount of thermodynamic potential that is actually stored in the object. However we are more interested in the cost of the process of manufacture and discard; it is not really our concern to calculate the thermodynamic cost of a collection of mint automobiles. Therefore we calculate the total thermodynamic cost by adding to the net cost of producing the new machine the thermodynamic potential lost when the machine is discarded.

The amount of thermodynamic potential stored in the new machine is exactly the unrealizable, ideal limit of its thermodynamic cost, the result of what scientists call a "reversible process." In the ideal limit, either the system or the surroundings may pay the thermodynamic cost, but whichever pays the bill, the amount is the absolute minimum as set by natural law. If the system pays, the net change in the system's thermodynamic potential is zero, and the process has merely changed one form of potential into another. If the surroundings pay, as, for example, if the required energy were taken from the sun, then the stored potential of the system would increase by the amount stored in the new machine. In the real world, of course, we cannot expect to operate ideal systems. We always spend considerably more thermodynamic potential to make something than is stored in that thing. The difference between the potential we spend for the process of production and what is stored in the product, is the net potential spent or lost in the process. This difference, this net cost, will provide the basis for our analysis in the last section. It is precisely because the thermodynamic potential is truly lost, that we describe the ultimate shortage of chemical potential as the only true shortage. The amount is limited to what we have stored in the earth and what we receive from the sun; one is limited in absolute amount and the other, for all intents and purposes in this context, comes only at a fixed, unchangeable rate.

There is a certain degree of arbitrariness in defining the boundaries that separate system from surroundings. We have made our choices largely on the basis of what kinds of data are available. For example, we have included the expenditure of electrical energy for mining and manufacturing as part of the process undergone by the system, but have omitted the processes of generating electricity from primary energy sources. (To include this conservatively, one need only multiply the first three entries in the last column of Table 1 by a factor of about 2.6.) We have also omitted the thermodynamic costs of sustaining the people who do the work, on the basis of the assumption that the people would somehow be sustained whatever process one considers. We have also neglected the thermodynamic cost of operating our exemplary machine, the automobile, on the basis that the operation of the vehicle belongs more properly to the thermodynamic system associated with transportation than to the process of manufacture and discard.

With this description of our system, we may now proceed to the analysis.

THERMODYNAMIC ESTIMATES

We have chosen as an example the thermodynamics associated with the manufacture of automobiles, both from new raw materials and from recycled automotive scrap. The quantities of principal interest to us are the amounts of thermodynamic potential consumed in mining and manufacture of automobiles from "new" raw materials, the amounts of thermodynamic potential consumed in recycling, and the minimum requirements of thermodynamic potential that would be required to manufacture an automobile by an ideally efficient process. The criterion for judgement is introduced at this point, the criterion of "thermodynamic thrift": that it is desirable to minimize the consumption of thermodynamic potential, in achieving any chosen goal. The criterion is the thermodynamic analog of the statement "It is undesirable to throw away money needlessly."

With the criterion of thermodynamic thrift and the results of our estimates of the free energy consumption, we can compare and evaluate three policies, in terms of what they can achieve. The first is maximizing recycling; the second is extending the useful life of the machine; and the third is the development of more (thermodynamically) efficient processes. By considering automobile manufacture as a prototype for manufacturing processes, we can immediately make certain generalizations and recommendations for long- and short-term policy regarding technology and manufacturing.

Having defined our system, we take the first step in analyzing the process of automobile manufacture by defining the process and breaking it into manageable steps. Each step involves a transformation of matter from one state to another. We find it convenient to isolate six states:

State 1: material as ores and other primary forms;

State 2: pure raw materials;

State 3: the new, manufactured automobile;

State 4: the used automobile, no longer functioning;

State 5: the materials of the automobile, discarded and dispersed, and finally;

State 6: the chemically degraded dispersed materials (e.g., completely rusted iron).

The six states are connected by the transformations indicated in Figure 1. (Not shown in RECORD). These transformations are labeled, for convenience, as:

A—Mining and Smelting (but strictly, including manufacture of synthetics, production of fabrics and other basic industrial processes);

B—Manufacturing;

C—Normal use;

D—Recycling;

E—Junking, and;

F—Natural degradation.

Often, steps E and F are not actually separate, but occur simultaneously.

The two pathways of main concern for us are the manufacture of automobiles from basic raw materials, via steps A, B, C, E, and F, or the recycling process, via steps B, C, and D. We are interested in the real costs, in terms of energy and thermodynamic potential, for these two pathways. We are also interested in one other thermodynamic quantity, the *minimum* requirements of thermodynamic potential, for production of an automobile, either from the nonfunctioning wreck (State 4) or the raw materials (State 1).

The next stage of the development is the determination of the thermodynamic quantities for the steps of interest. The actual energy expenditures are tabulated for a wide variety of processes which cover most of the important quantities of interest to us.[1,2] One real energy quantity must be estimated from rather nonspecific data, but, as we shall see, even with the uncertainty so introduced, We are still able to draw unambiguous conclusions. It would be desirable to know the actual entropy changes which, together with the energy, determine the *real* expenditure of thermodynamic potential. However, the analysis shows that the changes of energy so clearly dominate the changes in thermodynamic potential that, at the present level of refinement and for the particular problem under discussion, these entropy changes can be neglected. Inclusion of real changes of entropy would only strengthen our final conclusions. The other quantities to be found are the ideal thermodynamic changes, the differences in energy and thermodynamic potential for each transformation in Figure 1. We must estimate the change in internal energy and in thermodynamic potential for the stuff that makes up an automobile, in each step of the process. These changes represent the ultimate natural limits on the energies and thermodynamic potentials that must be paid, in order to carry out the various steps.

Having used the term "thermodynamic potential" so freely, we must define it. We take the thermodynamic potential F as

$$F = E - TS + PV$$

Here, E is the internal energy, T is the absolute temperature, S is the entropy, and the last term, PV, is the product of pressure and volume. We are interested only in

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* We omit such special exceptions as the loss of helium from the earth's atmosphere.

Footnotes at end of article.

changes in F. The last term, PV, is essentially constant for almost all liquid and solid systems, and is quite properly neglected for systems such as the one we are discussing here. (The PV term is not negligible for systems involving gases, such as the burning of fuels, or the dispersal of one gas into another.) We therefore concern ourselves here with finding the changes in thermodynamic potential, F final $-$F initial ΔF. Since the world's temperature is more or less constant, we can write

$$\Delta F = \Delta E - T\Delta S,$$

and concentrate on the changes in energy and entropy, with each step. (There is some question regarding the appropriate quantity to be used for T in certain parts of the treatment, but the ambient temperature gives a suitable upper limit for ΔF, which is all we need.)

The energy changes are virtually all changes in the internal chemical energy of the materials, and are well-known, measured quantities, per unit of material.[3] Hence the theoretical values of ΔE, per automobile, are readily determined from a knowledge of the composition of an automobile. Automobiles are almost all steel, iron, ferro alloys, and aluminum, and the thermodynamics of automobiles are dominated by these materials. The contributions to ΔE and ΔF from fabrics, rubber, plastics and other materials become significant only if we require quite precise values for the thermodynamic quantities. At this stage, such precision would add nothing to our insight because of the uncertainties and variations in the parts of the cycle associated with mining and preparation of primary materials. For example, the energy differences between different iron ores (in the quantities required for an automobile) e.g., hematite vs. taconite, are comparable to the energy associated with the "minor materials" of the automobile. Hence we neglect the minor materials in the present treatment.

Most of the entropy changes are small, as it turns out, but have been considered explicitly for reasons that will become apparent. Entropy changes associated with chemical transformations are known from experiment and are available just as the corresponding energy changes are available.[3] Entropy changes associated with the creation of an ordered structure have been estimated from an extension of information theory; [4] the details of the method are given in the Appendix.

Entropy changes associated with dispersal of used materials are sometimes quite significant. These quantities are readily evaluated from the well-known expression [5] $\Delta S = nk \ln(C_{initial}/C_{final})$, where n is the number of atoms in the system, k is Boltzmann's constant, approximately 1.6×10^{-16} erg/deg C, and the argument of the natural logarithm is the ratio of the initial concentration (atoms per unit volume) to the final concentration. The initial concentration is essentially the density of the pure material. The final concentration has been taken as the mean concentration of the particular substance in the earth's crust, based on its natural abundance.

This method of calculating changes of entropy and thermodynamic potential is associated with a specific picture: discarding according to Step E is equivalent to allowing the relatively pure materials of a junked automobile to become uniformly dispersed throughout the earth's crust, to the extent that, were the process to be pursued indefinitely, we would eventually be forced to recover the materials from their lowest state of thermodynamic potential. This is the state of uniform distribution. Iron, which, on the average, comprises about 0.6% of the earth's crust, is mined from ores that are about 50% iron, so that we presently obtain iron from a relatively high-grade source. This is not true of all substances; iodine obtained from sea water, for example, is taken from a state approaching maximum dispersal and minimum thermodynamic potential. Such examples only arise when high-grade sources are unavailable or when extremely efficient recovery methods have been developed.

Having outlined how the thermodynamic quantities are obtained, we now attach numerical values to them. It is convenient to carry out the estimates on the basis of the energy and thermodynamic potential per automobile. Our figures are based on the projections for 1980, given by Landsberg Fischman and Fisher,[1] except where noted. The most uncertain figures in our estimates are those associated with mining and smelting. The total national energy expenditure for these processes is 33×10^9 kilowatt-hours (kwh). On the basis of the weight of mined iron ore, relative to an estimate of the total weight of mined material, we assume that one-fourth to one-half of that energy is used for iron, and that one-fifth of the iron mined is used for automobiles.[1] We take 7 million as the number of automobiles manufactured in 1960, and assume that about 14 million automobiles will be manufactured in 1980. We find that the iron in each new automobile is actually produced by the expenditure of about 115–230 kwh of energy for mining and smelting. This figure probably has the indicated uncertainty of about a factor of 2, and could be uncertain by a factor of 3. Producing the automobile's 0.1 metric ton of aluminum requires about 1640 kwh.

Now we consider the ideal limit associated with Step A. The absolute thermodynamic potential change associated with mining and smelting the metric ton of iron in an automobile is approximately 5 kwh, including both the chemical transformation of iron oxide to pure iron, and the mechanical work of lifting the ore to the earth's surface. The 0.1 metric ton of aluminum adds about another 0.5 kwh, so we can estimate the total change in thermodynamic potential of the materials in an automobile, that ideal thermodynamic limit that would be spent by producing pure starting materials from primary ores by a perfectly efficient machine, would be about 6, or possibly 7 kwh.

The actual costs in energy and, at the same time, a lower limit to the costs in thermodynamic potential for Step B was roughly 2000 kwh per automobile in 1960, and is projected to be about 4200 kwh in 1980.[6] The theoretical limit to the change in thermodynamic potential for Step B is essentially the change associated with introducing order and structure into the purified materials. This is of order 10^{-11} kwh, or conceivably 10^{-10} kwh at the very most. In other words, the actual expenditures of energy for manufacturing an automobile are reflections of the *historically developed means* of production and transport, rather than of the *thermodynamic requirements* for creating ordered structure of an operable machine.

The thermodynamic potential for Step C is roughly that for the loss of the information content of the structure, and is therefore negligibly small, for our present purposes. We do not take into consideration the consumption of thermodynamic potential associated with the use of an automobile, because that is fairly independent of its manufacture and dispersal. One aspect of the thermodynamics of use would play a role in a more refined treatment; this is the dependence of the fuel and servicing requirements on the age, condition and manufacturing tolerances of an automobile.

The actual requirements for recycling through Step D are approximately 600 kwh for steel (because scrap steel is generally processed by electric furnace), about 60 kwh for cast iron, and between 600 kwh and 1640 kwh, depending on the amount of refining and treatment required, for aluminum, giving a total between 1260 and 2300 kwh. The ultimate changes in thermodynamic potential are again negligibly small, associated simply with the segregation of a few relatively pure but functionally useless components to separate piles of relatively pure materials.

The next phase, Step E, requires no energy input. It consists simply of the dispersal of the metric ton of iron (and a small contribution from aluminum) from its virtually pure state to its condition of uniform dispersal, comprising 0.68% of the earth's crust. This gives a change in thermodynamic potential between 25 and 26 kwh per auto.

Finally, Step F, the natural chemical degradation of the dispersed materials, is associated with a loss of chemical potential which is almost entirely due to rusting of the iron and steel. This gives a net loss of about 2 kwh per automobile, considerably less than the loss associated with dispersal.

The set of changes in thermodynamic potential associated with the various steps are collected in Table 1.

TABLE 1

Real and ideal changes in thermodynamic potential associated with the steps in the processing of an automobile. The abbreviation "n.a." means "not applicable"; "negl." means that the quantity is negligibly small. In all the steps of this example, with the exception of Step E (and the negligibly small changes in the ideal limits for Steps B, C and D), the overwhelming contribution to the change in thermodynamic potential is given by ΔE, the energy change. Negative signs indicate *losses* or *expenditures* of potential. The figure of 6 kwh for ideal Step A is actually the increase in thermodynamic potential associated with the automobile itself; in the ideal limit, this could all be taken from either the system (environment) or surroundings. If it were taken from the system, then the total net change in the thermodynamic potential of the system would, of course, be zero.

Step	Ideal	Real
A	6 kilowatt-hour for auto alone.	−2,300.
B	Negligible	−2,000 in 1960. −4,200 in 1980.
C	do	Not available.
D	do	−1,260 to −2,300.
E	−25	−25.
F	−2	−2.

A. *Recycling:*

The first comparison to be made is that of automobile manufacture, by existing processes, from ores and other primary materials, with recycling. The former process involves Steps A, B, C, E and F, while the latter involves only Steps B, C, and D. The first process, according to the figures of Table 1, contributes a net loss of approximately 6525 kwh of thermodynamic potential per automobile; with the uncertainty we estimate for Step A, this could be as small as 5000 kwh, but it is very unlikely to be less than this. The recycling process, with present technology, uses between 3260 and 4300 kwh with the 1960 energy requirements for manufacturing, and will go up to between 5480 and 6500 kwh if the projections for 1980 prove correct. The savings associated with recycling at the present time are therefore between zero and about 1040 kwh per automobile.

It is very probable that not all the needs for new automobiles can be met by recycling. The projections of Landsberg, Fischman and Fisher [1] indicate that up to about 50% of these needs can be met from "obsolete scrap." If this is reasonably accurate, then a program of maximum recycling would amount to an average saving up to about

Footnotes at end of article.

520 kwh per new automobile, or about 10% of the present thermodynamic requirements for manufacturing a new automobile. The maximum annual net saving in energy now would be of order 4 billion kwh. This clearly would represent a moderate saving in energy and thermodynamic potential, if it could be realized. However, it is not clear whether it is, in fact, realizable, so that recycling with present technology seems to be a questionable process. If the thermodynamics of Step B could be improved, then recycling would provide larger benefits; by the same token, if the energy costs for Step A increase, this also makes recycling more desirable.

At another level, the level of ultimate costs of thermodynamic potential, recycling is also advantageous. Even if the component parts of automobiles are allowed to rust away, a decided saving is achieved by preventing the dispersal of nonfunctional automobiles. In effect, by collecting wrecked automobiles into stockpiles and letting them rust there, we save the 25 kwh per automobile of Step E, even though we may lose the 2 kwh of Step F. Consequently, there is a basis for retaining automobile scrap stockpiles, whether or not a policy of maximum recycling is adopted. Of course,the real saving achieved by recycling is far greater than the possible saving from a single non-dispersal policy.

B. *Extended Life:*

A second general means for achieving thermodynamic thrift comes to mind. This is a policy of extending the life of the machine. Presumably, the useful lifetime of a machine is a function of the precision with which it is manufactured and of the kind of maintenance it receives. It is difficult to assess the precise thermodynamic costs that would be required if the useful life of an automobile were doubled or tripled. However, one can say with full confidence that an upper limit for these costs is, at the very most, somewhat less than the real present expenditure for Step B, i.e., with the total expenditure required for manufacturing the vehicle.

A policy of extending lifetimes of automobiles would, in effect, increase the cost of Step B, conceivably by as much as 1000 kwh, more probably by no more than half this amount, but would require that Step A be performed only one-half or one-third as often as it is presently. This would mean a net saving of order 2750–4500 kwh per lifetime of present vehicles and two to three times this much over the life of an extended-use vehicle, with one extended-use vehicle replacing two or three of the type now manufactured.

Presumably the economic cost of extended-life vehicles would be significantly higher than that of comparable vehicles now being made. The manufacturing manpower required, per mile travelled or per passenger-mile, might well be comparable to present manpower requirements. However, these considerations are irrelevant to the kind of thermodynamic considerations on which we are focusing here. Balancing thermodynamic gains against the inconveniences or added financial cost is already at the level of policy decisions that may call for judgments outside the purely thermodynamic sphere. As the discussion in the second section indicates, we can expect that most economic judgments would coincide with decisions based on thermodynamic considerations, provided that the economic costing is done with a sufficiently long-term valuation and with the costs of "externalities" included.

The bases of economic and thermodynamic valuation tend to become more and more similar as one extends the time scale for consideration of economic value. We shall return to the question of the limitations on making decisions on strict thermodynamic grounds.

C. *Real and Ideal Costs:*

The third general sort of approach to thermodynamic thrift is suggested by comparing the first and second columns of figures in Table 1. The most striking aspect of the table is the enormous disparity between the magnitudes of the two sets of figures. Where the ideal expenditures of thermodynamic potential are tens of kilowatt-hours per automobile, the actual expenditures are typically thousands of kilowatt-hours per automobile.

The immediate implication of this disparity is the existence of possibilities for vast savings in thermodynamic potential. The discrepancy between real and ideal thermodynamic costs makes it clear that there can be technologies far more efficient than the ones we use now. Even "modest" improvements in efficiency could be expected to reduce the thermodynamic costs from thousands of kilowatt-hours per vehicle. It is not at all unreasonable to suppose that improvements in basic technology could increase the efficiency (in terms of the ratio of ideal to real thermodynamic costs) from the present figure or 1980 projection of about 0.1% up to 1% or even 5%.

Clearly, the largest potential savings, in terms of energy and thermodynamic potential, can be achieved with improvements in the basic methods of metal recovery and fabrication. The savings that could, in principle, be so achieved would reduce the thermodynamic cost of an automobile by factors of five, ten or more. We saw, by comparison, that extending the life of a machine could achieve a saving of about 50–100%, whereas recycling can apparently achieve a saving of about 10% now and probably less than that in 1980.

