ute to the betterment of this community.

Mayor Ralph Perk of Cleveland, the commissioners of Cuyahoga County, and others have endorsed February 29 as the first Volunteers Day, and I join with them in saluting these citizens for their fine work.

To commemorate Volunteer Day, I would like to insert into the RECORD the following article and proclamation:

NOW FEBRUARY 29 WILL BE DAY FOR VOLUNTEERS

If all goes well, Sadie Hawkins may have to share her day—Feb. 29—with millions of volunteers throughout the country.

Volunteer Recognition Day, suggested by the Greater Cleveland Red Cross, will be proclaimed in Cleveland this year, and, perhaps by 1976, will be on the national calendar.

Mayor Ralph J. Perk issued the proclamation this morning, praising the thousands of volunteers throughout the city who "as unpaid helpers truly represent a gift of self to their neighbors in need."

The mayor said, "It's appropriate that we salute these volunteers who give extra time on this extra day of the year."

In accepting the proclamation, Mrs. Robert W. Chamberlin, Red Cross chairman of volunteer, replied, "People visiting our country have referred to volunteering as the first wonder of America. True, some volunteer work is performed in a spectacular manner, but more often it's done quietly in ordinary, commonplace jobs.

"Why a volunteer day on Feb. 29. Why not?" asked Mrs. Chamberlain. "We recognize Sweetest Day, Valentine's Day and many others. Why not recognize people who help people?

"Some agencies give their volunteers pins or certificates of appreciation, but what about the thousands of volunteers who go unrecognized and unthanked?

"For those people, satisfaction for helping is their best reward. However, our community can and should publicly acknowledge them. We hope other communities will do the same."

Volunteer Recognition Day was suggested by Miss Eileen Madigan, director of Volunteer recruitment and placement for the Red Cross.

"I've always hoped to see some kind of official day recognizing volunteers," she said. Then, I thought, "Leap Year, the extra day on the calendar would be the day.

"I checked the library and they couldn't find any volunteer recognition day. After that, we started a serious campaign."

The mayor of Akron and some suburban mayors have said they would issue proclamations. Next step, says Miss Madigan, is to suggest that Ohio Gov. John J. Gilligan issue a proclamation.

CITY OF CLEVELAND—PROCLAMATION

(Designating February 29, 1972, as "Volunteer Day" in the city of Cleveland)

Whereas, the "extra" day given to us on February 29th is symbolic of the "extra" time which every volunteer gives during the year, and further symbolizes the "plus" that each volunteer puts into his tasks; and

Whereas, this gift of service is essential to the life of the community and the individual; and

Whereas, volunteering is the very core of the American way of life and vital to the well being of the nation and the city; and

Whereas, this proclamation was requested by the Greater Cleveland Chapter of the American National Red Cross to recognize all volunteers in every facet of community life,

Now, therefore, I, Ralph J. Perk, Mayor of the City of Cleveland, commend these civic and service minded volunteers for their continuing efforts to strengthen the city and nation, and hereby urge volunteer participation by every citizen able to give of his extra time.

In witness whereof, I have hereunto set my hand and caused the Corporate Seal of the City of Cleveland to be affixed this 20th day of January, 1972.

RALPH J. PERK,
Mayor.

RESOLUTION DECLARING FEBRUARY 29 VOLUNTEER RECOGNITION DAY

Be it herewith resolved that Tuesday, February 29, 1972, be known as "Volunteer Day" in the County of Cuyahoga, State of Ohio.

Be it further resolved that this particular date be used to publicly acknowledge and recognize the men, women and youth who actively participate in a vast variety of significant tasks, freely giving their time and energy to constructive action in helping people.

Be it also resolved that the date of February 29, 1972, was selected because it symbolizes the "plus" that the volunteers give to tasks, because as unpaid helpers they truly represent a gift of self to their neighbors in need, and,

Because, this gift of service is essential to the life of the community and the individual, and

Because, volunteering is urgently needed in every conceivable avenue of human service, across the street and across the nation, and,

Because, volunteering is the very core of the American way of life and vital to the well-being of the nation and the country, we hereby urge volunteer participation by all citizens and commend those who are doing so, and,

Because, this proclamation was requested by the Greater Cleveland Chapter of the American National Red Cross to recognize all volunteers in every facet of community life, we commend and recognize this volunteer service agency for their continuing efforts to strengthen the nation and our county through community volunteer programs.

Signed and sealed by the office of the County Commissioners, State of Ohio on this —— day, February 1972.

HIGH CORRIGAN.
FRANK POKORNY.
SETH TAFT.

SENATE—*Tuesday, February 29, 1972*

The Senate met at 9:15 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

PRAYER

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

O Lord, whose kingdom is an everlasting kingdom, whose dominion spans all time and eternity, help us to work not only for our time but for all time, not only for our generation but for all generations, and to do it under Thy judgment and in accord with Thy spirit. Prepare us for the surprises of providence, the unexpected turns in the historical process. Give us wisdom to exploit sudden change for Thy kingdom's sake. Teach us how to be both kind and firm in the right, reverent in the use of power, and strong in the things of the spirit. Draw us together here and the leaders of the nations everywhere in a resolute devotion to the ways of peace and the life of Thy kingdom.