POLICY RESPONSES

The figures are reasonably compelling; the differences between the three courses we have considered are so large as to make the three choices almost qualitatively different. We need not worry about details of the computations, when the figures separate the possibilities so clearly. It is obvious as can be that the savings to be achieved by recycling with present technology are at best small, compared with the savings that extended-life machines could provide, and that these savings are, in turn, small compared with the possible savings that could be accomplished by new technology. The decision to opt for thermodynamic thrift* would immediately tell us which course is the most desirable.

At the same time that we consider which policy offers the greatest savings, we must also ask about the relative ease of adopting one policy or another. Recycling is a relatively minor perturbation on present policy; maximum recycling would only amount to reapportioning the relative amounts of effort among well-established courses that we now follow. In absolute terms, a moderate amount of energy and thermodynamic potential might be saved if a policy of maximum recycling were adopted. Making extended-life machines would require some changes in manufacturing technique and a moderate readjustment of the relationship between the owner and the vehicle. The adjustment, as well as the savings, would be significantly greater than in the case of maximum recycling, and the time required to put the policy into effect would be longer as well. It seems reasonable to suppose that recycling might be adopted and put into practice rather soon, while the changes necessary for extending machines' useful lives are being developed.

The same sort of comparison holds for major technological change, but on a much grander scale. The basic ideas required to implement the changes probably do not yet exist. Only when these ideas have been conceived and developed into workable engineering methods could we begin to achieve some of the huge possible savings that can be made. Hence, we should plan to use, first, recycling and then, extended-life machines, during the interval when the new technology is being developed.

Whether or not development of the new technology is slow or difficult is not important, unless, by some strange quirk of fate, its cost of development rivals the saving it provides. The potential savings are so great that we consider this possibility too unlikely to be worthy of consideration. We assume that the costs of development, even if they are large, will be infinitesimal compared with the eventual savings. A saving of only 1000 kwh per vehicle would correspond to the total power output of eight or ten good-sized generating stations.

The assumption that the costs are small compared with the gains, together with the adoption of a policy of thermodynamic thrift, point to the desirability of establishing a new national goal. This goal would be the development of new technology for extractive and manufacturing industries, technologies that would operate with efficiencies far closer to the ideal limits than do the present methods.

The desirability of such a national goal would carry with it some very surprising implications that differ sharply with current Federal policy. The foremost implication is the need for numbers of scientists and engineers with the skills to do fundamental and innovative development in applied science and basic engineering. Rather than cutting back the supply of scientists now, we should be assessing how large a force may be needed to increase our scientific and engineering personnel enough to establish a major effort in technological development. The effort would entail far more detailed and careful analyses of real and ideal processes than the rough figures developed here. However, the analyses would only be the first step, and would only provide the measure against which the real innovations could be tested. Finally, a major engineering development would be required to convert the ideas into practical, full-scale methods.

A second implication of the adoption of developing new technologies as a national goal would be with regard to the National Laboratories, including the National Bureau of Standards. Just as national laboratories were the natural centers for our previous national goals, of nuclear weapons and space travel, the national laboratories become natural foci for development of new technologies. The requisite scale of development, in terms of both time and the scale of readjustment, is far too vast for the private sector to undertake it. Hence, instead of reducing the scale of national laboratories and focusing them on increasingly specific goals, this argument implies that we should be broadening and strengthening these laboratories.

The third implication is the desirability of training young scientists and engineers who are oriented toward technology and application, albeit at a very basic level within this context. The orientation of scientific and engineering training during the past one or two decades has been relatively heavy toward the most basic and fundamental levels of our understanding of nature. Now, it appears, there is a need for people who want to make use of this knowledge to develop basic changes in the way we do things.

A fourth implication concerns the problem of the energy needs of the nation and the world. Most of the attention to this problem has gone toward improving and extending energy *production*. The conclusions of our analysis are that we can go far in dealing with energy needs if we improve energy *utilization*. At present, roughly 60% of the U.S. electrical energy production is used by industry. Let us take the automobile as a representative of industrial products, for thermodynamic purposes. Then we might expect our hypothetical new technology to reduce our industrial needs for electrical energy by about a factor of 10, ultimately, to something like 6% of the total national produc-

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tion. (We have not yet estimated what sorts of savings are potentially possible in the 40% used for domestic and commercial purposes.) With savings of this magnitude, one can begin to face the possibility of developing underdeveloped nations withcut the ominous problem of an insufferable energy demand. It may well be that technological development of underdeveloped nations can only be achieved if we make significant progress toward a new technology grounded in thermodynamic thrift.

It is clear that we *may* follow the three-stage course of recycling, developing extended-life machines and adopting new technologies. It is not yet clear whether we have any other options, particularly with regard to the new technologies. One way to reconcile our growing demands for power and increasing needs to process our environment is to achieve our life style by means much more efficient than those we now use. Whether such a course is sufficient in itself for an indefinitely long period is not known. It does seem now that such a policy is probably a necessary component of any adaptive means that avoids a cataclysmic social upheaval. In other words, prudence fairly dictates that we begin to think, evaluate, and react in terms of thermodynamic thrift. The short-term means for achieving this may be through judicious recycling; for the intermediate term we can turn to extended-life machines. However, for the long term, we must develop more efficient basic technology.

A CAVEAT

One very important point, to which we alluded earlier, must not be missed. The present limits of human capabilities for logical analysis, be it thermodynamic, economic or any other sort, are vastly more confined than is the actual range of the variety of human experience. To suppose that thermodynamics or economics could or should suffice to *determine* most policy decisions, is presumptuous beyond belief. The most we should expect from a logical analysis such as the one presented here, is that it can be a guide, to provide one way of ordering preferences and, sometimes, of eliminating a number of undesirable courses. In an ideal situation, we would be able to use logical analysis to reduce our options to a small number of choices, and then to choose among these according to the values that we cannot fit into a logical, analytical scheme. Occasionally there will be situations in which the choices can be made by thermodynamic analysis alone. These, however, should be the exception rather than the rule. If we are both wise and fortunate, our decisions will be made more easily because we use as much logical analysis as possible before we made our final choices.

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APPENDIX—CONCERNING THE ENTROPY OF A MACHINE

The information content and entropy of an organized structure have been analyzed by Brillouin,[4] in terms of the number of binary connections among elements of the structure. The reduction in entropy associated with N terminals or binary junctions, relative to an unorganized structure is

$$I = K\,N \log_2 N,$$

where k is the Boltzmann constant and the logarithm is taken to the base 2. The number of binary junctions or terminals N is given in terms of the number n of elements in the structure, the number of m of internal terminals and the number q of external terminals:

$$N = nm + q.$$

Our problem is one of defining the elements of structure of a machine.

We begin by recognizing that the machine functions as intended when it is made to conform to a set of manufacturing tolerances. If every part of every piece satisfies the tolerances, the machine will operate as it should. If the tolerances are not met, then the machine will not operate, or will have a shorter life than is intended, or in some other way will not perform. Hence, the *tolerances* define the characteristics dimensional unit for organized structure of the machine.

We may next consider the terminals as the junctions between the machine and the outside world, the surface area of the machine, where the *unit* of surface area is the square of the tolerance dimension, l. Thus, the number q of external terminals is the total area A, measured in units of l^2:

$$q = A/l^2$$

The internal terminals may also be included, but do not change the magnitude of the result significantly. These, if they are included, are about 4 per unit of surface, or about $4A/l^2$.

We estimate that the uncritical surfaces of a machine, such as the exterior of the engine block, the chassis and the body contribute about 10^9 to N, with a tolerance of about 1 mm. The internal, critical surfaces, with tolerances of order 10^{-2} mm, contribute a total of about 10^{10}–10^{11} to N, so that the uncritical components are relatively unimportant, in terms of the order in the operating structure. The information, in bits, is $N\log_2 N$, $10^{11}\log_2(10^{11})$, or about 3.5×10^{12} bits, so that $kN\log_2 N$ is about 4×10^{-4} ergs per degree, or entropy units. The appropriate "temperature" is not clearly defined for this system, but the ambient temperature of 300° is probably a high upper limit, since all new automobiles are in, more or less, the same state. Hence, we estimate that $T\Delta S$ or TI is less than about 0.12 ergs. Even if I were as large as 1 entropy unit, the entropic contribution to the free energy of an automobile would surely be less than 10^5 ergs per vehicle, which would correspond to about 3×10^{-10} kwh per vehicle. Hence, the figure of 10^{-11} —10^{-10} was taken as an upper limit in the text; the correct figure is probably a thousandfold smaller.

FOOTNOTES

*The same concept has been used under the name "energy husbandry," by R. H. Socolow.

[1] H. H. Landsberg, L. L. Fischman and J. L. Fisher, "Resources in America's Future" (Resources for the Future, Inc., Washington, D.C., 1963).

[2] "Historical Statistics of the United States, Colonial Times to 1957" (U.S. Dept. of Commerce, Washington, D.C., 1960).

[3] "Handbook of Chemistry and Physics," 50th Ed (Chemical Rubber Co., Cleveland, Ohio, 1969).

[4] L. Brillouin, "Science and Information Theory," 2nd Ed. (Academic Press, Inc., New York, 1962).

[5] E. A. Guggenheim, "Thermodynamics," (North-Holland Publishing Co., Amsterdam, 1959).

[6] See Ref. 1, Table A10–28, p. 761.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

EDUCATION AMENDMENTS OF 1972

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the unfinished business.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The second assistant legislative clerk read as follows:

A bill (S. 659) to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, and related acts, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The pending question is on agreeing to the motion to concur in the amendment of the House to S. 659, with an amendment in the nature of a substitute. The motion is open to amendment.

Mr. PELL obtained the floor.

Mr. MANSFIELD. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. PELL. I yield to the majority leader as much time as he desires.

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

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

Mr. GRIFFIN. Mr. President, I yield myself 10 minutes from the time of this side on the bill.

The PRESIDING OFFICER. The Senator from Michigan may proceed.

Mr. GRIFFIN. Mr. President, later in the day, with the hope and the objective of voting sometime tomorrow, I plan to offer an amendment. The amendment I will offer will seek by statute to prohibit the forced busing of schoolchildren. It would withdraw from the Federal courts jurisdiction to require that pupils be bused to and from school or from school district to school district on the basis of race. It would prohibit the Department of Health, Education, and Welfare from requiring forced busing as a condition for receiving Federal funds.

Mr. President, I regret that it has become necessary to seek such restrictions upon the courts and the Department of Health, Education, and Welfare. But I, for one, have concluded, as have the vast majority of Americans, black and white, northerners and southerners, that too many courts and bureaucrats have lost sight of the fundamental meaning of the 14th amendment and the mandate of Brown versus Board of Education case.

In Brown, the Supreme Court held that State-imposed segregation in public education is denial of equal protection of the law. In effect, the court said that government must be color blind. I am con-

vinced that most Americans today accept and support that fundamental principle. I agreed with the Brown decision in 1954, and I support it now. But, unfortunately, since then some of the courts have gone well beyond Brown and well beyond the bounds of commonsense in requiring that schoolchildren be bused long distances because they are black, because they are white, because they are brown, because they are yellow or because they are red, in order to achieve an artificial and superficial racial balance.

In 1954, when the Supreme Court decided the Brown case, some black and white pupils were being bused miles past their neighborhood schools in order to attend schools that were segregated as a matter of law. Now, in 1972, instead of being allowed to attend those neighborhood schools, some black and white students are again being bused miles past their neighborhood schools by court order.

Mr. President, last year I introduced a joint resolution proposing an amendment to the Constitution which reads as follows:

> This Constitution shall not be construed to require that pupils be assigned or transported to public schools on the basis of their race, color, religion, or national origin.

The statutory amendment which I propose today reiterates my belief that it is fundamentally wrong for any instrumentality of government, including a court, to discriminate in the treatment of children on the basis of race.

Forced busing has not only proven ineffective but it is proving counterproductive. It is a wasteful diversion of tax dollars which should be used to improve the quality of education. In many areas it is increasing racial tensions instead of moving toward the goal of racial harmony. It is accelerating the flight from the cities to the suburbs and beyond. It runs counter to the desire of most parents, black and white, to see their children educated in a quality school close to home.

Mr. President, nearly everyone has reached the conclusion that forced busing is wrong—everyone, apparently, except some of the Federal courts and some of the bureaucrats.

Recently an article in the New Republic contained this statement:

> Parents rightly feel that it is physically difficult, if not impossible, to maintain a connection with the school and make their needs and wishes felt if the school is 15 miles away.

Continuing to quote from the New Republic:

> Busing, then, is not only disruptive and fraught with costs that are not always offset by the benefits it brings, but often fails to achieve the benefits it promises. It is therefore foolhardy to concentrate on massive school integration and the promise that busing can produce it as the chief objective in public education.

Mr. President, recently a distinguished black writer for the Detroit News, June Brown Gardner, wrote an article explaining why many blacks in the Detroit area are opposed to forced busing. Reading from that article, I quote:

> But in Detroit, where the majority of students are black and the city is fast becoming black, the concept of moving the entire city to the white suburbs for an education is humiliating to black people and an affront to black pride. Busing says in effect that any school which is all black is all bad. Black people cannot accept this implication because we know that black teachers are equal to white, black pupils are equal to white, and black student potential is equal to white.

Continuing to quote June Brown Gardner's article in the Detroit News:

> If a parent has a valid reason for wanting his child bused to another school, every consideration should be given to his request, but to bus thousands of Detroit children for the illusive goal of racial balance is humiliating to black pride, destructive to the building of a black identity, a massive waste of everybody's money, and a total disregard for the concept of equality which demands that every school, no matter where it is located, be equal to every other school.

Mr. President, reference has been made to the article in the Wall Street Journal written by Vermont Royster recently. It read in part:

> The law of a free people ought to prohibit segregation of any of its citizens in any form. A law to compel people to move from one place to another would make our society no longer one of a free people.
>
> But what we, the elders, have refused to decree for ourselves and our own lives we have, by some tortured logic, decreed for our children. However you may dismiss the inconvenience or the cost of this wholesale busing, we have asked our children to suffer what we will not. And the wrong of that cannot easily be dismissed.

Mr. President, New Detroit, Incorporated, a civic-minded organization which was appointed by the Governor and the mayor of Detroit after the riots in Detroit several years ago, and which has done an excellent job—I think almost everyone would agree—recently paid for a highly professional opinion poll company to take a survey of black opinion within the city of Detroit. One of the questions raised in that survey was this one:

> Would you be willing to have your children and children in this neighborhood go to a school at a further distance from home than the schools they now attend in order to go to an integrated school?

Of those polled, 62.9 percent answered the question "No."

In another survey conducted by the Detroit News, 74 percent of those polled agreed with the following statement:

> School money in Detroit should be spent for better schools and not on busing.

Mr. President, I can only echo those sentiments. School money in the United States will be better spent for better teachers and better schools, rather than for busing purely for the reason of achieving some artificial racial balance.

The question, of course, before the Congress is: What can we do about the situation? I must say that, as a lawyer, I fully realize and recognize the difficulties——

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

Mr. GRIFFIN. Mr. President, I yield myself an additional 10 minutes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. GRIFFIN. Mr. President, I fully recognize the difficulties of trying to deal in a statutory way with a matter that has been dealt with by the Supreme Court as an interpretation of the Constitution. The question necessarily arises whether there is anything that the Congress can do short of the adoption of a resolution to amend the Constitution which would have effect and be recognized on review by the Supreme Court of the United States.

It seems to me that there are two things that Congress can do by statute, and perhaps others. First of all, I believe that the adoption of an amendment similar to an amendment adopted in the other body, which would be procedural in effect and would merely delay the effective date for the implementation of a court order requiring forced busing until the appeal procedures had been exhausted, should be held constitutional by the Supreme Court. There Congress would only be dealing in a procedural rather than a substantive way with the matter. I would think that very clearly Congress by law could say that a court order requiring forced busing for the purposes of achieving racial balance could be delayed in terms of its implementation at least until the decision had been reviewed, if a review were to be sought within the time allotted.

The other way that Congress can deal, perhaps, constitutionally with this subject is to take the approach contained in the amendment that I shall introduce. That is to exercise a power which Congress has under the Constitution in terms of delineating the jurisdiction of the courts under Article III of the Constitution. I must say that I move down this particular path with some reluctance. I voted against an amendment which the distinguished Senator from North Carolina offered at one time dealing with the criminal laws and the laws of evidence. I do not remember all the circumstances and details, but he wanted, in effect, to modify a Supreme Court decision by withdrawing jurisdiction of the Supreme Court in that particular area and to a limited extent. I opposed his amendment at the time, saying that I thought it was much preferable to allow the Supreme Court to correct the situation itself.

That would be the preferable route in this situation as well. But looking at the question of constitutionality, and whether Congress has the authority, it seems to me that the Senator from North Carolina presented then a very persuasive argument that Congress, indeed, does have authority and could constitutionally adopt a statute partially withdrawing the jurisdiction of the Court in an area such as this. And it seems to me that it would serve a good purpose for Congress to go on record clearly indicating its support for such an approach by statute, which would then put the Supreme Court into the position of either clarifying or modifying its own decisions to make clear that forced busing is not constitutionally required, or passing upon the constitu-

tionality of this attempt by Congress to delineate a restricted jurisdiction.

Mr. ERVIN. Mr. President, will the Senator yield briefly?

Mr. GRIFFIN. I yield to the Senator from North Carolina.

Mr. ERVIN. I call the Senator's attention to certain authorities bearing upon this point. Every Member of the Senate has in his office a book entitled "The Constitution of the United States of America, Revised and Annotated 1963." This book was originally annotated by one of the greatest constitutional scholars this country has ever known, Prof. Edwin S. Corwin of Princeton University.

It states, on page 705, with respect to the power of Congress over the jurisdiction of Federal courts inferior to the Supreme Court:

> 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.

Then on page 700, after reviewing the decisions of the Supreme Court interpreting the provision of clause 2 of the second section of article III of the Constitution which prescribes:

> 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.

This book, annotated by this great constitutional scholar, says:

> 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.

I think those statements, as well as multitudes of decisions, establish beyond any question, in accordance with the words of article III, that Congress has the power to define or to limit the appellate jurisdiction of the Supreme Court and the jurisdiction of all courts inferior to the Supreme Court.