In the Master's name. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 29, 1972.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. ALLEN 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 Monday, February 28, 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 be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination on the Executive Calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The nomination on the Executive Calendar will be stated.

CIVIL AERONAUTICS BOARD

The second assistant legislative clerk read the nomination of Whitney Gilliland, of Iowa, to be a member of the Civil Aeronautics Board.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

LEGISLATIVE SESSION

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

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the distinguished Senator from Ohio desire recognition on the part of the minority?

Mr. SAXBE. No.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent, due to the unavoidable temporary absence of the distinguished Senator from South Dakota (Mr. McGOVERN), that the distinguished senior Senator from Georgia (Mr. TALMADGE) be recognized at this time.

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

At this time the distinguished Senator from Georgia is recognized for not to exceed 15 minutes.

THE AMERICAN LEGION

Mr. TALMADGE. Mr. President, I join my colleagues in the Senate today in paying tribute to the American Legion. I congratulate the American Legion for its outstanding accomplishments. It has been my pleasure to work with the Legion, first, as chairman of the Finance Committee's Subcommittee on Veterans' Legislation, and now as second-ranking member of the new standing Committee on Veterans' Affairs.

The American Legion does its homework in looking after the medical, social, and economic needs of the Nation's veterans. This organization has always taken the lead in helping Congress formulate effective and beneficial programs. But aside from its legislative efforts, the American Legion is an organization composed of men and women who represent the spirit of America. The American Legion is an organization of unwavering patriotism. It believes in America. It is steadfast in its allegiance to principles that have made our country free, strong, and prosperous.

The American Legion is not afraid to stand up and be counted. Legionnaires—from the national commander, State officers, and on down through rank and file membership—are not afraid to champion a cause in which they devoutly believe. It may not always be a popular cause, but that has never stood in the way of the American Legion.

The Legion's main concern is Americanism. That has always been a cause worth championing. Considering the state of the world and the United States today, I might say that Americanism and patriotism are very badly in need of friends like the American Legion.

We need more people who stand for flag, for country, for God, and a strong America. We need more loyal Americans.

By that, I do not mean sunshine patriots or fair-weather friends. I mean people who are ready and willing to speak out for the American way of life, in good times and bad, and to defend it against its enemies—whether they be foreign or domestic.

I salute the American Legion for its dedication to a stronger and more patriotic America, and wish it well in its work.

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. 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

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

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the Chair recognizes the distinguished senior Senator from South Carolina (Mr. THURMOND) for not to exceed 15 minutes.

AMERICAN LEGION DAY ON CAPITOL HILL

Mr. THURMOND. Mr. President, today more than 1,000 National and State department officers and members of the American Legion will gather in Washington for their annual pilgrimage to the Nation's Capital.

They will spend 3 days meeting on various phases of Legion business, highlighted by a day on Capitol Hill. The national commander, John Geiger, of Illinois, will lead a contingent of several hundred in an appearance before the Senate Veterans' Affairs Committee, where the 1972 legislative program of the American Legion will be presented.

As Republican ranking member of the Senate Committee on Veterans' Affairs, I have had an opportunity to become familiar with the accomplishments and goals of this largest of servicemen's organizations, and I want to take this opportunity to pay tribute to this great patriotic group of veterans.

Since World War I, they have demonstrated their dedication and love of country which they fought to preserve. Time after time during the last 50 years, when America's institutions have been attacked, the Legion has always been steadfast in demanding that the principles of freedom and democracy as outlined in our Constitution not be destroyed.

These men hate war more than anyone else in the country because they have experienced it. While their dislike of war is well known, they have never hesitated to support our Commander in Chief as they realize the necessity of remaining strong to deter further aggression.

I commend the national commander of this great organization, John Geiger, of Illinois, and I also want to pay tribute to the loyal Legionnaires of South Carolina, who have through the years, supported the ideals and principles of the United States by their activities in this fine organization.

I know that Comdr. Oral O. Cox and the other officers of the Legion in South Carolina, including E. Roy Stone and James A. Hamilton, Sr., who are here in Washington to participate in this annual pilgrimage, have given long and dedicated service to their community, State, and Nation, through their activities in the American Legion.

Mr. President, it is a pleasure and honor for me to welcome the American Legion to Washington and to congratulate the Legion for their outstanding example and splendid service to our Nation and our Nation's veterans.

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. 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.

AUTHORIZATION FOR STAR PRINT OF S. 3059

Mr. THURMOND. Mr. President, I request authority for the Secretary of the Senate to make a star print of S. 3059. This print is necessitated by typographical errors in the original bill which were not corrected before being sent to the printer. The revisions are now available, and I ask unanimous consent that a star print be made.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. SAXBE. 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.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. SAXBE. Mr. President, I suggest that the Senate proceed to the consideration of routine morning business for a period of 30 minutes, in accordance with the previous order.

The ACTING PRESIDENT pro tempore. Does the Senate request action with respect to the 15 minutes allotted to the Senator from South Dakota?

Mr. SAXBE. The Senate has waited 15 minutes on the Senator. If he does appear and there is no routine morning business, I would agree to a unanimous-consent request that he be recognized.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Ohio? The Chair hears none, and it is so ordered. The Senate will proceed now to the transaction of routine morning business for a

period not to exceed 30 minutes, with statements by Senators therein limited to 3 minutes.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED DEPARTMENT OF STATE APPROPRIATIONS ACT OF 1972

A letter from the Acting Secretary of State, transmitting a draft of proposed legislation to authorize appropriations for the Department of State, and for other purposes (with accompanying papers); to the Committee on Foreign Relations.

PROPOSED IMPROVEMENT OF ORGANIZATION OF THE DEPARTMENT OF STATE

A letter from the Acting Secretary of State, transmitting a draft of proposed legislation to strengthen and improve the organization of the Department of State, and for other purposes (with accompanying papers); to the Committee on Foreign Relations.

PROPOSED U.S. INFORMATION AGENCY APPROPRIATIONS AUTHORIZATION ACT OF 1972

A letter from the Director, U.S. Information Agency, transmitting a draft of proposed legislation to authorize appropriations for the U.S. Information Agency, and for other purposes (with accompanying papers); to the Committee on Foreign Relations.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Causes of Shipbuilders' Claims for Price Increases," Department of the Navy, dated February 28, 1972 (with an accompanying report); to the Committee on Government Operations.

PROPOSED INCREASE OF APPROPRIATIONS FOR CONTINUING WORK IN UPPER COLORADO RIVER BASIN

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to increase the authorization for appropriation for continuing work in the Upper Colorado River Basin by the Secretary of the Interior (with accompanying papers); to the committee on Interior and Insular Affairs.

PROPOSED INCREASE OF AUTHORIZATION FOR APPROPRIATION FOR COMPLETING WORK IN THE MISSOURI RIVER BASIN

A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to increase the authorization for completing work in the Missouri River Basin by the Secretary of the Interior (with accompanying papers); to the Committee on Interior and Insular Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution adopted by the Common Council of the City of Buffalo, New York, relating to the removal of British troops from Northern Ireland and unification of that country; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 2094. A bill for the relief of Colonel Charles V. Greffet (Rept. No. 92–674).

By Mr. STEVENS, from the Committee on Commerce, with amendments:

S. 1297. A bill to authorize the State of Alaska to operate a foreign registered ferry vessel between ports in Alaska and between ports in Alaska and ports in other States for a period not to exceed three years (Rept. No. 92–680).

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

S. 2713. A bill to amend title 18 of the United States Code to authorize the Attorney General to provide care for narcotic addicts who are placed on probation, released on parole, or mandatorily released (Rept. No. 92–675).

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

S.J. Res. 117. Joint resolution asking the President of the United States to declare the fourth Saturday of each September "National Hunting and Fishing Day" (Rept. No. 92–676).

By Mr. LONG, from the Committee on Finance, without amendment:

H.R. 12910. An act to provide for a temporary increase in the public debt limit (Rept. No. 92–679).

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs, without amendment:

S. 2013. A bill to amend chapter 21 of title 38, United States Code, to increase the maximum amount of the grant payable for specially adapted housing for disabled veterans (Rept. No. 92–677).

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs, without amendment:

S. 3160. A bill to provide for the modification in the par value of the dollar, and for other purposes (Rept. No. 92–678), together with individual views and views of the Committee on Foreign Relations.

Mr. SPARKMAN. Mr. President, in connection with my reporting of S. 3160, I ask unanimous consent that the committee have until midnight tonight to file the text of the report. I also ask unanimous consent that the views of the Foreign Relations Committee and any individual views of members of that committee, to which the bill was informally referred, be included and be printed as a part of the report of the Committee on Banking, Housing and Urban Affairs.

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

EXECUTIVE REPORTS OF COMMITTEES

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

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

Richard G. Kleindienst, of Arizona, to be Attorney General (Exec. Rept. No. 92–19), together with individual and separate views.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The VICE PRESIDENT announced that on today, February 29, 1972, he signed the following enrolled bills and joint resolution, which had previously been signed by the Speaker of the House of Representatives:

S. 7. An act to provide for the establishment of the Buffalo National River in the State of Arkansas, and for other purposes;

S. 960. An act to designate the Sycamore Canyon Wilderness, Coconino, Kaibab, and Prescott National Forests, State of Arizona;

S. 1857. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended;

S. 2896. An act to amend chapter 83 of title 5, United States Code, relating to adopted child;

S. 3122. An act to extend certain provisions of the Federal Water Pollution Control Act through June 30, 1972, and others through April 30, 1972;

H.R. 2714. An act for the relief of Mrs. Kayo N. Carvell;

H.R. 2792. An act for the relief of Juanita Savedia Varela;

H.R. 3093. An act for the relief of Mrs. Crescencia Lyra Seras and her minor children, Maria Minde Fe Serna, Sally Caroza Serna, Gonzalo Garoza Serna, and James Garoza Serna;

H.R. 4319. An act for the relief of Josephine Dumpit;

H.R. 5179. An act for the relief of Soo Yong Kwak;

H.R. 6506. An act for the relief of Mrs. Hind Nicholas Chaber, Georgette Nanna Chaber, Jeanette Hanna Chaber, and Violette Hanna Chaber;

H.R. 6912. An act for the relief of William Lucas—also known as Vasilios Loukatis;

H.R. 7316. An act for the relief of Mrs. Norma McLeish;

H.R. 8540. An act for the relief of Eleonore G. Mpolakis;

H.R. 8699. An act to provide an Administrative Assistant to the Chief Justice of the United States;

H.R. 9180. An act to provide for the temporary assignment of a U.S. magistrate from one judicial district to another;

H.R. 11738. An act to amend title 10, United States Code, to authorize the Secretary of Defense to lend certain equipment and to provide transportation and other services to the Boy Scouts of America in connection with Boy Scout Jamborees, and for other purposes; and

S.J. Res. 189. Joint resolution to authorize the President to designate the period beginning March 26, 1972, as "National Week of Concern for Prisoners of War/Missing in Action" and to designate Sunday, March 26, 1972, as national day of prayer for these Americans.