Mr. GRIFFIN. The Senator from North Carolina knows that under the Constitution Congress has the right to establish inferior courts; is that not correct?

Mr. ERVIN. Yes. And I would suggest to the Senator that the reason I think the men who drafted and ratified the Constitution put these provisions in the Constitution, giving Congress the power to regulate the appellate jurisdiction of the Supreme Court and all of the jurisdiction of courts inferior to the Supreme Court, was that they realized that the Supreme Court had the power to check unconstitutional actions on the part of the President or on the part of Congress, and that there should be some check on the exercise of unconstitutional powers by the Supreme Court, and this was given to Congress, to keep the Supreme Court and the other Federal courts from straying far beyond the bounds of their constitutional authority. It is the only check provided in the Constitution on the courts.

Mr. GRIFFIN. Mr. President, it seems to me that while the only sure way, perhaps, of dealing effectively with this subject is to adopt a constitutional amendment, there is understandable reluctance on the part of many people, including the junior Senator from Michigan, who has himself introduced the constitutional amendment, to go that route unless it is absolutely necessary. There is no question that the Constitution should be the embodiment of broad principles.

The PRESIDING OFFICER. The time of the Senator has expired. Does the Senator wish additional time?

Mr. GRIFFIN. I yield myself an additional 10 minutes.

Mr. President, I was saying that most people, I believe, including those who have introduced proposals to amend the Constitution—and that includes the junior Senator from Michigan—are reluctant to go that route if it is possible to deal with this subject effectively in some other way. But there should be no mistake about it: If it should become necessary to adopt a constitutional amendment in order to bring reason and commonsense into a matter of educating our children, the American people would demand it—if not in this session, I think that in the next session Congress would be ready to adopt such an amendment.

In the meantime, I think there is wisdom in pursuing the other courses that are available. Although I am persuaded by the arguments of the distinguished Senator from North Carolina that this approach would be held constitutional, I recognize, nevertheless, that until the Supreme Court has ruled on this particular amendment, there is always the possibility that the Supreme Court could hold what we might do to be unconstitutional. So we would run a risk, but it seems to me that it is a risk we should accept.

The Senator from North Carolina has eloquently pointed out some of the provisions in article III of our Constitution.

In ex parte McCardle, the Supreme Court of the United States held that Congress had the power to rescind the Court's authority to review applications for writs of habeas corpus. Certainly, that was a far-reaching exercise of the authority to limit the Court's jurisdiction at an early date, and the Court held that Congress had such power under article III.

Chief Justice Chase, writing for the Court, said:

> 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 was given by express words.

Sixty-four years later, when Federal courts were attempting to control labor disputes by issuing injunctions, Congress passed the Norris-LaGuardia Act, which expressly withdrew from Federal courts their jurisdiction to invoke a particular remedy in a given situation.

Mr. President, that is what we would be trying to do, essentially, in this amendment—not to withdraw the jurisdiction of the courts to deal with the subject of segregation or discrimination generally, or to pass upon interpretations of the 14th amendment.

Some people argue that the amendment I will propose would repeal the 14th amendment. That is absurd. It would not repeal the 14th amendment at all. But it would withdraw from the courts one remedy—a remedy which in my opinion and which in the opinion of most Americans is a radical, unreasonable remedy—a remedy of busing, just as Congress said to the courts at an earlier date that the Federal courts in labor disputes may not issue injunctions.

It would seem to me that the adoption of this kind of amendment might get the court back on track, might get the court back on the track where it should be and where I think most Americans thought the court was when it announced the Brown decision, and that is that government at all levels should be color blind.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. GRIFFIN. I yield.

Mr. ERVIN. Does not the Senator from Michigan think that the reason Congress passed the Norris-LaGuardia Act and prohibited virtually all issuance of injunctions in labor controversies was that the courts had grossly abused their power to issue injunctions and had done an injustice to labor?

Mr. GRIFFIN. The Senator from North Carolina makes an excellent point.

Mr. ERVIN. Does not the Senator think an equally good case can be made of the fact that the courts are now abusing their powers and are committing an injustice upon the little school children of America, and for that reason Congress will have an equal duty to intervene in behalf of little children, as it did in the case of labor?

Mr. GRIFFIN. I think the Senator from North Carolina makes a persuasive argument.

Mr. President, there are other similar instances of statutes passed by Congress which have circumscribed and limited the jurisdiction of the Federal courts; and the Senator from North Carolina, in times past, has put a great deal of material in the RECORD making a case for this particular approach.

At the present time, I do not know whether or not the amendment, when I offer it, will include the addition of the amendment adopted in the House, which would delay the effectiveness or implementation of a court order until the appeal procedures available had been exhausted. Perhaps that amendment will be offered separately. In any event, I want to indicate my strong support for that amendment as well as the amendment I have described, and which I will offer later, to withdraw from the jurisdiction of the Federal courts the power to issue orders requiring forced busing on the basis of race.

Mr. President, I want to indicate that if certain other approaches are presented to Congress—if, for example, an amendment which seeks to deal with this problem strictly on the basis of so-called freedom of choice is submitted in a manner similar to the amendments along this line that were offered in earlier debates—I will oppose that amendment, because I think it would go too far, unless it would be modified.

For example, if construed literally, it

would say that if a school board constructed a brandnew school, and there were three or four other schools, some older and not so attractive, under a strict interpretation of freedom of choice, all the schoolchildren in the school district presumably would have the right, under freedom of choice, to attend a brandnew school. It seems to me that helps to point up why the power of freedom of choice, literally interpreted, is unrealistic. I think that a school board does need the authority to assign students on a reasonable basis to schools within the district, provided always that assignment is not based on race, color, national origin, or religion, which is the thrust of my amendment.

If amendments are offered, and some have been in the past, which go so far as to prohibit voluntary busing by a school district or a school board, then I would be obliged again to oppose such an amendment. I am conscious of the fact that in many areas—in the city of Detroit, for example, we have had in effect a voluntary program, adopted voluntarily by the local school authority, the purpose of which is quality education, and the integration or racial mix is an incident thereof.

It is not designed primarily for the purpose of establishing any particular percentage or degree of racial mix. The voluntary busing program in Detroit does help achieve that goal.

I want to indicate that if such an amendment should be offered, and it is susceptible of that interpretation as prohibiting or outlawing a voluntary busing program, I would again oppose it.

Mr. ERVIN. The Senator from North Carolina wishes to know if he has correctly interpreted the amendment of the Senator from Michigan. As I interpret his amendment, it does not apply to anything which a State may voluntarily desire to do. It applies only to forced busing at the instance of the Federal Government; is that not correct?

Mr. GRIFFIN. The Senator from North Carolina is absolutely correct. The amendment that the junior Senator from Michigan will offer would not apply to or affect any voluntary busing program. It would only prohibit forced busing that would be ordered by a Federal court.

PRIVILEGE OF THE FLOOR

Mr. PELL. Mr. President, I ask unanimous consent that the following staff members of the Committee on Labor and Public Welfare be admitted to the privilege of the floor during consideration of the message of the House on S. 659: Stephen J. Wexler, Richard D. Smith, Roy Millenson, Daniel Moyle, Richard Segal, Albert Sidney Johnson III, Kevin McKenna, and Nick Edes.

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

Mr. GRIFFIN. Mr. President, I ask unanimous consent that a member of my staff, Mr. Robert Lewis, may also be permitted the privilege of the floor during consideration of S. 659.

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

QUORUM CALL

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

The PRESIDING OFFICER (Mr. TUNNEY). On whose time?

Mr. PELL. On my time.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. PELL. Mr. President, I ask unanimous consent that during the consideration of S. 659, the following staff members of the Select Committee on Equal Educational Opportunity be authorized to be on the floor: William C. Smith, Bert Carp, Leonard Strickman, Francis Hennigan, Carolyn Fuller, and Donald Harris.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, and I do not intend to object, I would ask the distinguished manager of the bill whether the select committee to which he has referred has jurisdiction over the pending legislation?

Mr. PELL. The select committee has no legislative jurisdiction.

Mr. BYRD of West Virginia. Mr. President, I have no objection. However, it is understood that that subcommittee would not be entitled to have four additional staff members present on the floor over and above the names specified in the request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. PELL. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 213. An act to repeal the "cooly trade" laws; and

H.R. 6420. An act to amend the Immigration and Nationality Act.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred to the Committee on the Judiciary:

H.R. 213. An act to repeal the "cooly trade" laws; and

H.R. 6420. An act to amend the Immigration and Nationality Act.

EDUCATION AMENDMENTS OF 1972

The Senate continued with the consideration of 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. 663

Mr. ERVIN. Mr. President, I call up amendment No. 663 and modify the amendent on page 1, line 7, by striking out the words "a bill to amend the Higher Education Act of 1965," and substitute in lieu thereof the words, "the committee amendment to the House amendment to the Higher Education Act of 1965".

The PRESIDING OFFICER. The amendment is so modified, and, without objection, the amendment, as modified, will be printed in the RECORD.

The amendment, as modified, is as follows:

The committee amendment to the House amendment to the Higher Education Act of 1965, the Vocational Education Act of 1963, and related Acts, and for other purposes, is amended as follows: At the end of the committee amendment to the House amendment insert the following new title:

TITLE —PROHIBITION AND LIMITATIONS WITH RESPECT TO THE TRANSPORTATION OF PUBLIC SCHOOL STUDENTS TO CORRECT RACIAL IMBALANCE

EFFECTIVE DATE OF COURT ORDER WITH RESPECT TO THE TRANSFER OR TRANSPORTATION OF STUDENTS

SEC. . Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purpose of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired.

PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR BUSING

SEC. . No funds appropriated for the purpose of carrying out any program subject to the provisions of the General Education Provisions Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system. No officer or employee of the Department of Health, Education, and Welfare (including the Office of Education) or of any other Federal agency shall, by rule, regulation, order, guideline, or otherwise, (1) urge, persuade, induce, or require any local education agency, or any private nonprofit agency, institution, or organization, to use any funds derived from any State or local sources for any purpose for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal

funds under any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) on the part of a Federal officer or employee.

PROHIBITION AGAINST BUSING FOR EMERGENCY SCHOOL AID

SEC. . No funds appropriated pursuant to any provision of Federal law making funds available for financial assistance to local educational agencies in order to establish equal educational opportunities for all children on an emergency basis may be used to acquire or pay for the use of equipment for the purpose of transporting children to or from any school, or otherwise to pay any part of the cost of any such transportation.

NEIGHBORHOOD SCHOOLS

SEC. . Nothing in this Act shall be construed as requiring any local educational agency which assigns students to schools on the basis of geographic attendance areas drawn on a racially nondiscriminatory basis to adopt any other methods of student assignment whether or not the use of such geographic attendance areas results in the complete desegregation of the schools of such agency.

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

Mr. ERVIN. Mr. President, I yield myself such time, within the limits of 1 hour, as I may consume.

This is an amendment which would restore to the committee substitute the amendments which the House had made in respect to the original bill when it was under consideration in the House.

Mr. President, we have had some misgivings expressed by some persons to the proposal that the Congress limit the jurisdiction of Federal courts. This has been a practice of Congress ever since the beginning of this Nation. We have just spent a month considering the so-called EEOC bill. That bill, in its original form, contained a provision which would have limited the jurisdiction of Federal courts. It expressly provided that the courts could not review the findings of the Commission with respect to whether or not an employer had been willing to make an agreement satisfactory to the Commission under the bill. That was a very crucial question that the court was denied the power to consider, because upon that finding depended the whole jurisdiction of the Commission to do anything.

Mr. President, with respect to many legislators, it depends upon whose ox is being gored. When this Congress adopted the Norris-LaGuardia Act, it took away from the Federal courts about 95 percent of their jurisdiction and powers. It did this by virtually depriving the Federal courts of the power to issue any injunction in any labor controversy. Most of the jurisdiction of the courts of equity lies in their power to issue restraining orders and injunctions. And Federal courts are courts of equity.

There is not a Member of this Congress who has not voted on occasion to limit the power and jurisdiction of the Federal courts. When Congress passed the Voting Rights Act of 1965, Congress decreed that every courthouse door in the United States should be nailed shut against 40 counties in my State and six other Southern States and that they could not get relief anywhere on the face of this earth, of a judicial nature, except by traveling, in some cases, 1,000 miles and bringing their witnesses to one court, the court sitting in the District of Columbia, the district court—where, I assert, knowledgeable Members of Congress knew that it would be virtually impossible to get a panel of judges that would hold the scales of justice evenly in any case arising in the South having racial overtones. My assertion is borne out by the assignment of a panel of judges to hear the case involving the trial of my county of Gaston, where no discrimination in voting had occured within the memory of any living man, which sought to obtain relief from the court.

There are some provisions of the Constitution which are so plain that the wayfaring man may run and still read and understand them, and these are the provisions of the Constitution which give Congress the exclusive power to define the appellate jurisdiction of the Supreme Court and all of the jurisdiction of all of the other Federal courts.

Section 1 of article III of the Constitution provides that 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.

Every Federal court, except the Supreme Court, is a creature of the Constitution, and the creator always has the power to define what its creatures shall do. And so it is not surprising that the Supreme Court has held, under this section of article III, in cases virtually past number, that Congress can not only define and limit the jurisdiction of Federal courts inferior to the Supreme Court, but that it can even abolish such courts. And Congress has on occasion abolished such courts created by it. It did this in connection with the Commerce Court, which existed at one time. It also did it in connection with the circuit courts, which existed at one time in this Nation.

I wish to call the attention of the Senate to the case of Lockerty against Phillips, which is reported in 319 U.S. at page 182. This was a case which involved the power of Congress to prescribe what jurisdiction Federal courts should have under the Emergency Price Control Act of 1942. On page 187 the Court had this to say with reference to the jurisdiction of all Federal courts other than the Supreme Court:

> All Federal courts other than the Supreme Court derive their jurisdiction wholly from the exercise of the authority to ordain and establish inferior courts conferred on Congress by Article III, Section 1 of the Constitution. Article III left Congress free to establish inferior Federal courts or not as it felt appropriate. It could have declined to create any such courts, leaving suitors to the remedies afforded by the State courts, with such appellate review by this court as Congress might prescribe. The congressional power to ordain and establish inferior courts includes the power 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.

Interpreting that same act, the Court held, in the case of Yakus against the United States, reported in 321 U.S. at page 414, that Congress had the power to deny jurisdiction to the Federal district courts, as inferior courts, and that by this Emergency Price Act it did deny such courts the power to consider whether a person charged with a criminal violation of the Emergency Price Act had been deprived of his liberty and his property by that act in violation of the due process clause of the fifth amendment.

Some days ago I called the attention of the Senate to the case of Ex parte McCardle. Ex parte McCardle involved the power of Congress to regulate the appellate jurisdiction of the Supreme Court, and it was a drastic decision.

McCardle was a newspaper editor and publisher in the State of Mississippi in the days of reconstruction. After the last Confederate soldier had laid down his arms and returned to peaceful pursuits, under the Reconstruction Act. Federal troops were garrisoned in Mississippi—and I might add that for years after that tragic episode they were stationed in my hometown of Morganton, N.C.

The Reconstruction Acts provided that the military commander of the military district embracing a Southern State could order men tried before military commissions instead of in civil courts. Several years before the McCardle case was handed down, the Supreme Court of the United States expressly held, in Ex parte Milligan, that where the civil courts of a State or the Federal courts within a State were operating, no American citizen who was a civilian could be tried before a military commission. The Supreme Court held, in Ex parte Milligan, that a civilian under those circumstances had a constitutional right to be tried in a civil court, that he had a constitutional right to be indicted by a grand jury before he could be placed on trial for an infamous crime, and that he had a constitutional right to be tried before a petit jury; and it set aside the conviction of Milligan, a civilian, who had been tried and sentenced to death by a military commission.

Despite the decision in Ex parte Milligan, the military commander in Mississippi had McCardle arrested by military authorities and had him scheduled for trial before a military commission instead of a civil court. And, lo and behold, they had him arrested and scheduled for trial before a military commission because McCardle had written an editorial criticizing the military occupation of Mississippi and criticizing the military officials, as he certainly had a right to do under the freedom of the press clause of the first amendment.

So here was a man who, according to the decision in Ex parte Milligan, was being deprived of his liberty in violation of the Constitution, who was being denied his right to be tried before a civil court rather than a military commission, and who was being held and detained for trial for exercising a right guaranteed by the first amendment of the Constitution of the United States. McCardle applied to the local Federal court—it was then called a circuit court—for a writ of habeas corpus. When the circuit court refused to release him at the hearing

upon the application for the writ of habeas corpus and remanded him to the military authorities for trial, McCardle appealed to the Supreme Court of the United States under an act of Congress which conferred upon the Supreme Court of the United States the power to review the refusal of an inferior Federal court to release a man upon a writ of habeas corpus. McCardle's case was argued before the Supreme Court of the United States, and the Supreme Court took it under advisement.

Before the Supreme Court could write and announce its decision, the radicals who controlled Congress in that sad episode of our history repealed the act of Congress which had given McCardle the right to have his case reviewed by the Supreme Court of the United States; and the Supreme Court handed down a decision at its December 1868 term dismissing McCardle's appeal, stating that it dismissed the appeal "for want of jurisdiction."

In the course of the opinion, which was written by Chief Justice Chase, this statement was made:

It is quite true, as 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."

In making that statement, the Court was quoting from clause 2 of the second section of article III, which reads as follows:

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.

I submit that a high school boy who is capable of reading the English language to any extent whatever is able to ascertain that under that provision of the Constitution, and by the plain English words in it, Congress is given the power to prescribe such exceptions and to impose such regulations as it may see fit in respect to the appellate jurisdiction of the Supreme Court.

In the course of the McCardle opinion, Chief Justice Chase said further:

The exception to the 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 exception 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.

So the Supreme Court dismissed the appeal because the act of Congress permitting it had been repealed and, in consequence, it no longer had any jurisdiction in the matter.

There have been many theoretical writers of law who do not like the McCardle case, and they do not like what article III of the Constitution says in plain English words. I was present on one occasion when one of these theorists asserted that Congress did not have the power to limit the jurisdiction of Federal courts because of what he described as the doctrine of separation of powers and the supremacy clause of the Constitution. He expatiated on this matter for about 50 minutes. When he got through, I said:

I think, without doing any bragging, that I can demolish your arguments in about 3 seconds.

With respect to the doctrine of the separation of powers, the Constitution itself separates the powers to prescribe the jurisdiction of Federal courts by giving it to Congress in article III and by denying it to the courts in the same article.

With respect to the supremacy clause of the Constitution, the supremacy clause says that this Constitution, the acts of Congress enacted pursuant to it, and treaties made by the United States shall be the supreme law of the land. The supremacy clause does not say that all this Constitution except article III shall be the supreme law of the land. It says that article III as well as all the other provisions of the Constitution shall be the supreme law of the land.

Mr. President, I asked the Library of Congress to furnish me with a list of some statutes in which Congress had undertaken to define and limit the jurisdiction of the Federal courts. I have just received a reply to my request dated February 23, 1972, in which the Library of Congress states that the following is a list of statutes in which Congress has withdrawn, restricted, or ignored the ordinary orginal jurisdiction of the U.S. district courts, the appellate jurisdiction of the U.S. courts of appeal, and the original and appellate jurisdiction of the U.S. Supreme Court. The study lists some 77 statutes in which Congress has exercised its constitutional powers to define or limit the jurisdiction of the Federal courts. I ask unanimous consent that the statement and the list of statutes be printed in the RECORD.

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

VARIATIONS IN FEDERAL COURT JURISDICTION

The following is a list of statutes in which Congress has withdrawn, restricted or ignored the ordinary original jurisdiction of the United States District Courts, the appellate jurisdiction of the United States Courts of Appeals and/or the original and appellate jurisdiction of the United States Supreme Court:

5 U.S.C. sections 701–706—Judicial review under the Administrative Procedure provides that administrative actions supported by substantial evidence be upheld.

5 U.S.C. section 8715—Provides for concurrent original jurisdiction in the Court of Claims and the district courts of the United States to hear cases under chapter 87 of title 5 (Life Insurance).

5 U.S.C. section 8912—Provides for concurrent original jurisdiction in the Court of Claims and the district courts of the United States to hear cases under chapter 89 of title 5 (Health insurance).

6 U.S.C. section 5—Provides for a five year limitation of liability against sureties for officials of the United States.

7 U.S.C. section 8—Provides for judicial review under the Commodity Exchange Act with original jurisdiction in the United States Courts of Appeal restricting modification or setting aside of agency action to those cases where the order is unsupported by the weight of the evidence, is beyond the jurisdiction of the agency, is unconstitutional, or where notice or hearing were denied.

7 U.S.C. section 135b (d)—Provides for judicial review under chapter 6 (Insecticides) of title 7 with original jurisdiction in the United States Courts of Appeals in which the findings of Administrator of the Environmental Protection Agency must be sustained if supported by substantial evidence on the record as a whole.

7 U.S.C. section 194—Provides for judicial review of hearings of the Secretary of Agriculture against meat packers found to have violated 7 U.S.C. sections 191–195 with original jurisdiction in the United States Courts of Appeals.

7 U.S.C. section 210—Provides for judicial review of the Secretary of Agriculture against stockyard violations of 7 U.S.C. sections 205–208 with original jurisdiction district courts of the United States and where the findings and orders of the Secretary are prima facie evidence of the facts.

7 U.S.C. section 292—Provides for judicial review of hearings of the Secretary of Agriculture against associations of agricultural products producers with original jurisdiction in the district courts of the United States and where the findings of the Secretary are prima facie evidence of the facts.

7 U.S.C. section 499g (b)—Provides for judicial enforcement of reparation orders under chapter 20A (Perishable Agricultural Commodities) of title 7 with original jurisdiction in the district courts of the United States and where the findings of the Secretary are prima facie evidence of the facts.

7 U.S.C. section 1115—Provides for judicial review of allotments made under chapter 33 of title 7 with original jurisdiction in the United States Courts of Appeal and where the findings of fact of the Secretary of Agriculture, if supported by substantial evidence, are conclusive unless clearly arbitrary or capricious.

7 U.S.C. section 1366—Provides for judicial review of market quotas under sections 1361–1367 of title 7 with original jurisdiction in the district courts of the United States and where the findings of fact by the review committee, if supported by the evidence, are conclusive.

7 U.S.C. section 2050—Provides for judicial review of a refusal to issue or renew, or suspension or revocation of a certificate of farm labor contractor registration with original jurisdiction in the district courts of the United States and where the findings of fact of the Secretary of Agriculture may not be set aside if supported by substantial evidence.

7 U.S.C. section 2149(b)—Provides for judicial review of cease and desist orders issued by the Secretary of Agriculture for violations under 7 U.S.C. section 2142 with original jurisdiction in the United States Courts of Appeal in accordance with 5 U.S.C. sections 701–706.

8 U.S.C. section 1105a—Provides for judicial review of deportation order in which the Attorney General's findings of fact are conclusive if supported by reasonable, substantial and probative evidence on the record as a whole.

10 U.S.C. ch. 47—Provides, inter alia, for court-martial jurisdiction.

12 U.S.C. section 1730(j)*—Provides for judicial review of cease and desist orders is-

sued under 12 U.S.C. section 1730 with original jurisdiction in the United States Courts of Appeal and proceeding as provided in chapter 7 of title 5.

12 U.S.C. section 1730a (k)—Provides for judicial review of orders of the Federal Savings and Loan Insurance Corporation with original jurisdiction in the United States Courts of Appeals proceedings as provided in chapter 7 of title 5.

12 U.S.C. section 1786(i)—Provides for judicial review of cease and desist orders issued under 12 U.S.C. section 1786 with original jurisdiction in the United States Courts of Appeals proceedings as provided in Chapter 7 of title 5.

12 U.S.C. section 1818(h)—Provides for judicial review of cease and desist orders issued under 12 U.S.C. section 1818 with original jurisdiction in the United States Courts of Appeals proceedings as provided in chapter 7 of title 5.

12 U.S.C. section 1848—Provides for judicial review of the orders of the Board of Governors of the Federal Reserve System with original jurisdiction in the United States Courts of Appeals and where the findings of fact by the Board are conclusive if supported by substantial evidence.

15 U.S.C. sections 15b, 16—Provides for statutes of limitation in antitrust actions.

15 U.S.C. section 21(c)—Provides for judicial review of cease and desist orders under 15 U.S.C. section 21 with original jurisdiction in the United States Courts of Appeals where the agency's findings of fact are conclusive if supported by substantial evidence.

15 U.S.C. section 45(c)—Provides for judicial review of cease and desist orders under 15 U.S.C. section 45 with original jurisdiction in the United States Courts of Appeals where the agency's findings of facts if supported by evidence is conclusive.

15 U.S.C. section 77i—Provides for judicial review of Securities Exchange Commission orders governing domestic securities under 15 U.S.C. section 77a *et seq.* with original jurisdiction in the United States Courts of Appeals where the findings of the Commission are conclusive if supported by evidence.

15 U.S.C. section 78y—Provides for judicial review of orders issued under chapter 2B of title 15 with original jurisdiction in the United States Courts of Appeals where the findings of fact by the Commission are conclusive if supported by substantial evidence.

15 U.S.C. section 79x—Provides for judicial review of orders issued under chapter 2C of title 15 with original jurisdiction in the United States Courts of Appeals where the findings of fact by the Commission are conclusive if supported by substantial evidence.

15 U.S.C. section 80a–42—Provides for judicial review of orders issued under subchapter I of chapter 2D of title 15 with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the Commission are conclusive if supported by substantial evidence.

15 U.S.C. section 80b–13—Provides for judicial review of orders issued under subchapter II of chapter 2D of title 15 with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the Commission are conclusive if supported by substantial evidence.

15 U.S.C. section 687e(f)—Provides for judicial review of orders issued under 15 U.S.C. section 687f with original jurisdiction in the United States Courts of Appeals proceeding as provided in chapter 7 of title 5.

15 U.S.C. section 717r—Provides for judicial review of orders issued under chapter 15B of title 15 with original jurisdiction in the United States Courts of Appeals and where findings of fact made by the Commission are conclusive when supported by substantial evidence.

15 U.S.C. section 1071—Provides for appeal to the United States Court of Customs and Patent Appeals in trademark cases.

15 U.S.C. section 1193(e)—Provides for judicial review of flammability standards and regulations with original jurisdiction in the United States Courts of Appeals proceedng as provided in chapter 7 of title 5.

15 U.S.C. section 1193(e)—Provides for judicial review of standards prescribed by regulation issued under 5 U.S.C. section 553 with original jurisdiction in the United States Courts of Appeals proceeding as provided in chapter 7 of title 5.

16 U.S.C. Sec. 8251—Provides for judicial review of Federal Power Commission orders under chapter 12 of title 16 with original jurisdiction in the United States Courts of Appeals where findings of the Commission are conclusive where supported by substantial evidence.

17 U.S.C. Sec. 115—Provides for a three year statute of limitations on criminal and civil actions under title 17 (Copyrights).

18 U.S.C. Sec. 401—Limits the contempt powers of the United States Courts to conduct stated in Sec. 401.

18 U.S.C. ch. 119—Limits conditions under which a warrant approving the interception of oral or wire communications may be intercepted.

20 U.S.C. Sec. 241k—Provides for judicial review for certain actions of the Commissioner of Education under 20 U.S.C. Sec. 241 with original jurisdiction in the United States Courts of Appeals where findings of the Commissioner are conclusive if supported by substantial evidence.

20 U.S.C. Sec. 351d(f)—Provides for judicial review of the Commissioner's action in terminating payments to the States under chapter 16 (Public Library Services and Construction) of title 20 with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the Commissioner are conclusive if supported by substantial evidence.

20 U.S.C. Sec. 721—Provide for judicial review of certain actions under chapter 21 (Higher Education Facilities) of title 20 with original jurisdiction in the United States Courts of Appeals where findings of fact made by the Commissioner are conclusive if supported by substantial evidence.

20 U.S.C. Sec. 827—Provides for judicial review of certain actions under chapter 24 (Grants for Educational Materials, Facilities and Services, and Strengthening of Educational Agencies) of title 20 with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the Commissioner are conclusive if supported by substantial evidence.

20 U.S.C. Sec. 869a—Provides for judicial review of certain actions taken under part A or B of subchapter III of chapter 24 of title 20 with original jurisdiction in the United States Courts of Appeals where the findings of fact of the Commission are conclusive if supported by substantial evidence.

20 U.S.C. Sec. 1008—Provides for judicial review of certain action taken on community service program grants, 20 U.S.C. Secs. 1001–1011 with original jurisdiction in the United States Court of Appeals where the findings of fact of the Commissioner are conclusive if supported by substantive evidence.

20 U.S.C. Sec. 1110c—Provides for judicial review of certain actions taken under 20 U.S.C. Secs. 1110a, 1110b with original jurisdiction in the United States Courts of Appeals where findings of fact made by the Commissioner are conclusive if supported by substantive evidence.

20 U.S.C. Sec. 1128—Provides for judicial review of certain actions taken under 20 U.S.C. Sec. 1127 (denial of state plans for financial assistance for the improvement of undergraduate instruction) with original jurisdiction in the United States Courts of Appeals where the findings of fact of the Commissioner are conclusive if supported by substantial evidence.

20 U.S.C. Sec. 1413(d)—Provides for judicial review of certain actions taken under 20 U.S.C. Sec. 1413(a) (state plans for assistance to states for education of handicapped children) with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the Commissioner are conclusive if supported by substantial evidence.

21 U.S.C. Sec. 346a(i)—Provides for judicial review of administrative agency action involving tolerances for pesticide chemicals in or on raw agricultural commodities under certain provisions of 21 U.S.C. Sec. 346a with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the Secretary of Health, Education, and Welfare are conclusive if supported by substantial evidence.

21 U.S.C. Sec. 348(g)—Provides for judicial review under 21 U.S.C. Sec. 348 (regulation of food additives) with original jurisdiction in the United States Courts of Appeals where the findings of the Secretary with respect to question of fact are sustained if based upon a fair evaluation of the entire record.

21 U.S.C. Sec. 355(h)—Provides for judicial review of the Secretary's refusing or withdrawing approval of an application under 21 U.S.C. Sec. 355 (new drugs) with original jurisdiction in the United States Courts of Appeals where the Secretary's findings of fact are conclusive if supported by substantial evidence.

21 U.S.C. Sec. 877—Provides for judical review of action taken under subchapter I of chapter 13 (Drug Abuse Prevention and Control) of title 21 with original jurisdiction in the United States Courts of Appeal where the findings of fact of the Attorney General are conclusive if supported by substantial evidence.

22 U.S.C. ch. 2—Provides for the jurisdiction of consular courts.

22 U.S.C. Sec. 1623—Provides for the settlement of claims under the Yugoslav Claims Agreement of 1948 by the Foreign Claims Settlement Commission of the United States.

27 U.S.C. Sec. 204(h)—Provides for judicial review of the Secretary of the Treasury's action in denying application for, suspending, revoking or annulling a permit under the Federal Alcohol Administration Act with original jurisdiction in the United States Courts of Appeals where the Secretary's findings of fact are conclusive if supported by substantial evidence.

28 U.S.C. Secs. 1331, 1332—Jurisdiction of the district courts of the United States in civil cases is limited to cases which involve $10,000 or more.

28 U.S.C. Sec. 1341—District courts of the United States have no jurisdiction to enjoin, suspend or restrain the assessment, levy or collection of any state tax where a state remedy exists.

28 U.S.C. ch. 91—Provides for the jurisdiction of the United States Court of Claims.

28 U.S.C. ch. 93—Provides for the jurisdiction of the United States Court of Customs and Patent Appeals.

28 U.S.C. ch. 95—Provides for the jurisdiction of the United States Customs Court.

28 U.S.C. ch. 155—Provides for the jurisdiction of three-judge courts empowered to enjoin the enforcement of unconstitutional state and federal statutes.

28 U.S.C. ch. 158—Provides for judical review of orders of federal agencies with original jurisdiction in the United States Courts of Appeals.

29 U.S.C. Sec. 160(e)—Provides for enforcement of orders under Sec. 160 by the National Labor Relations Board with original jurisdiction primarily in the United States Courts of Appeals where the findings of fact made by the Board are conclusive if supported by substantial evidence on the record considered as a whole.

29 U.S.C. Sec. 210—Provides for judicial review of wage orders in Puerto Rico and the Virgin Islands with original jurisdiction in the United States Courts of Appeals where

the findings of fact of the industry committee are conclusive if supported by substantial evidence.

29 U.S.C. Sec. 667(g)—Provides for judicial review of the Secretary of Labor's withdrawal of approval or rejection of a state plan under 29 U.S.C. Sec. 667 with original jurisdiction in the United States Courts of Appeals.

30 U.S.C. Sec. 731—Provides for judicial review of orders of the Federal Metal and Nonmetallic Mine Safety Board of Review under 30 U.S.C. Sec. 730 with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the Board are conclusive if supported by substantial evidence on the record considered as a whole.

30 U.S.C. Sec. 816—Provides for judicial review of orders under chapter 22 (Coal Mine Health and Safety) of title 30 with original jurisdiction in the United States Courts of Appeals where the findings of fact made by the agency are conclusive if supported by substantial evidence on the record considered as a whole.

47 Stat. 70 Sec. 4 (1932)—Provides that no United States Court has jurisdiction to grant injunctive relief against certain conduct in labor disputes.

56 Stat. 23, 33, (Sec. 204(d) (1942)—Provides that no court has jurisdiction to consider the validity of regulations or orders under the Emergency Price Control Act or to restrain or enjoin such orders except as granted by Sec. 204 of that Act.

79 Stat. 437, 445, Sec. 14(b) (1965)—Provides that no court other than the district court of the District of Columbia or a Court of Appeals reviewing certain determinations of Civil Service hearing officers has jurisdiction to hear broad-gauged attacks on the Voting Rights Act of 1965 or to restrain its enforcement.

81 Stat. 100, 104 (1967)—Provides that no judicial review is available from classification or processing of registrants under the Universal Military Training and Services Act.

84 Stat. 922, 935, Sec. 702 (1970)—Limits the jurisdiction of the United States Courts to hold certain evidence inadmissible.

CHARLES DOYLE,
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Mr. ERVIN. Mr. President, I should like to state further in this respect that the Library of Congress did not have very much time to make this study. I want to assert from my own study of Federal statutes that there are far more than the 77 statutes in which Congress has exercised its power under article III of the Constitution to define or limit the appellate jurisdiction of the Supreme Court and the jurisdiction of all courts inferior to the Supreme Court. Every Member of Congress has voted for some of the statutes. For example, Congress would have the power, under article III of the Constitution, to give Federal courts jurisdiction of every controversy arising under the Construction and the laws and treaties of the United States, and of every controversy between citizens of different States regardless of the value of the thing in dispute.

But this Congress has consistently placed limitations on the jurisdicton of Federal courts to entertain or try such actions, by placing certain monetary limitations on the value of the amount in dispute. At the present time, as a general rule, the Federal courts have no jurisdiction of any legal controversy unless the matter in dispute exceeds $10,000. So Congress says that a man who has a claim of less than $99,999.99 cannot have his case heard in the Federal courts because the Federal courts under act of Congress do not have the jurisdiction to try them.

Why was article III written in such fashion as to give Congress the power to prescribe the appellate jurisdiction of the Supreme Court and the jurisdiction of all courts inferior to the Supreme Court?

I think the answer to that is very plain. Those who drafted and ratified the Constitution had studied the heart-rending story of the struggle of man against arbitrary governmental power, for individual freedom and the right to self-government. They had found this truth inscribed, sometimes, in letters of blood on each page of that history, that no man and no set of men can be safely trusted with unlimited governmental power. So when they wrote the Constitution, they provided in it that all legislative power of the Federal Government should be vested in the Congress. But they knew that Congress would pass some laws which were foolish even though they might be constitutional and so they put a check on such action on the part of Congress. They provided that the President could veto an act of Congress and that that act would remain invalid unless two-thirds of each House of Congress should overrule the veto.

There are many other limitations on the powers of Congress in the Constitution to prevent tyranny, such as the provision that Congress shall pass no ex post facto law, and that Congress shall pass no bill of attainder. These were checks placed on Congress by the Constitution to prevent it from exceeding the bounds of the Constitution and not only to prevent it from exceeding the bounds of the Constitution but also to prevent it from acting in an unwise manner.

Now these men recognized that there had to be some checks placed on the power of the President. They recognized that the President, as head of the Nation, should have the right to appoint ambassadors, and should be Commander of the Armed Forces of the Nation, and should have the right to appoint Federal judges.