REPORT OF ACTIVITIES OF THE JOINT COMMITTEE ON DEFENSE PRODUCTION

Mr. SPARKMAN submitted the 21st annual report of the activities of the Joint Committee on Defense Production, which was referred to the Committee on Banking, Housing and Urban Affairs.

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. THURMOND:

S. 3252. A bill for the relief of Renato M. Dioquino; and

S. 3253. A bill for the relief of Mrs. Clementina De Loya de Kronenfeld. Referred to the Committee on the Judiciary.

By Mr. NELSON:

S. 3254. A bill to amend the Federal Food, Drug, and Cosmetic Act, as amended, to require the submission of certain additional information by applicants for new drugs; to require the inclusion of certain additional information in drug labeling; and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. ANDERSON:

S. 3255. A bill to designate the Blue Range Wilderness, Apache National Forest, in the States of Arizona and New Mexico; and

S. 3256. A bill to designate the Aldo Leopold Wilderness, Gila National Forest, N. Mex. Referred to the Committee on Interior and Insular Affairs.

By Mr. HUMPHREY:

S. 3257. A bill for the relief of Gary Wentworth, of Staples, Minn. Referred to the Committee on the Judiciary.

S. 3258. A bill to amend the Agricultural Marketing Agreement Act of 1937, as amended, to include citrus for freezing and canning and the products thereof among the commodities which may be regulated. Referred to the Committee on Agriculture and Forestry.

By Mr. KENNEDY:

S. 3259. A bill to authorize the Council on Environmental Quality to carry out a county government environmental control demonstration project. Referred to the Committee on Public Works.

By Mr. FANNIN:

S. 3260. A bill to amend section 2039 of the Internal Revenue Code of 1954 (relating to estate tax treatment of annuities). Referred to the Committee on Finance.

S. 3261. A bill to amend the Internal Revenue Code of 1954 to make clear the tax treatment intended for guaranteed renewable life, health and accident insurance contracts in the case of life insurance companies. Referred to the Committee on Finance.

By Mr. CURTIS (for himself, Mr. HRUSKA, Mr. BAKER, Mr. DOLE, Mr. HANSEN, Mr. PEARSON, and Mr. TOWER):

S. 3262. A bill to amend the Occupational Safety and Health Act of 1970, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. McGOVERN:

S. 3263. A bill to amend the National School Lunch Act to provide for a universal school lunch pilot program. Referred to the Committee on Agriculture and Forestry.

By Mr. HOLLINGS:

S.J. Res. 209. A joint resolution proposing an amendment to the Constitution of the United States with respect to the power of Congress to enforce the 14th amendment with respect to public schools. Referred to the Committee on the Judiciary.

By Mr. McCLELLAN:

S.J. Res. 210. A joint resolution to authorize the President to issue a proclamation designating the last full calendar week in May of 1972 as "Clean Waters for America Week." Referred to the Committee on the Judiciary.

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

S.J. Res. 211. A joint resolution to amend title IV of the Consumer Credit Protection Act establishing the National Commission on Consumer Finance. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON:

S. 3254. A bill to amend the Federal Food, Drug, and Cosmetic Act, as amended, to require the submission of certain additional information by applicants for new drugs; to require the inclusion of certain additional information in drug labeling; and for other purposes. Referred to the Committee on Labor and Public Welfare.

SUBMISSION OF BIOLOGICAL DATA BY APPLICANTS FOR NEW DRUGS

Mr. NELSON. Mr. President, for nearly 5 years, the Monopoly Subcommittee of the Senate Select Small Business Committee has conducted hearings on competitive problems of the drug industry. A long list of witnesses from industry, Government agencies, universities, hospitals, and private practice have testified.

Much of the testimony has centered on questions pertaining to the quality of drug products and the ability of different brands of the same drug—which might vary greatly in price—to be therapeutically effective and safe when administered to patients for their intended purposes. The great preponderance of testimony asserted that the vast majority of drugs which meet the standards of the U.S. Pharmacopeia or the National Formulary are in fact therapeutically equivalent.

A number of the witnesses, however, have indicated that there is a gray area in that some drugs may comply with the chemical standards and yet not perform satisfactorily when administered to humans.

Our hearings have attempted to identify the scope or magnitude of these exceptions by establishing how many drugs and which drugs might be so involved.

We have over 8,000 pages of printed testimony which have been presented before the subcommittee, and yet only a very few such drugs have been brought to the subcommittee's attention. Although such differences have been detected only in a few drugs to date, practitioners responsible for prescribing, dispensing, and administering drugs to patients are understandably concerned that similar differences may exist among other drugs which as yet have not come to light.