The Constitution, however, places checks on these powers of the President to keep him from acting unwisely or unconstitutionally. It provides that he cannot appoint a Federal judge or an ambassador without the advice and consent of Congress. They also recognized that the heads of state, in times past, in other countries, and even to some extent in the colonies, had made themselves virtual dictators over the people by exercising powers as commanders in chief of the militia. So while they gave the power to command the Armed Forces to the President, they took particular pains to check his exercise of that power and to prevent him from using that power to become a dictator by giving Congress the power of the purse and by stating that even Congress with all of its power of the purse could not make an appropriation for the armed services for more than an expressly limited period of time.

The men who drafted and ratified the Constitution of the United States knew that Federal judges are just like Presidents and Members of Congress; that is, they knew they were human beings. They knew they were subject to human weaknesses and they knew, as George Washington declared in his Farewell Address to the American people, that they were all subject to the disease of tyranny—which George Washington rightly diagnosed in his Farewell Address as the love of power and proneness to abuse it.

Now it is apparent that under the Constitution the Federal courts can restrain unconstitutional exercise of power by Congress and the unconstitutional exercise of power by the President. It is also plain from a study and observation of human nature that Federal judges who do not have the ability or willingness to restrain themselves and confine their decisions to the principles of the Constitution can also abuse their powers. They attempted to free them from all of the temptations which assail all of the rest of us who occupy or seek public office from all of economic pressures, political pressures, social pressures, and other pressures by declaring in effect that Federal judges should hold their offices for life and should receive a compensation for their services which cannot be diminished a single penny during their continuance in office.

This was done by the men who drafted and ratified the Constitution because they wanted to make all Supreme Court Justices and all Federal judges independent of everything on earth except the Constitution. These men who drafted this great document realized that the Supreme Court Justices and Federal judges hunger and thirst for power just like the occupants of other public office, and that on occasion they might succumb to the temptation to go beyond the bounds of their constitutional power and beyond the limits of the Constitution itself despite the fact that it was provided that they hold office for life and receive a compensation which could not be diminished during their continuance in such office.

Tyranny results from only one thing, and that is the insatiable thirst and hunger of some men in public office for more power than the Constitution and the laws give them. So the men who drafted and ratified the Constitution imposed checks upon Congress to prevent Congress from transgressing its constitutional powers; and imposed checks upon the President to keep him from transgressing his constitutional powers; but did not propose that Supreme Court Justices and Federal judges should be free of all checks which would keep them within the bounds of their constitutional power and prevent them from usurping and exercising powers they do not possess under the Constitution and the laws.

I assert that this is the explanation of why the men who drafted and ratified the Constitution worded the third article in such a way that Congress should have the power to regulate and even to withdraw the appellate jurisdiction of the Supreme Court and the jurisdiction of all courts inferior to the Supreme Court.

That was the only effective way by which the country could restrain Supreme Court Justices and Federal judges and keep them within the bounds of the authority of their offices.

Some people say that the impeachment power is provided. However, under the Constitution a judge cannot be impeached and removed from office unless he is convicted by the Senate of treason, bribery, or other high crime or misdemeanor.

The Constitution does not provide for the impeachment of a Federal judge or a Supreme Court Justice merely because he hungers and thirsts for more power than his office gives him and strips the Constitution and perverts the Constitution and twists the provisions of the Constitution awry to obtain such power.

As I have said before on the floor of the Senate, all of these tyrannies which the Federal courts have practiced upon little children and by which they have converted little children, both black and white, as well as yellow and red and brown, into the helpless subjects of a judicial oligarchy is allegedly based upon the equal protection clause of the 14th amendment which says that no State shall deny to any person within its jurisdiction the equal protection of the laws.

Mr. President, during recent years—and I say this with reluctance and with sadness—the Supreme Court has piled a lot of intellectual rubbish on the equal protection clause. As a result some Federal judges seem incapable of seeing the equal protection clause because of the intellectual rubbish which is piled upon it.

The equal protection clause is perhaps the simplest provision to be found in the Constitution in its objectives and in its effect and in its application when properly interpreted.

Those who drafted this clause really believed that a State should not have one law for one man and another law for another man when those men were similarly situated, or one law for one group of people and another law for another group of people when the groups were similarly situated. So, they put in the Constitution the 14th amendment, the equal protection clause. All that the equal protection clause does is this, it prohibits any State from treating in a different manner people similarly situated.

Mr. President, all of the little children of school age residing in the same geographic district or the same geographic zone are similarly situated. They have a right to demand that they be treated alike. If they have a neighborhood school, every child in the zone or the district has the same right as every other child to attend that neighborhood school.

When a U.S. court requires a school board to divide the children in a school attendance zone or district into two groups and to permit one group to attend the neighborhood school and to deny the other group the privilege of attending the neighborhood school, the U.S. court requires that school board to violate the equal protection clause because it requires the school board as the State agency to treat children similarly situated in a different manner.

Now, in every busing case the Federal court requires the school board to divide the children in the attendance zone or district into two classes, and requires the school board to let one class attend the neighborhood school and denies to the other class the right to attend the neighborhood school.

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

Mr. ERVIN. I am happy to yield to the distinguished Senator from Georgia.

Mr. TALMADGE. Is it not true that the Brown decision in 1954 held that no State could classify children by color to attend public schools?

Mr. ERVIN. Absolutely. That was the holding of the Brown case. I might state that in every subsequent decision the Supreme Court has held that that is the law and the proper interpretation of the equal protection clause, and that by reason thereof no child can be excluded from any school on the basis of the child's race.

Mr. TALMADGE. Mr. President, will the Senator yield further?

Mr. ERVIN. I yield.

Mr. TALMADGE. Is it not true that since that time, in less than 18 years, our Federal courts have gone full circuit, in that they are now classifying children by race and by color for assignment to public schools?

Mr. ERVIN. Yes. I am glad the Senator has called that to the attention of the Senate.

When the Federal court orders a school board to deny children within a geographical attendance zone or district the right to attend the neighborhood school it does so in order to compel the school board to transport those children elsewhere, either to decrease the number of children of their race in the neighborhood school or to increase the number of children of their race in schools elsewhere.

Oceans and oceans and oceans of judicial sophistry cannot wash out the plain fact that that is denying the children who are bused solely on the basis of their race, their rights under the equal protection clause.

Mr. TALMADGE. Is it not true that various Federal courts, in their zeal to achieve some sort of mythical racial balance that they themselves feel is desirable social conduct in this country, have entered orders in many areas of our country, particularly in many of the southern States, ordering some arbitrary number of students to be sent to specific schools, a certain percentage of black and a certain percentage of white, and then ordering them to be bused to whatever districts may be necessary to achieve that racial balance?

Mr. ERVIN. The Senator is correct. The Federal courts are doing that notwithstanding the fact that the Civil Rights Act of 1964 expressly defined what segregation is and is not, and it expressly forbade any Federal court to do anything of that character.

Mr. TALMADGE. In addition to that, it is expressly in violation of the holding that the Supreme Court used to support in the Brown decision in the first place.

Mr. ERVIN. In effect, what it comes down to is an absurd conclusion; that in order to enforce the equal protection clause of the 14th amendment, Federal courts can compel States to violate the equal protection clause of the 14th amendment.

Mr. TALMADGE. The Senator is making a very significant address. I am sorry we do not have more Members of the Senate in attendance to listen to the wisdom and the commonsense the Senator from North Carolina is presenting.

The people of this country—North, South, East, and West—are up in arms today about sending their children great distances to schools far removed from their homes to achieve some sort of racial balance. I hope this Congress will have the courage to act with wisdom and justice and put an end to it, because if it was wrong to classify children by race in 1954 for assignment to public schools it is equally wrong to do so in 1972. I hope Congress will exercise its power and wisdom and put an end to this foolish business of getting children up before daybreak, letting them stand in the rain, sleet, and snow to go to school, where one member of the family may go north and another member of the family may go east and still another go west, to be separated until after dark. I think it would be wise if some of these judges could be bused about instead of some of our children.

Mr. ERVIN. I would say to the Senator that some of these judges take particular pains to see that their children shall not be subjected to the judicial tyranny which they impose upon the children of other people, by sending their children to private schools and thus add the vice of judicial hypocrisy to the sin of judicial tyranny.

I wish to make another observation In 1964 I was a Member of the Senate. The Civil Rights Act of 1964 was passed that year over my protest. Those who favored the Civil Rights Act of 1964 and, in particular, the provisions of it relating to desegregation of schools, stated on the floor of the Senate time and time again that that act was being passed to enforce the decision in the Brown case; that is, that no child should be excluded from any school on account of his race. I heard that statement made with my own ears on a number of occasions by the manager of the bill, Senator HUBERT HORATIO HUMPHREY. The statement is in the RECORD to that effect. The distinguished Senator from West Virginia, the present assistant majority leader, stood on the floor of the Senate within my hearing and asked him if under this bill they could bus little children to and fro to integrate the schools, and the Senator from Minnesota stated that positively, in answer to the question, that could not be done.

Before the Swann case the Supreme Court handed down its decision in Green against New Kent County, a rural Virginia county. This county had only two schools; one had been a school for white children and the other had been a school

for black children, during the days when segregation was permitted by law and was constitutional, as then interpreted by the Supreme Court.

After the decision in the Brown case the school board of New Kent County said that every child in New Kent County could go to either one of those schools that he wished to attend. They treated them all alike, gave them all the same right, regardless of their race. Because the white children elected to remain where they had been before and most of the black children elected to remain at their school, the school they attended before, we got a most astounding decision from the Supreme Court which, in its ultimate analysis, holds this: That where little children exercise their freedom of choice, exercise their liberty, by mixing themselves in schools, in racial proportions pleasing to Supreme Court Justices, little children are allowed to be free and to enjoy liberty. But when the little children, in the exercise of their freedom and liberty, attempt to go to the schools they wish to go to and exercise their freedom and liberty in a way pleasing to themselves, they have no liberty.

I deny that the Constitution of my country makes the freedom of little children hang upon such an arbitrary and tenuous legal thread as that. I deny that the Supreme Court Justices have the right to impose such tyranny on those little children.

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

Mr. ERVIN. Mr. President, I ask for 1 more second.

I withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. BROOKE. Mr. President, the provisions contained in the measure before us, S. 659, the "Education Amendments of 1971," were all considered by this body in the previous session of Congress.

The bill contains the omnibus education provisions, passed without opposition on August 6. The new programs and directions for many areas of education make S. 659 truly a landmark measure in the history of Federal aid to education. The emergency school aid provisions contained in S. 659 are identical to S. 1557, which passed by a vote of 74 to 8 last April 26 after considerable debate over the transportation of pupils as a means to achieve voluntary or court-ordered desegregation.

While the provisions of the pending measure remain unchanged from last session, there has been a perceptible change in the mood of the Nation as it concerns busing. Distortions and expansive rhetoric have created a state of near-hysteria in many quarters. Facts have been lost amid fears.

Regrettably this historic education measure has become a focal point of attention in the alleged busing versus anti-busing controversy. However, the measure before us does not require any school district to bus a single student or desegregate a single school. The emergency school aid provisions merely offer assistance to those school districts desegregating by choice or by court order.

Mr. President, busing within the context of the pending measure must be brought into proper perspective. The issue is not, as is often stated, "busing to achieve racial balance." Rather it is merely a question of whether busing shall remain as one of several constitutional tools available for overcoming a constitutional violation. At present it is the law of the land that busing is a legitimate mechanism for eliminating de jure desegregation in public school systems. Those who oppose busing would have us reverse or dilute that law.

It would serve us well to focus on existing law by reviewing the Supreme Court decisions relating to school desegregation and consequently to school busing.

In 1954, the Supreme Court unanimously ruled that State-imposed segregation in the public schools violated the equal protection clause of the 14th amendment. In Brown against Topeka Board of Education the Court reversed the longstanding Plessy against Ferguson decision by ruling that "separate but equal facilities" are inherently unequal. The thrust of the Brown decision was that black children were being denied their rights under law since they were receiving a decidedly and inherently inferior education.

This dictum was reinforced a year later in 1955. In a decision, popularly referred to as Brown II, the Court ruled that admission to public schools should be guaranteed, as soon as practicable, on "a nondiscriminatory basis." The Court also recognized that this would require the "elimination of a variety of obstacles."

The interpretation of the phrase "nondiscriminatory basis," and questions of which obstacles should be removed to insure admission to public schools on this basis, were the subject of several minor Supreme Court decisions over a 12-year period.

In 1968 the Court made it clear, again in a unanimous decision, that a local "freedom of choice" plan was inadequate to the task of meeting the mandate of Brown II. Justice Brennan, in expressing the opinion of the Court, said:

> Brown II was a call for dismantling of well-intrenched dual systems tempered by the awareness that complex and multi-faceted problems would arise and would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems, were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

In weighing the steps which might be necessary, Justice Brennan added:

> Freedom of choice is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end.

In April of last year, the Supreme Court unanimously affirmed that "busing" was among the "other means" which if required, must be employed to provide equal educational opportunity to all on a "nondiscriminatory basis."

Chief Justice Burger wrote the opinion for the Court in Swann against Charlotte-Meckleburg Board of Education:

> The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation is contrary to the equal protection guarantees of the Constitution and it was this maxim that was the basis for holding in *Green* that school authorities are clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

The objective of the Chief Justice and his colleagues was to reaffirm unanimously the dictum, first enunciated in Brown that all children must be afforded an equal educational opportunity.

Ideally, neighborhood schools would provide such education on an equitable basis. But the circumstances in this country are not ideal. Economic opportunities and access to housing have not been equal, and neighborhood patterns have developed along racial lines.

All too frequently these patterns have been institutionalized in the public schools by official acts. And it is in such cases, where schools have been segregated by official intent, that the Swann decision applies.

The Supreme Court has made it clear that it is a school system's affirmative duty to end segregation and provide quality education for all on an equal basis. When a system fails to meet its constitutional obligation it becomes the affirmative duty of the Court to impose its remedial power.

Whether it integrates voluntarily or under Court order, each school system requires different remedies. There is no one, set formula for insuring equality of educational opportunity in all districts. The answers are not always easy. Solutions, Justice Burger suggests, "may be administratively awkward, inconvenient, and even bizarre in some situations, and may impose burdens on some. But such problems cannot be allowed to impede the clear constitutional imperative to end segregation in our school systems."

In the Swann case, the Court ruled that busing was an essential remedy to overcome racial imbalance in one community. For those residents who feared long bus rides for their children, the Court pointed out that under the district court's busing plans there would be less busing than previously existed in the dual system.

This points up an important fact: Busing, which now serves as a means to desegregate, has long served as a means to segregate. For generations, white students have been bused past nearby black schools to distant white schools. In many communities this pattern continues today.

Busing can serve several ends. But, most important, it has long been recognized as an essential means of providing quality education. Forty percent of the Nation's public school pupils ride school buses to school, and there is no evidence to suggest that these 18 million youngsters suffer any ill effects from their daily rides. Among educators, school consolidation has become synonymous with improving the quality of ed-

ucation. In most cases, busing is indispensable to consolidation.

Is it not paradoxical that, though generally accepted as an instrument for school consolidation, busing is widely rejected as a method for school desegregation?

This schizophrenic reaction to busing seems to reflect the undue fears of many Americans that busing will somehow lead to a deterioration of education. Such a view is diametrically opposed to the intent of the Constitution as interpreted by the courts, and to the emergency school aid provisions contained in the pending measure.

The intent of the Constitution, as unanimously interpreted by the Supreme Court over the past 18 years, is equality of education for all. The intent of the emergency school aid provisions is to provide $1.5 billion in compensatory assistance toward the goal of insuring that equality and quality of education are synonymous.

Neither the Constitution nor any provision of this bill suggests that busing is the necessary means to achieve desegregation in every instance. Such a suggestion would clearly contradict experience and reason.

Clearly it is preferable for students to attend schools as close to home as possible. A school system desegregating voluntarily or under court order should seek remedies that provide for pupil assignments close to home. By remedial restructuring of attendance zones, "pairing" or "grouping" of schools, such a goal is often attainable. Yet each school district poses different problems, and in some the segregated housing patterns clearly defy a "walk to school" remedy for segregation.

In such cases, where other remedies will not work, busing must be used to unify a dual school system and equalize educational opportunities.

When busing becomes an imperative remedy due to the absence of alternative approaches, caution is in order to insure that neither the health nor the education of pupils is adversely affected by the busing process.

The Chief Justice addressed the proper limits of busing in Swann when he wrote:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process.

In other words, busing is, and must be, considered a limited tool in the desegregation process.

Though limited, however, it remains an essential remedy that must be retained for school districts desegregating voluntarily or under court order. The law of the land outlawing school segregation will stand. We must not, therefore, limit the remedies available to a school district to be in compliance with the law.

To limit the desegregation mechanisms available to a school district is akin to asking a physician to heal a patient while taking away one of the medicines necessary for the cure.

We have long envisioned the healing of the persistent and painful patterns of segregation. We have long placed our initial hopes in the desegregation of our schools and the opportunity for a quality education for all. Yet we find, in the desegregation of our schools, that we are treating the symptoms while a cure for segregation eludes us.

Segregation will be ended when housing and economic opportunities become truly equal and we move to an integrated society. When we reach the goal of integration in our neighborhoods, we shall be able under the law to send our children to the neighborhood schools we all prefer. The moving van, not the school bus, is the proper vehicle for true integration.

While we should be ever mindful of the long-term goal, we cannot escape the narrower context of the issue before us: Shall we impede school districts in their efforts to remedy a constitutional violation by restricting the constitutional options available to the districts? Knowing the law of the land, do we then handicap those who seek to comply with it?

The question can be put another way. The Governor of Florida, Reubin Askew, recently raised it most eloquently and succinctly:

> We're talking about more than the problem of transportation. We're talking about a problem of justice. Perhaps the time has come for all of us to decide if we're *really* committed to desegregating our school systems and providing an equal opportunity for all.

The time has come for us in the Senate. The answer must be: We are.

Mr. MONDALE. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time therefor be drawn equally from the two sides.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ALLEN. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

AMENDMENT NO. 922

The assistant legislative clerk read as follows:

> Beginning on page 753, line 24, strike out all to and including line 2 on page 754, and insert in lieu thereof the following:
>
> SECTION 901. No provision of this or any other Act shall be construed to require the assignment or transportation of students or teachers for any purpose.

Mr. ALLEN. Mr. President, I yield myself such time as I may require.

I was amazed upon examining this "Sears, Roebuck catalog" to find that it contains the Senate bill, S. 659, the House amendment to that bill, and then the Senate committee amendments to the House amendments—all of those bills and amendments are contained in this tremendous document.

I was further amazed, Mr. President, to read the very last section of the committee amendments, title 9, section 901, which reads as follows:

> No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

Mr. President, that sounds mighty, mighty good. They are not going to allow any provision of this act to be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance. The average observer would feel that this provision would outlaw the assignment or transportation of students and teachers in order to create or establish a balance, because one would think offhand that "overcome racial imbalance" would be synonymous with "create or establish a racial balance."

Not so, Mr. President. The words "racial imbalance' have been construed by HEW and by the Federal courts to mean de facto segregation. So, Mr. President, we have the amazing factor here of the committee coming forth with this section 901, which is not new wine in old bottles, but old wine in old bottles. This is the very same provision that we have been operating under since 1964. What this provision protects is not what is called de jure segregation, but it protects de facto segregation, and de facto segregation alone.

Mr. President, while the country is clamoring for antibusing legislation in every section of the country, the Senate committee—I am glad to see that some of the members are present in the chamber; possibly they will give us an answer as to why this was done, why they are serving us in the Senate this old wine in old bottles, this protection for de facto segregation alone.

I am sure that the country has been amazed to read the statistics coming from the Department of Health, Education, and Welfare to the effect that there is more desegregation of the public schools in the South than there is in the North. I was interested to the point of inserting in the CONGRESSIONAL RECORD this morning an account of the busing situation in the city of New York. The headline of the article very smugly stated, "Busing Is No Problem Here," here being New York.

No, Mr. President, it is not a problem in New York, because they do not have any busing, or so the article stated, and it said that the school authorities did not have any plans for any busing. They said they had a voluntary program under which some 3,000 students were bused into the innercity, under a plan by which students or their parents could apply for admission to a school of their choice to fill a vacancy in that school.

I thought when I read that, Mr. President, how different that is from Alabama and the South, where literally hundreds of young children are transported by bus from one section of the city to another section of the city, and schools are closed. In the State of Alabama, more than $100 million worth of school buildings have been closed by orders of the Federal courts, and they lift those chil-

dren out of their home communities and into distant communities, with strange schools, strange playmates, strange teachers, and strange surroundings, and crowd them into already overcrowded schools, whereas in New York, Mr. President, they apply for a vacancy that might exist in another district.

So, Mr. President, section 901, which the amendment I have submitted would seek to strike out and amend, provides that de facto desegregation, the segregation that is supposed to exist in areas outside the South, is going to continue to be protected.

Oh, no; we cannot have any transportation, any assignment of students, in order to overcome racial imbalance. We cannot do that. That would be knocking out de facto segregation. That would be knocking out Northern style segregation, which the statistics show is increasing rather than decreasing. So why should they have a rule saying that there should be no transportation, no assignment of students or teachers, to overcome racial imbalance? Why not have the same prohibition as to both types of segregation? Why not say that there should be no transportation of students or teachers, no assignment of teachers or students, to overcome segregation where, as, and if it exists?

So the amendment that the junior Senator from Alabama has offered would merely strike out the words "in order to overcome racial imbalance" and insert the words "for any purpose." That would be in line with the demand of the majority of the people of this Nation.

It is said that a segregated education, education obtained in a segregated school, is an inferior type of education to one obtained in an integrated school. I question that premise. I question whether that is so. In defense of the black citizens of my State, I would say that that is not so. It is not necessary to have integration of bodies in order to obtain a good education. What we need is a better education for all, better teaching staffs, better school facilities, for all our students, and not lift them up by the hundreds and the thousands from their home communities, that is, in the South, and take them into strange communities, in strange schools, with strange playmates and strange teachers.

Mr. President, this is the language with which we have been trying to cope for 7 years, but we get the cold shoulder. We are told, yes, the law says there cannot be any busing in order to overcome racial imbalance, but that is talking about de facto segregation.

Mr. President, if education in an integrated public school is a better education than one in a segregated school, I am wondering why the State of New York and many other States outside the South, where segregation is increasing in public school systems, do not move rapidly to end this segregation, to provide integrated schools, in order that all their citizens can obtain the benefits of an integrated school education.

The amendment turned out by the Senate committee on this subject is a cynical approach. How cynical can one get? When the public is demanding an end to busing for the purpose of creating a racial balance, they have come out with a section saying that there shall be no busing as regards defacto segregation. In effect, there shall be no busing in areas outside the South.

Mr. President, I was somewhat taken aback when I read news accounts crediting the distinguished Senator from New York (Mr. JAVITS) with stating that he opposed—and in order to be absolutely accurate, I am going to limit what I understand his opposition to be on the face of it—to a constitutional amendment to forbid busing because, he said, that would nullify the results of the Civil War, when the Nation lost oceans of blood and mountains of treasure.

It occurs to the junior Senator from Alabama that those among us who seek to preserve the device of busing in the South, while forbidding it in the North, want to see busing continue in the South, but they do not want to see any desegregation in the North, and the records show that, because segregation is increasing in many areas outside the South.

Mr. President, why should the bloody flag of the War Between the States continue to be waved in this body? That is no argument. Look at what the condition is in the North after 106 years. The black citizens there are getting an inferior education, because they are in segregated schools. And they come out with a provision saying that there shall be no busing as regards northern-type segregation. Where is the fairness of that?

What is wrong with the Stennis amendment, which provided that desegregation standards and criteria should be the same nationwide? We were trying to truly make of this country and its various sections one nation, with the same rule as to public schools and the desegregation of public schools, applied equally throughout the country. Was that amendment adopted? It was finally adopted, after the distinguished Senator from Pennsylvania (Mr. SCOTT) put in an amendment saying, "Yes, we will have unanimity." We will have unanimity as to all de facto segregation. Everything involved in de facto segregation would be enforced the same throughout the country and all regulations and criteria and standards affecting de jure segregation, which is said to exist in the South, would have a uniform rule as to that, but we would not agree to a uniform rule throughout the country. No, we are going to have a little rule up in the North that protects segregation but down in the South we are going to permit busing, we are going to have uniform busing down there. And that is what it is. It is uniform throughout the South. But we come up with section 901 that continues to protect the segregation that exists in the North. No protection for the South, no protection against busing. We will have to continue to put up with that. But the committee says, "Let us keep on protecting segregation in the North."

Mr. President, the purpose of this amendment is merely to say that under this act, or any other act, they shall not be construed to require the assignment or the transportation of students or teachers for any purpose. They will give protection to all. Mr. President, do you think that is going to be accepted? It makes too much sense to be accepted.

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

The PRESIDING OFFICER (Mr. BROCK). The Senator has used 18 minutes. Forty-two minutes remain to him.

Mr. ALLEN. I thank the Presiding Officer. Mr. President, I reserve the remainder of my time.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 1746) to further promote equal employment opportunities for American workers; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. DENT, Mr. HAWKINS, Mrs. MINK, Mr. BURTON, Mr. CLAY, Mr. GAYDOS, Mr. WILLIAM D. FORD, Mr. BIAGGI, Mr. MAZZOLI, Mr. PUCINSKI, Mr. BRADEMAS, Mr. QUIE, Mr. ERLENBORN, Mr. BELL, Mr. ESCH, Mr. LANDGREBE, Mr. HANSEN of Idaho, Mr. STEIGER of Wisconsin, and Mr. KEMP were appointed managers on the part of the House at the conference.

ORDER FOR ADJOURNMENT

The PRESIDING OFFICER. Who yields time?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate completes its business tonight, it adjourn until 9:45 tomorrow morning.

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

(Subsequently, the above order was changed to provide for the Senate to convene at 9:15 a.m. tomorrow.)

ORDER FOR RECOGNITION OF SENATOR STENNIS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, immediately upon the giving of the prayer, the reading of the Journal, and the recognition of the two leaders under the standing order, the distinguished Senator from Mississippi (Mr. STENNIS) be recognized for not to exceed 15 minutes.

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

EDUCATION AMENDMENTS OF 1972

The Senate continued with the consideration of the House amendments 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.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ALLEN. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 1 minute.

Mr. ALLEN. Mr. President, I modify my amendment, and I have a memo in my hand which I send to the desk, to strike out all after the word "teachers" and add the words "for the purpose of changing the racial composition of any school."

In other words, that is added instead of "for any purpose," but it does change the words "racial imbalance," which means any de facto segregation, to the words "for the purpose of changing the racial composition of any school" which would cover both kinds of segregation.

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

Mr. ALLEN. I yield.

Mr. MANSFIELD. Would the Senator from Alabama allow the clerk to read the amendment as proposed to be changed?

Mr. ALLEN. Yes. On my time.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment as follows:

On page 753, strike out line 24 over to and including line 2, on page 754, and insert in lieu thereof the following:

Section 901. No provision of this or any other Act shall be construed to require the assignment or transportation of students or teachers for the purpose of changing the racial composition of any school.

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

Mr. PELL. Mr. President, the committee recommends adoption of title IX in order to recognize and accept the desire and wishes of the country that there should be some limitation to the use of busing.

"Busing" has become really a red letter word. What we sought to do was to make sure that busing would be not used in a forced situation. We would rather that, if it is used, it be used at the discretion of local school boards.

We realized that it was a compromise move that may or may not have achieved its purpose. It is the middle of the road toward which we so often look. However, I think we realized in the committee and as individuals that the people throughout our country are opposed to the concept of busing in a good many cases and is particularly opposed to busing for the sake of busing.

Sometimes I wonder, too, whether the Congress has not reflected those worries even more vigorously than the country as a whole expresses it. Very often, I believe that Congress is a year or two behind the country and I am wondering whether this is not the case this time.

I do not know, but I do believe that the bill as put forward and the compromise that it seeks to achieve does reach a moderate, middle ground that we hope will be satisfactory.

I know my personal view is that busing for the sake of busing is not correct. Busing, unless it achieves a degree of educational improvement, is not correct. Obviously the busing of children from a majority group into a center city where they find themselves very much in the minority would not be beneficial to them. Nor would it be beneficial to the children already in that school. On the other hand, only busing children from the inner city into suburbia would not be correct.

Busing is not a tool that should be used to extreme, but in modernation. It is one means of achieving a degree of the integrated society which we seek. Of course, we seek to be reasonable men. What one man might consider moderate, another man would consider extreme.

There is more acceptance of integration in the schools in the South than there is in the North. We have a lot to learn in the North.

There may be some flaws in the bill. However, in this case as the manager of the bill, having considered many of the elements that the Senator from Alabama has advanced, I would feel compelled to oppose his amendment.

Mr. President, I yield as much time as he desires to the Senator from New York.

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

Mr. JAVITS. Mr. President, I join with the Senator from Rhode Island (Mr. PELL) in opposing the amendment. I might say that I think it is rather dreadful that upon this very major education bill we have gotten into the struggle over busing. However, whether dreadful or not, there it is, and we have to deal with it. I think in fairness to the committee, it should be pointed out that the very section that is sought to be amended by the amendment of the Senator from Alabama represents an effort by the committee simply to carry on what has been carried on in other legislation, including appropriation bills on this subject. Rather than to rock the boat now in terms of the busing proposition, the committee simply carried over the section 901 which was the catechism we adopted before in respect of education appropriation bills.

Mr. President, the provision which the Senator from Alabama would seek to substitute for the part he would strike may or may not actually do what I believe he wants to do, because it relates to education acts generally and the requirement for transportation or the assignment of children for transportation in education acts generally really is not relevant to the provisions of the 14th amendment. That is the basis upon which the Court decided the Brown case, and it is the basis upon which the Court classically decided the cases in this field.

So, even if we extend this particular provision to any other act—to wit, any other provision of law—it still does not reach the main issue which is reached in my judgment by the basket of amendments proposed by the Senator from North Carolina which he subsequently withdrew.

Mr. President, my own judgment on the busing issue is that I have no fear of it whatever. I state unequivocally, as I have stated before—that, I believe that busing is an essential, temporary tool to be used in respect of raising the level of the education of our children by taking them out of a segregated environment which debases that level.

That was the basis for the decision of the Supreme Court in 1954. It has been the gravemen of the decisions since, and in that regard, the findings of the famous Coleman report held that we make a material, radical change in the level of the education by putting children, regardless of their color, in a desegregated environment and maintaining them there. Both by the findings of the Select Committee on Equal Educational Opportunity, of which I am a member and which the Senator from Minnesota (Mr. MONDALE) heads so ably, and in accordance with the memorable speech he made here the other day, we lay out exactly what that committee has done.

We understand the problems of people who do not want children transported. We are talking about the parents of children. We are talking about parents with all of the built-in prejudices as well as the legitimate concerns, that all parents have, including the parents of black children.

The Court has made it clear in the Swann case, and the Court has had a very excellent way of working out of these situations in which they take account of the main complaints, that the health of the children should not be impaired and that there should not be excessive busing of children of tender age.

I place great emphasis upon that great phrase in the Swann case which says that we cannot impinge upon the educational process of the children. I believe that refers to not only the child who is being transported, but it also refers to the children in the school to which that child is being transported.

The argument that the process of desegregation is a tool makes a lot of sense to me.

The Supreme Court decisions show that the courts are refining the doctrine so as to meet the practicalities of the situation. If we need to do anything, we need to legislate carefully with a scalpel and not with a cutless. I think the amendment of the Senator from Alabama proposes to cut off the head of transportation.

If it does that—and I say that I do not know whether the language does that or not, but nevertheless that seems to be the thrust of the purpose there—I join with the Senator from Rhode Island (Mr. PELL), as the ranking member of the Committee on the Minority in opposing the amendment.

I believe it is too broad, sweeping, and inappropriate to achieve the result which we all want, which is decent education for all children, but without impinging upon the education of any. That is what we are all really after, means to bring about excellence in education, and that is the central point which the Senator from Minnesota (Mr. MONDALE) brought out, which my own experience in the committee has brought out, and which the experts have brought out.

The central question, no matter how many billions of dollars more are piled into compensatory education, it simply cannot, even if the Constitution is laid

aside, equal the decisive result which is obtained from taking children out of a segregated situation which is so conducive to not learning, and putting them into a desegregated situation where the whole atmosphere is conducive to improved education for children of all races.

Finally, all of us should want to encourage this process. It will enrich the country; it will raise the economic and social level of all of our people, including depressed peoples; and it will lend stability, as well as justice to the country.

Again, I refer to the fine speech made by the Senator from Minnesota (Mr. MONDALE). The Senator from Rhode Island (Mr. PELL) and I, as well as others, have said many times more than one-half of the children are being bused now. In my State in New York we have had established for years central school districts to take the place of the little red schoolhouse that, notwithstanding the sentiment attached to it, did not bring the most children up to the parity required by good citizenship in the United States, although once in a while an Abraham Lincoln came along.

Mr. President, for all those reasons I join the Senator from Rhode Island in opposing the amendment.

Mr. President, I also at this time ask unanimous consent that a pertinent column by Tom Wicker appearing in yesterday's New York Times be printed in the RECORD:

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

THE FIFTH OPTION: IN THE NATION

(By Tom Wicker)

High officials in the White House have let it be known that upon his return from China President Nixon will be presented four "options" from which to choose a means of halting or slowing court-orderer busing for purposes of school desegregation. Apparently, there is to be no "option" suggesting to Mr. Nixon that perhaps the President's role ought to be, instead, to restore some perspective situation.

The four options, as described to Robert B. Semple Jr. of this newspaper, are as follows:

1. A Presidential speech or statement summarizing his oft-stated opposition to busing but also raising broader educational issues.

2. More Justice Department intervention against busing in school desegregation cases.

3. Legislation restricting the remedies that courts could impose to overcome segregation.

4. A Constitutional amendment banning busing.

But surely someone around the President—perhaps his able H.E.W. Secretary, Elliot Richardson, who apparently opposes a Constitutional amendment—could at least as devil's advocate present him a fifth option that would go something like this:

"A speech or a series of speeches by the President expressing the view that while he personally favors other means of desegregating schools and considers busing in some ways harmful, he views segregated schools as even worse and realizes that at present there is no feasible alternative to some busing for purposes of racial desegregation; that the evidence is overwhelming that the 'quality education' he seeks cannot be achieved without substantial school desegregation; that therefore there will have to be some busing until other means of desegregation make it unnecessary."

Put more bluntly, this option would ask Mr. Nixon to put aside, without abandoning, his personal views, and to assert powerful Presidential leadership that would lay the real alternatives before the people. Governor Reubin Askew of Florida, for instance, has said to his constituency what Mr. Nixon might well say to the nation.

No one, Mr. Askew reminded a news conference last week, "liked the inconvenience and the hardship that accompanied busing . . . I don't like it, the people don't like it and the courts don't like it. The question is, however, how do you address yourselves to achieving an end, and the end is to insure an equal opportunity for the school children of this state regardless of race, creed, color or place of residence.

"I say that somewhere along the line we've got to break this cycle . . . by which many people, particularly black people in this country, are not having a chance at an adequate education so that it could help them . . . to improve themselves economically and in turn improve the whole economy of our entire country.

"At this time busing is an artificial and inadequate instrument of change and I think it should only be used as a temporary measure to try to put us on the road to doing what we should do and that is to provide this equal opportunity. And I haven't seen to my satisfaction any other way that we could accomplish this until such time as our housing patterns change and all of our schools are upgraded so that busing then will become unnecessary."

Mr. Nixon himself has pointed out that those who have studied the matter "know that desegregation is vital to quality education." He knows that big investments in "compensatory education," on the other hand, have produced few encouraging results. He must know as well as anyone some of the statistics Senator Walter Mondale of Minnesota cited in a notable speech last week—that twenty million school children ride buses to school in America every week, and that 65 per cent of the nation's school children ride buses to school for reasons that have nothing to do with desegregation.

And if he does not know it, Mr. Nixon could easily find out that only in rare instances have the courts ordered anything like unreasonable busing, and that virtually every busing plan has been aimed at overcoming state-sponsored segregation—not at establishing some social planner's arbitrary racial balance. Nor would it be hard for him to learn that busing programs, to a great extent, enabled Senator Mondale to say that "integrated education—sensitively conducted and with community support—has been tried, and 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."

That is why the fifth option should go before Mr. Nixon with the rest. There may be no quick political profit in it, but the vision and the courage that have taken Mr. Nixon to China might yet cause him to find the right course here at home.

Mr. ALLEN. Mr. President, I yield myself 6 minutes.