This element of uncertainty is causing concern among physicians, pharmacists, and others whose first interest is the patients they serve. This uncertainty has also prevented the most economic use of tax dollars in procuring drugs under various Government programs, including purchases for the military as well as drugs for use in Veterans' Administration and Public Health Service hospitals and in reimbursement programs such as medicare and medicaid. Regrettably, some spokesmen and groups within the pharmaceutical industry have seized upon this relatively insignificant element of uncertainty and have repeatedly exaggerated it and publicized it to further their own economic interests.

Uncertainty exists simply because of a lack of information about the biological performance characteristics of drugs on the market in the United States. The absence of such information is the subject of recurring concern to many leading physicians, pharmacists, pharmacologists, medical educators, pharmaceutical scientists, FDA officials, and consumers who testified before the subcommittee. If such data were available, it would remove this element of uncertainty concerning the equivalence of drugs.

The lack of such information has been a matter of concern to various professional groups. In 1969 the House of Delegates of the American Pharmaceutical Association adopted a policy statement which had been formulated earlier by the APhA Academy of Pharmaceutical Sciences stating in part that

> . . . every manufacturer should be obligated to perform tests which are appropriate and sufficient to demonstrate the clinical safety and efficacy claimed for that manufacturer's product and to make a summary of this information readily available to the medical and pharmaceutical professions. . . .

In 1969, a committee of the National Academy of Sciences/National Research Council published a "White Paper on the Therapeutic Equivalence of Chemically Equivalent Drugs" in the Journal of the American Medical Association expressing the concern of that group as to the absence of data bearing on the biological activity of chemically equivalent drugs.

The HEW Task Force on Prescription Drugs, at the direction of then President Johnson, undertook an extensive review of the problems connected with including the cost of prescription drugs under medicare, not only noted the lack of availability of such information but as one of its 25 recommendations urged the Department of Health, Education, and Welfare to undertake a testing program on a high priority basis to develop such information.

The review committee subsequently appointed by former HEW Secretary Finch at the beginning of the present administration arrived at similar conclusions, and all of these groups have expressed the unanimous belief that inadequate information is made available to the physician, the pharmacist, or the consumer by pharmaceutical manufacturers.

In its final report to the Commissioner of the Food and Drug Administration, the National Academy of Sciences/National Research Council described the quality of evidence of efficacy as submitted by drug manufacturers as follows:

> The lack of substantial evidence based upon well-controlled investigations by experienced investigators was conspicious.

In referring to the quality of the labeling of drugs, the NAS/NRC concluded:

> In brief, the majority of package inserts were found to fail in their primary purpose of providing the physician and pharmacist with authoritative and objective guides to prescribing or dispensing the drugs in question.

Although the reports were published at least 2 years ago, the pharmaceutical

industry has done nothing whatsoever on a voluntary basis to provide such information and to correct this deficiency.

To remedy this deficiency, I am introducing a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for inclusion of such biological performance data by manufacturers as part of their new drug application and to require the inclusion of such biological performance information in the labeling which accompanies the drug in order that it will be readily available for reference purposes by physicians and pharmacists.

This proposal will set the ground rules so that when a drug is developed the manufacturer will have to inform the FDA on the biological performance characteristics—such as concentration of the drug in the blood—that are necessary in order for that drug to be effective. Current requirements of the Food, Drug, and Cosmetics Act do not require manufacturers to reveal such information either to the FDA in applying for approval to market their product or to physicians and pharmacists who prescribe and dispense these products. Moreover, if in the judgment of the manufacturer no biological performance characteristic is important for that drug when it is used in patient therapy or if such data has not been determined, the manufacturer would be required to make a positive statement to that effect.

Although this bill would require the manufacturer to state what, if any, special biological performance characteristics pertain to the drug product he wishes to market, this bill would not compel him to make any public disclosure of the processes, techniques, or procedures he uses to produce a drug product with these performance characteristics. Hence, I would emphasize that adequate safeguards remain regarding any trade secrets. Our intent is simply to compel the manufacturer to provide a clear, specific statement of claims associated with his product in terms which will be meaningful and useful to health-care practitioners.

By Mr. ANDERSON:

S. 3255. A bill to designate the Blue Range Wilderness, Apache National Forest, in the States of Arizona and New Mexico; and

S. 3256. A bill to designate the Aldo Leopold Wilderness, Gila National Forest, N. Mex. Referred to the Committee on Interior and Insular Affairs.

Mr. ANDERSON. Mr. President, I am today introducing legislation which proposes to include the Black Range primitive area in the Gila National Forest in New Mexico in the national wilderness system.

This area, to be renamed the Aldo Leopold Wilderness, is located astride the crest of the Black Range of southwestern New Mexico and encompasses 188,095 acres of land predominantly valuable for its wilderness character.

The proposed wilderness, with its long mountain range, deep canyons, and sharp ridges descending from the crest in many directions, is unusual in this part of the Southwest. The varied contrast provided by distant view of arid lands, of timbered benches below the ridge lines, and outstanding scenery from many vantage points give this area superb wilderness character.

Elevations ranging from 6,300 feet to 10,165 feet make this wilderness a biotic storehouse of plant and animal life.

Past history adds to the enchantment of this proposal. The area was the home of several Apache chiefs and their people. The movements of settlers and miners into this portion of the Southwest began in the 1870's but made little imprint on the proposed wilderness. Few were hardy enough to challenge the wily and well-armed Apaches and the inhospitable ruggedness of the mountains.

The late Aldo Leopold, who began his career with the Forest Service in the Southwest in 1909, sensed the need to preserve some areas from the encroachment of man. While employed as assistant district forester in Albuquerque, an inspection trip took him to the Gila National Forest in 1922. Here he found a vast expanse of unspoiled land that he felt must be preserved as wilderness. As a result of his pleas and a convincing inspection report, the Gila Wilderness—which included the present Black Range primitive area—was designated in 1924 by District Forester Frank Pooler, becoming the first area of the type. My bill would certainly contribute to the aspirations of Mr. Leopold, the man who presented the opportunity to see much of nature unspoiled by man.

Today I am also introducing legislation which proposes the addition of the Blue Range primitive area in the Apache National Forest to the national wilderness preservation system.

The Blue Range Wilderness, located in the Blue Range of east-central Arizona, 65 miles northwest of Silver City, N. Mex., encompasses approximately 177,200 acres of primitive land.

The proposed wilderness offers a variety of wilderness characteristics and attributes, including outstanding scenery, broad expanses of conifer forests, spectacular rock formations, and a wide range of ecological zones from the semi-desert in the rough, broken country below the famous Mogollon Rim to the typical high mountain conditions common above the rim.

The area proposed as wilderness contains the eastern end of the Mogollon Rim, which was made famous in Zane Grey's writings as the "Tonto Rim." The uniqueness of this rim, from a geological and ecological standpoint, is further enhanced by the spectacular Blue River Canyon and the Blue River itself.

Here in the "Blue," a pleasing mix of all the resources combines to make the area outstanding as a wilderness where the mark of man and his activities is relatively obscure. A visitor can virtually isolate himself from the stresses of modern civilization and gain spiritual refreshment through self-evaluation. The solitude and a sense of being close to creation make this area unique in its setting.

By Mr. HUMPHREY:

S. 3258. A bill to amend the Agricultural Marketing Agreement Act of 1937, as amended, to include citrus for freezing and canning and the products thereof among the commodities which may be regulated. Referred to the Committee on Agriculture and Forestry.

NEW MARKETING APPROACHES FOR THE CITRUS INDUSTRY

Mr. HUMPHREY. Mr. President, I am introducing today a bill to amend the Agricultural Marketing Act of 1937 to include citrus for freezing and canning and the products thereof among the commodities which may be regulated under this particular act.

The citrus industry has for more than 30 years been operating under a marketing order program which permits that industry to self-regulate grades and sizes of fresh citrus for shipment. More recently, other order programs have been initiated to regulate marketing volumes. However, all of these orders apply to fresh fruit shipments.

The purpose of the legislation I am introducing today is to make it possible for the citrus growers to establish marketing orders for citrus that has been processed.

Enactment of this legislation is important to both the citrus growing industry and to the people of our Nation, especially our young. To citrus growers, it could mean the development of "concentrate pools" to accommodate surplus supplies of citrus in years of overproduction and to supply regular markets in years when crop failures and short crops occur. Establishment of such pools also would make it possible for citrus producers to develop secondary markets for their products by selling a portion of the pool supply at reduced prices in markets such as schools and other institutions providing feeding services.

To children and other people receiving all or a portion of their daily diets through institutional feeding programs, having such reduced priced citrus juices made available to them can substantially contribute to meeting their basic nutritional needs.

By the mid-1970's there will be more than 750,000 tree-bearing acres of land in Florida alone devoted to the production of oranges. Under optimum weather conditions, about 200 million boxes of oranges can be expected to be produced from this acreage, far in excess of potential markets.

This year's production of oranges in Florida is estimated to be 136 million boxes or about what is expected to be marketed this year.

However, the citrus industry in this country, is expected to produce increasingly large surpluses in future years and as of now, has too few tools available to it to work out the problems that accompany such surpluses. Enactment of these amendments to the Agricultural Act of 1937 will give them some of the tools they will need in that regard. And it will help them work out their overproduction problems in a way to give themselves some insurance against future crop failures in addition to being able to supply added nutrition to many who need it the most and who can afford it the least.

While development of a reserve concentrate pool could be undertaken under the Orange Stabilization Act of Florida, the act has no provision for allotments

or set-asides in order to develop a pool. Also pooled products under the current State act can only be utilized in the event of a freeze or similar natural disaster. Pooled products could not be sold under the State act into secondary markets such as the school market.

Mr. President, vitamin C and the other important nutritional elements provided by citrus products are vitally important to the health and well-being of the people of our Nation, particularly among our young people as they go through their early formative years of growth and development. Enactment of this legislation can result in a major step being taken in improving their nutrition, an opportunity we should be eager to take advantage of.

Mr. President, it also should be noted that these amendments to the Agricultural Act of 1937, is mere enabling legislation. Enactment of these amendments will not result in any Federal or taxpayer funds being expended now or in the future. Producers of these products will merely be permitted, by reason of these amendments, to self-administer some new marketing programs for themselves. No Federal control or subsidies would be involved. It would help citrus producers help themselves—and in so doing, help others receive the benefits provided by their products.

In view of the many benefits to be derived through the enactment of these amendments. I hope my Senate colleagues will join me cosponsoring and in securing passage of them.