I was interested in the different approaches taken by the distinguished Senator from Rhode Island and the distinguished Senator from New York with respect to this amendment. The Senator from Rhode Island said there is a great hue and cry about busing in this country and this is the effort of the committee to do something about it. The Senator from New York, on the other hand, said this measure carries forward the law which has existed for many years. Now, which of those versions is correct?

It is quite obvious this has been the law for a number of years. It was in the Whitten amendments before they were emasculated in this very Chamber. What has not been explained by either of the speakers recommending the committee amendment is why did the committee come forward, as the Senator from Alabama said, seeking to serve the Senate old wine in old bottles to meet this situation, and offer it only as protection against de facto segregation, segregation of the type that is said to exist in the North.

If it is so good for the North to have this protection, if it is so good and necessary that the segregation in the North be protected by forbidding busing to break down that segregation, why in the world should not the same prohibition against busing be allowed in the South? That is all the amendment of the junior Senator from Alabama seeks to do. It would provide something new, I will say to the distinguished Senator from Rhode Island. It would provide something new because it would prevent busing of little children in the South in order to create a racial balance, whereas the committee serves up a provision that does not change the law as it exists now, but it does harbor and protect segregation in the North.

So, Mr. President, all this would seek to do is to provide the same rule providing busing for areas outside of the North. Why should not the same rule apply? If the committee is going to forbid busing in areas outside the South, why should not the Senate apply the same provision to the entire country? That is all my amendment would do. It would give the public school child in the South the same protection.

The Senator from New York renewed his argument that only by breaking down segregation—and that should be done in the South by busing or by any other means—and desegregating public schools can the schoolchildren be given a quality education, a good education, because segregated education, the Senator would have us believe, is inferior to integrated education. If that be so why have not the areas outside the South conferred this better education on all our citizens? Why does segregation in the North continue to increase while schools in the South are desegregated?

The amendment offered by the junior Senator from Alabama would merely give the same rule for the South as the committee seeks to provide for the North.

I recommend that the Senate agree to the amendment.

Mr. GRIFFIN. Mr. President, will the Senator yield to me for a parliamentary inquiry?

Mr. ALLEN. I am delighted to yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, earlier in the day the junior Senator from Michigan indicated he wishes to offer an amendment and hopefully have a vote on it tomorrow. That amendment is Amendment No. 915.

My parliamentary inquiry is whether or not that amendment would be in order to offer as a substitute to the amend-

ment by the Senator from Alabama now pending.

The PRESIDING OFFICER. If the Senator offered it as an amendment in lieu of the language offered by the Senator from Alabama it would be in order.

Mr. GRIFFIN. I want to indicate to the majority leader and the minority leader that I am prepared, as I indicated earlier, to lay my amendment before the Senate and to do so as a substitute, if there could be some understanding, perhaps, that we might vote first thing tomorrow or at any time tomorrow, if that be inconvenient.

Mr. MANSFIELD. The Senator has not made a unanimous-consent request, but I assure him we cannot have that assurance at that time because there are others of us prepared to offer amendments in the second degree; and as far as the distinguished minority leader and I are concerned, we are prepared to vote tonight.

Mr. SCOTT. That is correct.

Mr. MANSFIELD. In that way the distinguished Senator from Michigan, the deputy Republican leader, would be able to keep his word and have a vote on his amendment tomorrow.

Mr. GRIFFIN. I am sorry. I understand the amendment of the amendment was not going to be ready until tomorrow.

Mr. SCOTT. It might be well to explain that is probably our fault because we have been perfecting language and we will request the privlege to offer it as a substitute for the amendment of the Senator from Alabama.

Mr. GRIFFIN. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GRIFFIN. Is it the case that such a substitute may not be offered until all time has expired?

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLEN. Mr. President, I ask unanimous consent that this time for colloquy not come out of the time of the Senator from Alabama. I have a number of additional arguments I wish to make on the amendment.

Mr. PELL. Let it come from my time.

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

Mr. MANSFIELD. Mr. President, will the Senator indulge me while I do a little counting.

Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays are ordered.

Who yields time?

Mr. PELL. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama (Mr. ALLEN) has 31 minutes remaining.

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

Mr. MANSFIELD. Mr. President, on whose time?

Mr. SCOTT. From the time of the Senator from Alabama.

The PRESIDING OFFICER. Does the Senator yield such time?

Mr. ALLEN. Yes.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, if the Senator from New York will yield me 1 minute.

Mr. JAVITS. Yes, I yield.

Mr. MANSFIELD. Mr. President, how much time remains on the amendment?

Mr. ALLEN. Mr. President, how much time remains?

The PRESIDING OFFICER. All time has expired on the amendment.

AMENDMENT NO. 923

Mr. SCOTT. Mr. President, I offer an amendment and send it to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. SCOTT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. COOPER. Mr. President, I object. I should like to hear the full text of the amendment.

The PRESIDING OFFICER. Objection is heard, and the clerk will read the amendment.

The assistant legislative clerk read as follows:

AMENDMENT No. 923

At the end of the Senate Committee Amendment add a new section.

SEC. — (a). No funds appropriated for the purpose of carrying out any program subject to the provisions of the General Education Provisions Act, including this Act, may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written request of appropriate local school officials; provided, however, that no Court, and no officer, agent or employee, of the United States shall order the making of such a request; and provided further that no funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process.

(b) No officer, agent or employee of the Department of Health, Education and Welfare (including the Office of Education), the Department of Justice, or any other Federal agency shall, by rule, regulation, order, guideline, or otherwise, (1) urge, persuade, induce, or require any local education agency, or any private nonprofit agency, institution or organization to use any funds derived from any State or local sources for any purpose, unless constitutionally required, for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal funds under any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) on the part of a Federal officer or employee. No officer, agent or employee of the Department of Health, Education and Welfare (including the Office of Education) or any other Federal agency shall urge, persuade, induce or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process; or where the eduactional opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color or national origin.

(c) Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from one local educational agency to another, or which requires the consolidation of two or more local educational agencies for the purpose of achieving a balance among students with respect to race, sex, religion or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals the expired. This section shall take effect upon the date of its enactment and shall expire at midnight on June 30, 1973.

Mr. SCOTT. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, I ask unanimous consent that I may propose a unanimous-consent agreement without the time being taken out of either side on the amendment so that we can arrive at an agreement.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. SCOTT. Mr. President, my request, after consulting with the distinguished Senator from North Carolina (Mr. ERVIN) and the distinguished Senator from Alabama (Mr. ALLEN) would be that, in order to accommodate the convenience of Senators, and in order that the amendment can be printed so that all will be aware of what is contained in it, I ask unanimous consent that the 2-hour debate which has been formerly agreed upon for all amendments, shall begin at 10:30 a.m. tomorrow and shall expire at 12:30 p.m. tomorrow.

Mr. ERVIN. Mr. President, I do not quite understand the unanimous-consent request because, as I understand it, under the Senate rules, while no Member of the Senate can propose an amendment to the substitute amendment, any Member of the Senate can propose a perfecting amendment either to the Allen amendment or to the provisions of the bill which the Allen amendment seeks to amend and there is under the present unanimous-consent request a 2-hour limitation to be equally divided in respect to any such perfecting amendments.

The PRESIDING OFFICER. The Senator from North Carolina is correct.

Mr. SCOTT. Mr. President, my request was merely that the 2 hours on my side pertaining to the amendment begin at

10:30 a.m. and expire whenever under the unanimous-consent agreement it expires. It is the same thing. I will be glad to do that——

Mr. ERVIN. I construe the request of the Senator not to be a request that a 2-hour limitation on debate shall expire at 12:30 in respect to any perfecting amendment which might be in order.

Mr. SCOTT. The Senator is entitled to preserve any rights that he has now. Under my unanimous-consent request, if he has the right to offer a perfecting amendment, and if the perfecting amendment is ruled by the Parliamentarian to be a perfecting amendment, the Senator's rights are preserved. Is that satisfactory?

Mr. ERVIN. In other words, as I understand it, the Senator is asking unanimous-consent request that the debate on the substitute amendment begin at 10:30 and end at 12:30.

Mr. SCOTT. Mr. President, I withdraw the end part of it and ask that it begin at 10:30 and that it be the pending business at 10:30 a.m. tomorrow, if that suits the Senator.

Mr. ERVIN. As far as I am concerned, that would be entirely satisfactory to me. I thank the distinguished Senator from Pennsylvania, as well as the distinguished manager of the bill and the distinguished majority leader, for their willingness to allow the substitute amendment to go over until tomorrow so that it can be printed and made available to the Members of the Senate.

I thank the Senators.

Mr. SCOTT. Mr. President, that would seem to be fair to all. I therefore renew my request.

Mr. COOPER. Mr. President, I want to understand the request. The Senator is asking for 2 hours on the substitute amendment, the time to begin at 10:30 tomorrow morning.

Mr. SCOTT. Mr. President, we are governed by the existing unanimous-consent agreement which limits it to 2 hours. I merely asked that the debate begin at 10:30 tomorrow morning and that the amendment in the nature of a substitute become the pending business.

Mr. COOPER. Mr. President, reserving the right to object, we are talking about one of the most complex subjects before Congress and before the American people. The court has rendered these decisions on a number of occasions. Conceivably, reading the simple language of the Civil Rights Act of 1964, section 4 contravenes certain language in the act.

I have had an opportunity to read the proposed amendment and my first impression, as I look at it briefly, is that it would invalidate the decisions made by the courts. Whether we should do that, of course, will be determined.

I see two or three provisions in this proposal which are provisions that the Senate has authority to enact.

We are getting ready to discuss an issue which is of great significance to the schools and to schoolchildren and which troubles our entire country. I must object to limiting the time to 2 hours.

Mr. MANSFIELD. Mr. President, the Senator cannot object, because an agreement has been made. The time will start on the pending amendment, unless this time is counted, at the conclusion of the morning business tomorrow.

Mr. COOPER. Mr. President, I know that the time is set and that certain hours have been agreed to in the unanimous-consent agreement. However, I would ask that Senator who introduced the amendment to provide for more time. This is an important question, and to dispose of it in 2 hours would simply be beyond comprehension.

Mr. SCOTT. Mr. President, I would like to call to the attention of the Senator the fact that there are 6 hours on the bill, most of which has not been used.

Mr. MANSFIELD. There is no time on the bill. The time is on the amendments. If no amendment is pending, it could be considered as against the bill.

Mr. SCOTT. At one time there was 6 hours on the bill.

Mr. MANSFIELD. The Senator is correct. However, we had to change it. May I say that this is an issue whose time has come. We ought to face up to it. We have an agreement. I do not think it should be extended.

The issue is not so complex that it is not understood by everyone and by every parent and others in this country. I would hope that we would face up to it and dispose of it one way or the other.

I suggest to the distinguished Senator from Kentucky that on the basis of conversations I have had with the distinguished Senator from North Carolina (Mr. ERVIN) and the distinguished Senator from Alabama (Mr. ALLEN), the vote will not occur at the end of the 2 hours because they intend, if my memory serves me correctly, to offer some substitute proposals at that time.

There will be a lot of debate on it. The sooner we face up to it, the better off everyone will be, regardless of their feelings on this matter.

Mr. COOPER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. COOPER. Mr. President, can the amendment that has been offered be amended?

The PRESIDING OFFICER. The language proposed to be stricken is open to perfecting amendments.

Mr. COOPER. I thought that would be correct. I therefore reserve that right to object. I know that we have to face up to this matter. I am only asking for a little more time, a little more than 2 hours. Many questions may be asked on this proposal. I want to ask a few questions. I helped to manage this particular section when the 1964 Civil Rights Act was passed, and I have kept up with these cases throughout the years.

I think there is too little time and that we will be preventing Members of the Senate—not myself alone, but also others—from asking questions.

Many Senators will want to ask questions when we are enacting a statute which could be overturned in the court and which would help frustrate this problem for another year or two. All I ask is for a little more time.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kentucky?

Mr. MANSFIELD. Then, Mr. President——

Mr. SCOTT. Mr. President, before we get into that, I want to make sure that none of this time comes out of the amendment. I think that we have an agreement to that effect.

The PRESIDING OFFICER. The Senator is correct.

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

Mr. SCOTT. I yield.

Mr. JAVITS. Mr. President, I have very great regard for the Senator from Kentucky, and any request of his would be almost a mandate to me. However, I would like to point out to him, and also in fairness to our leadership, that there can be a succession of perfecting amendments. We could have one or five perfecting amendments. Once one is stricken down, another one is in order. There might conceivably be six or 10. Therefore, I believe that perhaps the Senator from Kentucky himself might wish to offer a perfecting amendment. I believe that using that technique, and without disturbing the original unanimous-consent agreement, what the Senator from Kentucky desires can be accomplished.

Mr. MANSFIELD. Mr. President, I would agree. And I think that would take care of the questions raised by the Senator from Kentucky.

Mr. GRIFFIN. Mr. President, reserving the right to object, I think it should be understood that no perfecting amendments to the substitute offered by the distinguished majority and minority leaders would be in order. There is nothing further that can be offered to modify that substitute. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRIFFIN. Mr. President, as I understand it, perfecting amendments to the Allen amendment or to the original text, or both, may be offered. If such perfecting amendments are offered, the votes on such perfecting amendments would precede the vote on the substitute offered by the two leaders.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRIFFIN. Because the substitute offered by the leaders is so important, and it is obviously the major amendment before the Senate, I would rather hope that we go along with the request of the distinguished Senator from Kentucky to have an additional hour on the amendment.

Mr. MANSFIELD. Mr. President, I am most reluctant to object, but I must object because, as the distinguished Senator from New York has pointed out, if the Senator from Kentucky wants time, he can offer perfecting amendments himself and get all the time in the world.

But I think in view of what the Senate has been led to understand we should keep the format the Senate agreed to and that will give the Senator all the time he needs.

Mr. COOPER. Mr. President, if the

Senator will yield, I wish to state that I still contend for the substance of what I have said but I will follow his suggestion and study carefully the amendment.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

Without objection, it is so ordered.

Mr. SCOTT. Mr. President, a parliamentary inquiry to clear up something.

Mr. MANSFIELD. Time begins at 10:30.

Mr. SCOTT. Time begins at 10:30; I understand.

The PRESIDING OFFICER. Yes.

Mr. SCOTT. Now, I ask unanimous consent that the time not be taken out of the amendment or out of the bill for the parliamentary inquiry I am proposing.

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

Mr. SCOTT. I would like to inquire as to the nature of the vote that would occur on any perfecting amendment because if perfecting amendments were to be offered by the proponents of the original amendment, does the vote occur on the original amendment as perfected prior to the vote on the substitute? It is not my understanding, but I would like that cleared up.

The PRESIDING OFFICER. The answer is no, it would not.

Mr. MANSFIELD. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. SCOTT. I yield.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. It is correct to state that it is the prerogative of any Senator to offer a perfecting amendment to the amendment, either in the form of perfecting amendments to the Allen amendment or the substitute as reported out of committee?

The PRESIDING OFFICER. The Senator is correct. If an amendment is offered to the substitute first, the amendment to the Allen amendment would not be in order until the amendment to substitute was disposed of.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. To make sure I understand the situation and the Chair's ruling in response to the request of the majority leader, do I understand perfecting amendments are in order to the bill?

The PRESIDING OFFICER. To the Allen amendment or the text proposed to be stricken by the Allen amendment.

Mr. BAKER. But not to the Scott-Mansfield substitute?

The PRESIDING OFFICER. That is correct.

Mr. BAKER. Yes, but as to other parts of the bill, there would be no restriction on the bill because that would be in the first degree, would it not?

The PRESIDING OFFICER. At a later date it would be in order.

Mr. BAKER. But amendments to any other part of the bill would not be subject to this restriction?

The PRESIDING OFFICER. Correct.

Mr. ALLEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ALLEN. An amendment would be in order to the language of the committee substitute which my amendment seeks to amend; that would be in order. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ALLEN. There are two sections to which perfecting amendments may be offered; that is, two legislative measures pending to which perfecting amendments may be offered.

The PRESIDING OFFICER. The Senator is correct.

Mr. MANSFIELD. The right to offer a perfecting amendment is a privilege afforded to every Senator. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Does the right reside with the authors of this substitute to offer perfecting amendments to this substitute?

The PRESIDING OFFICER. It does not.

Mr. BAKER. There is no method for offering amendments to the substitute by the authors of the substitute.

The PRESIDING OFFICER. The Senator is correct.

Mr. MANSFIELD. But the authors of the substitute can offer perfecting amendments on their initiative to the portions of the pending business, which the distinguished Senator from Alabama indicated.

The PRESIDING OFFICER. To obtain 901 or——

Mr. ALLEN. In other words, if all matters are cleared out of the way of the Scott-Mansfield substitute, its provisions are as unchangeable as the laws of the Medes of Persia.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senator will please restate his inquiry.

Mr. ALLEN. Once all obstacles are cleared out of the way of the Mansfield-Scott amendment, if that time ever comes, then the provisions of the Mansfield-Scott amendment would be as unchangeable as the laws of the Medes of Persia. Is that correct? It would be up and down?

Mr. SCOTT. I would not ask the Chair to speculate, but, as previously indicated, the time will come under the unanimous-consent agreement, one way or another.

The PRESIDING OFFICER. The Chair would state that the parliamentary situation is that the amendment pending is the Allen amendment and they cannot yield on the substitute at this point without unanimous consent.

Mr. MANSFIELD. Mr. President, will the Presiding Officer please explain that? I am not sure I understand what the Chair said.

The PRESIDING OFFICER. The pending amendment is the Allen amendment. The substitute has been offered to that amendment, but the time has expired on the amendment of the Senator from Alabama. Therefore, no time can be yielded on the substitute until unanimous consent is requested.

Mr. MANSFIELD. But time could be yielded on the bill under the 6-hour notation on a daily basis.

The PRESIDING OFFICER. But he cannot yield.

Mr. MANSFIELD. I understand he can. There is no amendment pending at the present time. All time on the Allen amendment has been disposed of and, under the agreement entered into by the Senate, we now have the Scott substitute being taken up at 10:30 tomorrow, so we want to conclude now. We can either go ahead and talk on the bill or lay it aside and talk.

Mr. SCOTT. Or go home.

Mr. MANSFIELD. Or go home.

Mr. SCOTT. That is the point I made about the 6 hours.