By Mr. KENNEDY:

S. 3259. A bill to authorize the Council on Environmental Quality to carry out a county government environmental control demonstration project. Referred to the Committee on Public Works.

COUNTY GOVERNMENT ENVIRONMENTAL CONTROL DEMONSTRATION PROJECT ACT

Mr. KENNEDY. Mr. President, I am introducing today a bill to establish a county government environmental control demonstration project. I am pleased to announce that Congressman SILVIO CONTE of the First District in Massachusetts is introducing an identical bill in the House of Representatives today.

Mr. President, the bill I introduce today authorizes the Council on Environmental Quality to fund $1 million annually over a 3-year period to Berkshire County in the Commonwealth of Massachusetts to carry out a demonstration project. Berkshire is a uniquely beautiful area and one most suitably qualified for this project.

Berkshire County, which has its own natural boundaries, is a good example of the delicate balance between man and his environment with its cities and towns and industrial and recreational developments intertwined with the mountains and valleys, rivers and streams and forests and farms. It seems to me that if we are to begin to deal effectively with the problems of the environment, new approaches must be explored and all governmental units must become involved in effecting the solutions. County government, burdened with functions better handled by the State governments, has been neglected and ignored as a tool in preserving and protecting the fragile quality of our environment.

But the deepening crisis of the urban centers is now encroaching on the counties and so much of what plagues metropolitan residents has now spilled past the city, past the suburbs, into the rural areas of the counties. Dirty rivers run through city and county alike. Superhighways are no more welcome in quiet rural areas than in residential sections of the city. And crime and poverty and pollution touch rural as well as urban residents. The time has come to determine if the county governmental unit may become an effective instrument in leading hte cities out of crisis and protecting our natural resources.

A rejuvenated county government aiding the cities need not conjure images of dragging city garbage to landfill dumps in the county, or redirecting city traffic through quiet country settings, or of shifting housing and industrial developments to more scenic surroundings. Nor do we suggest that massive Federal Government support and funding is not crucial to solving our environmental problems or that the local town that lives with its problems daily has no ideas for solving them. But it seems clear that county government is uniquely qualified to establish priorities in terms of environmental needs, to direct Federal funding into those priorities and to evaluate the difficulties and the resolutions for both the urban and rural areas within its jurisdiction.

The bill I introduce today will provide a model for: First, rejuvenating and strengthening county governments throughout the Nation in their ability to deal with environmental problems;

Second, dealing with such environmental problems as waste of land, forest and wildlife resources, soil erosion, and flood hazards;

Third, solving such problems in cooperation with and with the assistance of the Federal, State, and local governments; and

Fourth, establishing priorities in solving countywide environmental problems.

The county commissioners of Berkshire County who have over the years demonstrated their concern and their interest in reducing environmental hazards would be required by this legislation to submit their plan for carrying out the demonstration project to the Council on Environmental Quality. A project commission would include the county commissioners, at least 10 experts in county government or the environment selected from institutions of higher education or from business, one representative from each town or municipality in the county, and one representative each from the Berkshire Natural Resources Council, the Berkshire Industrial Development Commission, and the Berkshire Regional Planning Commission.

In addition to establishing priorities in the environmental problems of the county, the Commission would work out a schedule for completing at least the highest priority projects during this 3-year period of Federal funding and also provide study data to serve as a blueprint for other county governments.

The county government environmental control demonstration project can bring new hope to those of us concerned and anxious over the prospects for our environmental future. And if these problems of the environment are found to be best solved at the county level, then perhaps other problems such as transportation, poverty, and crime control can most effectively be handled at the county level.

The greatest resource in Berkshire County is its citizens. If county government is to be revitalized, if cooperating governmental units are to deal with environmental problems, if a model of environmental priorities is to be worked out to serve as a model for the rest of the Nation—it is the citizens of Berkshire County who will do it. Over the years we have seen them work diligently to preserve the individual character of their area, facing down ventures which presented environmental hazards, and steadily becoming overwhelmed with polluted air and water—the unique gifts of our way of life in this century. This legislation is designed to give these citizens an effective means of overcoming these devastating odds, of turning back the enormous thrust of polluted resources, and of demonstrating to all the concerned citizens in the Nation that it can be done.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 3259

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 "County Government Environmental Control Demonstration Project Act".

STATEMENT OF PURPOSE

SEC. 2. The purpose of this Act is to authorize a demonstration program which will provide a model for—

(1) rejuvenating and strengthening county governments throughout the Nation in their ability to deal with environmental problems;

(2) dealing with such environmental problems as waste of land, forest, and wildlife resources, soil erosion and flood hazards;

(3) solving such problems in cooperation with, and with the assistance of, the Federal and State and local governments; and

(4) establishing priorities in solving county environmental problems.

AUTHORIZATION FOR DEMONSTRATION PROJECT

SEC. 3. (a) The Council on Environmental Quality is authorized to enter into such arrangements as it may determine with the county commissioners of Berkshire County, Massachusetts, for a three year demonstration project to carry out the purpose of this Act.