Mr. GRIFFIN. Mr. President, the prerogatives of leadership being what they are, and the junior Senator from Michigan having been preempted in offering a substitute, I send to the desk a revised version of amendment No. 915, which I explained earlier today, and seek to have it printed and available tomorrow. The junior Senator from Michigan will try again tomorrow to have it offered as a perfecting amendment.

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

Mr. GRIFFIN. I yield.

Mr. MANSFIELD. May I say that tomorrow there will be a lot of perfecting amendments. But, remember, every Senator has the right.

Mr. PASTORE. To lay on the table, is that correct?

Mr. MANSFIELD. Not always. But I would hope the distinguished Senator from Rhode Island would exercise his usual discretion.

Mr. PASTORE. He will. There will be no question about that.

Mr. BYRD of West Virginia. Mr. President, will the manager of the bill yield to me time from the bill?

Mr. PELL. Mr. President, I yield the Senator as much time as he may desire.

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of all unanimous-consent orders recognizing Senators tomorrow there be a period for the transaction of routine morning business, not to extend beyond 10:30 a.m., with statements therein limited to 3 minutes.

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

ORDER FOR RECOGNITION OF SENATOR TUNNEY AND SENATOR GAMBRELL TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that to-

morrow, immediately after the two leaders have been recognized under the standing order, the Senator from California (Mr. TUNNEY) be recognized for not to exceed 15 minutes; that he be followed by the distinguished Senator from Georgia (Mr. GAMBRELL) for not to exceed 15 minutes; and that at the conclusion of the remarks by the Senator from Georgia (Mr. GAMBRELL) the distinguished Senator from Mississippi (Mr. STENNIS) be recognized for not to exceed 15 minutes as previously agreed to.

The PRESIDING OFFICER. Without objection it is so ordered.

ORDER OF BUSINESS

Mr. COOPER. Mr. President, there is no allotment of time at present?

Mr. PELL. Mr. President, I yield the Senator as much time as he desires.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

EDUCATION AMENDMENTS OF 1972

The Senate continued with the consideration of 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.

Mr. COOPER. Mr. President, I shall be brief. I know there will not be very much time tomorrow to speak on this amendment.

I want to raise some questions today and perhaps those Senators who manage the amendment will look over my questions and refer to them tomorrow.

Of couse, I know the majority leader and minority leader are making an effort—and a conscientious effort—to reach the difficult question of busing. I saw the amendment a short time ago and have not had a chance to digest it carefully, but I do want to point out a few questions which I think it raises, and which I hope the managers of the amendment would respond to tomorrow.

The first clause of section (a) provides that:

> No funds appropriated for the purpose of carrying out any program subject to the provisions of the General Education Provisions Act, including this Act, may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system.

The second clause goes further, and prohibits the use of any funds "in order to carry out a plan of racial desegregation of any school or school system," except in the written request of local school officials.

I point out that the *Swann* case held that a State could not absolutely prohibit the use of funds even to achieve racial balance, because that might impinge upon school desegregation.

I would question, although my mind is open to argument and reasoning, that we can prohibit the use of funds to carry out a program of racial desegregation of schools, and particularly if it has been ordered by a court. I want to raise that question.

The next question I raise is that the amendment attempts to tell the courts that, although they may render a judgment providing for school desegregation, they cannot enforce that judgment. I do not know that we have any authority to take the power of enforcement away from a court, unless we use the constitutional authority jurisdiction from an inferior court in some cases; but I doubt very much that we can strip a court of its enforcement powers. Certainly, I do not believe we can strip the Supreme Court.

The next question I raise is this: It might be argued that, while we cannot prohibit use of a State's funds, we can prohibit our Federal funds from being used; but, again, in the Swann case it was held that action could not be taken to take away the protections of a child who had fallen under the constitutional protection in desegregation cases.

I believe this amendment poses very grave constitutional questions and grave questions about delaying desegregation. That is the reason why I contend that it deserves longer debate.

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

Mr. COOPER. There is just one more point I want to raise. The amendment would bring into decisions by the HEW and by Federal agencies, and even by the courts, the criteria of the effect of busing upon a child's health or its impingement upon the processes of education. I think, since that has been suggested in several court cases, it is a field into which we could enter, particularly because I do not think the legislative body has ever laid down specific criteria for busing. It is a power we have. The courts may not agree with all the criteria we provide, but our interpretation would have effect.

That is all I wanted to say. I think this amendment raises grave problems. That is the reason why I thought we ought to have more time on it.

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

Mr. COOPER. I yield.

Mr. SCOTT. I do hope the Senator will read the amendment very carefully, because it has been carefully drafted and it is grounded on the concern which has been expressed and also on the Brown against Board of Education case and Swann against Mecklenburg Board of Education case. In that latter case the Supreme Court said an objection to busing "may have some validity" when the foregoing conditions are demonstrated; that is, the time or distance of travel being so great as to risk the health of children or significantly impinge upon the educational process.

Mr. COOPER. I suggested that it is certainly a proper provision of the amendment.

Mr. SCOTT. This amendment would be saying that this kind of objection does have validity, just as the Court said it may have validity.

Another part of the amendment is designed to avoid the effect of repealing title VI of the Civil Rights Act of 1964 as it applies to education, as we do not want to turn the clock back.

The third part of the amendment deals with the effective date of certain district court orders expiring on June 30, 1973, by which time these questions will have been resolved.

I think the Senator will find, the more he reads it, it is an effort to promote voluntary desegregation and compliance with court orders and validly applicable statutes, but that it does not attempt to repeal any section of any prior Civil Rights Act; and it is in the spirit of the Swann case that the amendment is drafted.

Mr. COOPER. Mr. President, I appreciate the Senator's explanation. I want to say that after reading it—and I have read it pretty carefully—I think it presents grave questions, and I think what it does—if we want to face it, we can—is to deny the tool of busing, at least until next year.

Mr. SCOTT. That is what the various amendments to which I stand in opposition would do. The other amendments would seek to deny funding and prevent all busing. There are today 20 million children being bused in this country. What we are trying to do is to find a moderate position in accordance with the law and this would establish guidelines under which busing could not take place.

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

Mr. SCOTT. I yield.

Mr. JAVITS. I have listened to the questions of the Senator from Kentucky with great interest. I would like to suggest to him the following areas of consideration. I believe that the power sought to be exercised by us, in the Senate, in this bill, as we restrain the expenditure of Federal funds in the exercise of Federal authority, as we are a separate branch of the Government insofar as we control Government departments and Government expenditures, is constitutional.

I have some doubts, myself, relating to both constitutionality and public policy considerations as to that section which seeks to suspend the operation of court orders for a year, or 16 months if we take it from today; but, as a practical matter, the issues raised in pertinent cases will probably not be fully resolved in those 16 months. But the important thing I would like to point out to the Senator is that I believe we will be marking a new departure in the busing field and believe we will be laying down not only guidelines, but rules of fairness.

The most critical rule of fairness that we are laying down, and which is taken out of the Swann case, is that busing shall not significantly impinge on the educational process. That means, as it is now spelled out in the amendment, not only the educational process as it affects the child being bused, but the educational process as it affects the school to which he is bused. That is, to me, the most significant aspect of this amendment and is to my mind the most substantive answer to what has been troubling people who have been so deeply exercised about busing.

For those reasons, I believe that this amendment as finally drafted commends itself as a temporary solution to a temporary problem, because, after all, the objective of the law is to desegregate.

Then we go back to busing patterns, which exist anyway, having not been ordered by the courts for 40 percent of America's children. This idea that it is some horrendous thing, I think, has been completely exploded by the hearings of the Select Committee on Equal Educational Opportunity; the fact that educational progress has already taken place through desegregation involving use of busing has not been refuted and is irrefutable.

Since I have such enormous respect for the Senator from Kentucky and his thinking as a constitutional lawyer and a judge, I suggest these lines of inquiry as he seeks to answer these questions about the rationale on which those, like myself, joining with the manager of the bill have proceeded with respect to this matter.

Mr. BAKER. Mr. President, may I inquire who has time, and if someone can yield time to me?

Mr. JAVITS. Mr. President, as I understand the ruling of the Chair, the time is now divisible between the two sides without regard to hours, so long as there is no amendment technically in order; therefore, I think we are prepared to yield time on the bill to the Senator from Tennessee, as he may desire.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Is the time under control?

The PRESIDING OFFICER. Unless there is unanimous consent, there is no time available.

Mr. BYRD of West Virginia. Mr. President, under the agreement, there is time on the committee substitute, not to exceed 6 hours daily. If that 6 hours has not been consumed, there would still be time available from the time on the substitute. Am I not correct?

The PRESIDING OFFICER. The Senator is correct, but time cannot be allowed from those 6 hours on an amendment. Technically, we are on an amendment.

Mr. BYRD of West Virginia. That is correct, but time on the Mansfield-Scott amendment does not begin until 10:30 a.m. tomorrow. Technically, the Mansfield-Scott amendment is before the Senate. Time-wise it is not. So, unless time may be yielded at this point from the committee substitute, the Senate, except by a unanimous consent of some sort, would be forced to adjourn. It appears only logical that, in this situation, time may be yielded for general debate from the remaining time on the committee substitute.

Mr. BAKER. Mr. President, the parliamentary inquiry is whether the time is under control. I have no desire to press the issue, but just to make sure that I have the 3 or 4 minutes I may require, I now ask unanimous consent to proceed for not more than 5 minutes on the bill.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, the Senator does not have to ask unanimous consent, because time on the amendment does not start running until tomorrow at 10:30 a.m.

Mr. PELL. Mr. President, I am glad to yield to the Senator whatever time he wishes.

Mr. BAKER. Whoever will yield me 5 minutes, I shall be glad to proceed on that basis.

Mr. JAVITS. I yield the Senator 5 minutes.

Mr. BAKER. I thank whoever yielded me 5 minutes.

Mr. PELL. The Senator from New York.

Mr. BAKER. Mr. President, this is not the occasion to undertake to educate the Senator from Kentucky by saying what he should consider overnight. I add my bit, not because he needs to be directed, but because the colloquy between the Senator from Kentucky and others has suggested problems which I believe of even graver consequence than we have expressed today.

I think we really are in a sad situation, when we are going to limit the consideration of this substitute to 2 hours, as we have now done. We are engaged in the consideration of a matter of really extraordinary importance, and one of vital importance, I believe, to a great majority of the people of this country. But that is behind us now. Two hours is the limitation on the substitute.

It does nothing to satisfy my concern to say there can be a series of perfecting amendments. There can be, presumably and theoretically, an endless string of perfecting amendments, but not to the substitute. The substitute stands inviolable, and there is nothing we can do about it.

Mr. President, just to make sure that there is some frame of reference, I think we might consider the fact that while the substitute reported by the distinguished joint leadership contends that it clarifies into law a suggestion of the Swann case that you cannot order busing when it will impinge on educational quality or unduly affect the health and welfare of the children, I think that deserves a further bit of explanation, because that is the precise language of the Swann case, and the Court itself, in Swann, complained that they have not had a legislative directive on how they should implement the requirements of the law.

I suggest, Mr. President, that that is nothing to give them a legislative policy, but simply reiterating the exact language of Swann. If we wanted to do that, the substitute might say that we cannot transport unless the child is in the fourth, fifth, or sixth grade, or unless the child is 6, 10, or 12 years old, or that we cannot transport for more than 15 minutes, or for more than 15 minutes before daylight, or for more than a certain geographical distance. This might be of assistance to the Court in establishing what we probably can do, that is, give some legislative direction to the implementation of a policy for public education. But that is not what we do in the substitute. We simply parrot the language of Swann, and say this is legislative direction. It is not, Mr. President.

The sad part about that is that, if my contentions are correct, then the 2-hour time limitation and the inviolate character of the substitute, which cannot be amended, becomes even more burdensome.

So, Mr. President, once again with apologies to the distinguished jurist and Member of this body having suggested these things for his fellows' consideration, I can only say the substitute is indeed replete with serious and basic constitutional questions. I have grave doubt that we can or should do some of the things suggested in the substitute. I think there are other things we can do; but I think it is a shame, Mr. President, that we have 2 hours—just 2 hours—to consider the substitute, take it or leave it. I do not think that is worthy of the Senate.

Mr. BYRD of West Virginia. Mr. President, on behalf of the manager of the bill, I yield myself 1 minute on the committee substitute.

ORDER FOR ADJOURNMENT UNTIL 9:15 TOMORROW

Mr. BYRD of West Virginia. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:15 a.m. tomorrow.

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

Mr. BYRD of West Virginia. I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1746.

The PRESIDING OFFICER (Mr. BROCK) laid before the Senate a message from the House of Representatives that the House had disagreed to the amendment of the Senate to the bill (H.R. 1746) to further promote equal employment opportunities for American workers and requested a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate insist on its amendments and agree to the conference requested by the House of Representatives on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. NELSON, Mr. EAGLETON, Mr. STEVENSON, Mr. HUGHES, Mr. JAVITS, Mr. SCHWEIKER, Mr. PACKWOOD, Mr. TAFT, and Mr. STAFFORD conferees on the part of the Senate.

EDUCATION AMENDMENTS OF 1972

The Senate continued with the consideration of 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.

Mr. GAMBRELL. Mr. President, will the Senator from Rhode Island yield me 4 minutes on the bill?

Mr. PELL. I yield 4 minutes on the bill to the Senator from Georgia.

AMENDMENTS NOS. 924 AND 925

Mr. GAMBRELL. On behalf of Senator CHILES and myself, I submit for printing, but not to call up, amendments to the pending committee substitute, one being an amendment which seeks to limit the jurisdiction of the Federal district courts in respect to school busing orders, and providing that in the event that busing is provided for, it should be provided for in a uniform way throughout and across the country, and defining what is uniform adopted busing policy throughout the United States.

The second amendment that I send to the desk for printing is likewise an amendment to the pending committee substitute. This is a clarification and adaptation which was previously adopted by the Senate to the school desegregation bill when it was passed last spring. The bill at that time was amended by the Senator from Florida (Mr. CHILES), and Senator CHILES and I are offering this amendment to the pending legislation to be considered by way of clarifying the committee's report on that subject.

The PRESIDING OFFICER. The amendments will be received and printed, and will lie on the table.

Mr. GAMBRELL. Mr. President, I ask unanimous consent that the two amendments to the committee substitute be printed at this point in the RECORD.

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

AMENDMENT NO. 924

On page 699, line 20, strike out the words "a final" and insert in lieu thereof the word "any".

On page 711, strike lines 15 through 20, and insert in lieu thereof the following:

"(c) Notwithstanding any other provision of this title, sums appropriated pursuant to section 704, and apportioned to a State pursuant to section 705, shall be available for grants to and contracts with any local educational agency in such State which is eligible to receive financial assistance under section 706(a)(1)(A)(i)(I) of this title, to assist such agency in carrying out programs or projects referred to in section 707 of this title, and as set forth in the plan of desegregation undertaken pursuant to order of court, and no further conditions shall be established by the Secretary, or any other official of the United States Government in order to establish the eligibility of such agency to receive grants or contracts under this title."

AMENDMENT NO. 925

At the end of the bill add the following new Section:

"SEC. —. (a) Notwithstanding any other law or laws, no court of the United States shall have jurisdiction or authority to enforce any order or judgment to the extent that it provides for the assignment or requirement of any public school student to attend a particular school because of his or her race, creed, or color, until—

(1) Appeals in connection with such order or judgment have been exhausted, or in the event no appeals are taken, until the time for such appeals has expired; and

(2) Plans, approved by competent judicial authority, providing for the racial desegregation of schools without regard to the origin or cause of existing segregation, shall have been adopted uniformly throughout the United States.

"(b) Plans referred to in Subsection (A)(2) hereof shall not be deemed to "have been uniformly adopted throughout the United States" until—

(1) Such plans have been adopted in school systems containing not less than 75 per centum of the public school population of the United States; or

(2) Such plans are in effect in not less than 75 of the 100 most populous school systems in the United States which have total minority student population greater than 15 per centum and such plans are in effect in 75 per centum of the States of the United States having a minority public school student population greater than 15 per centum.

"(c) The Attorney General of the United States is authorized to initiate appropriate actions in the Federal District Courts of the United States seeking the desegregation of public schools under plans as provided for in Subsection (A)(2) hereof, and no plan of public school desegregation shall qualify for consideration under Subsection (A)(2) hereof unless and until the Attorney General has been made or become a party to the action pursuant to which judicial approval of such plan has been given."

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum and I assume that this will be the final quorum call of the day.

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.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9:15 a.m. After the two leaders have been recognized, the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Senators TUNNEY, GAMBRELL, and STENNIS.

At the conclusion of the unanimous-consent orders recognizing Senators, there will be a period for the transaction of routine morning business, not to extend beyond 10:30 a.m., with statements therein limited to 3 minutes.

At the hour of 10:30 a.m., the Senate will resume the consideration of amendment No. 923 by the distinguished majority leader and the distinguished minority leader—an amendment to the Allen amendment, No. 922. Under the limitation of time on amendments, time on amendment No. 923 will be limited to 2 hours. Rollcall votes tomorrow are very probable.

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

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 9:15 a.m. tomorrow.

The motion was agreed to; and (at 4:53 p.m.) the Senate adjourned until tomorrow, Thursday, February 24, 1972, at 9:15 a.m.

HOUSE OF REPRESENTATIVES—*Wednesday, February 23, 1972*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Peace be to the brethren and love with faith, from God the Father and the Lord Jesus Christ.—Ephesians 6: 23.

O Thou Kindly Light of our pilgrim way, we come confessing that in the rush of busy hours we often forget Thee and neglect to climb the stairs to the upper room where for awhile we may be alone with Thee and have our faith restored, our hope renewed, and our love be given new life. Forgive us, our Father, and make us mindful of Thy presence as we face the duties of this day.

We pray for our Nation. Help her to be strong in Thee and in the power of Thy might that justice may reign in the minds of men and peace may rule in the hearts of our people.

"O God, may Thy spirit protect our dear land,
In mercy assist her to faithfully stand
For justice and honor through all of her days,
One people united to serve Thee in praise."

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

WELCOME TO ROTC CADETS

(Mr. SIKES asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. SIKES. Mr. Speaker, I wish to take this opportunity to welcome ROTC cadets from all over the Nation to Washington this week. I am sure that the membership of the House joins me in this cordial welcome.

Some 250 young men, representing the various ROTC detachments on a number of college and university campuses have been selected by the Department of Defense to attend the Reserve Officers Association's 2-day conference, which also marks that major national organization's 50th anniversary.

This is the first assembly of its kind