(b) Except as provided in subsection (c), no funds shall be paid to such county pursuant to this Act until such county commissioners submit to the Council a plan for carrying out such project which the Council determines to be satisfactory for the purpose of this Act and which—

(1) provides for a project commission, meeting the requirements of section 4, which will carry out such plan subject to the supervision of the county commissioners;

(2) establishes priorities for the solving of the county's environmental problems and establishes a schedule for completing at least the highest priority projects in the plan

during the three-year period of Federal assistance pursuant to this Act and provides assurances satisfactory to the Council that such schedule will be followed and that such county will continue to carry out the plan after such three-year period;

(3) provides adequate assurances of necessary cooperation by the Commonwealth of Massachusetts and any local government entities within the county, including the enactment of any necessary legislation;

(4) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds supplied pursuant to this Act; and

(5) provides for making an annual report and such other reports, in such form and containing such information as the Council may require and for keeping such records and for affording such access thereto as the Council may find necessary to assure the correctness and verification of such reports.

(c) Not to exceed 15 per centum of the funds authorized in section 5 may be paid to the County to cover costs of preparing the plan required by this section.

(d) The three year period provided in this section shall begin on the date the plan required by this section is approved by the Council.

PROJECT COMMISSION

SEC. 4. (a) The Project Commission required pursuant to section 3(b)(1) shall include—

(1) the County Commissioners of Berkshire County;

(2) at least ten experts in county government or the environment selected from institutions of higher education or from business;

(3) one representative from each town or municipality in the County; and

(4) one representative each from the Berkshire Natural Resources Council, the Berkshire County Industrial Development Commission and the Berkshire County Regional Planning Commission.

(b) The members of the Project Commission shall select one member to be Project Commissioner and may select such other officers and provide for such subcommittees of the Commission as they determine to be necessary.

AUTHORIZATION

SEC. 5. There is authorized to be appropriated the sum of $3,000,000 for payments to Berkshire County pursuant to this Act, and such sums as may be necessary for the administration of this Act by the Council on Environmental Quality.

By Mr. FANNIN:

S. 3261. A bill to amend the Internal Revenue Code of 1954 to make clear the tax treatment intended for guaranteed renewable life, health and accident insurance contracts in the case of life insurance companies. Referred to the Committee on Finance.

Mr. FANNIN. Mr. President, I introduce a bill to clarify congressional intent with respect to the tax treatment intended for guaranteed renewable health insurance contracts in the case of life insurance companies.

There are several types of health insurance contracts, as follows: First, noncancelable health and accident insurance contracts—that is, a contract which the insurance company is under an obligation to renew or continue at a specified premium—second, guaranteed renewable health and accident insurance contracts—that is, a contract which is not cancelable by the insurance company but under which the insurance company reserves the right to adjust premium rates by classes, in accordance with its experience under the type of policy involved—and third, cancelable health and insurance contracts—that is, a contract which a company may cancel. When Congress passed the Life Insurance Company Income Tax Act of 1959, it was concerned with the treatment of health insurance contracts under that act. For example, it was specifically provided in the law, section 801(e), that guaranteed renewable health and accident insurance contracts were to be treated under the 1959 act in the same manner as noncancelable health and accident insurance.

There are several other instances of congressional concern regarding health insurance contracts under the 1959 act. Under section 809(d)(5), the Congress provided a deduction for nonparticipating policies. The basic purpose of this provision was to permit stock life insurance companies to compete on a comparable basis with mutual companies which issue participating policies. This deduction for nonparticipating policies is as follows: the greater of first, 10 percent of the increase in life insurance reserves or second, 3 percent of premiums for nonparticipating policies which are issued or renewed for a period of 5 years or more.

It is interesting to note that the 3 percent of premium provision was added by the Senate Finance Committee during the deliberations on the 1959 act. This provision was added after testimony by a number of companies that, for various forms of insurance, a 3-percent premium test was a more reasonable approach than the 10-percent reserve test for obtaining competitive equality. Again, among the proponents of the 3-percent premium test were insurers that sold noncancelable health insurance and guaranteed renewable health insurance.

Thus, in my opinion, Congress thought it had equated noncancelable and guaranteed renewable health insurance contracts.

Congress further evidenced its concern regarding health insurance contracts in another provision in the 1959 act. Section 809(d)(6) provided a deduction of 2 percent of the premiums of group accident and health contracts. In 1962, this deduction of 2 percent of premiums was extended to premiums attributable to individual accident and health insurance contracts—unless they were of the nonparticipating type and were issued or renewed for periods of 5 years or more, in which case present law already allowed a deduction of 10 percent of the increase in reserves for nonparticipating contracts or, if greater, 3 percent of the premiums attributable to nonparticipating contracts. The explanation of this amendment, as contained in the Senate Finance Committee report was:

> This amendment will be of special benefit to smaller life insurance companies which generally do not write substantial group accident and health insurance contracts but which are active in the individual accident and health insurance market, where risks frequently are greater. S. Rep. No. 1720, 87th Cong., 2d Sess. 4.

It should be noted that these deductions for health insurance contracts are not absolute deductions. Rather, they are only "temporary" deductions since they must be added to the deferred tax base the code provides for life insurance companies. Thus, the amount of these deductions will be restored to a company's tax base and subject to the corporate tax in the future.

It has been brought to my attention that the Internal Revenue Service has issued two revenue rulings, Revenue Ruling 65–237 and Revenue Ruling 71–368, which negate the intent of Congress as to the tax treatment of guaranteed renewable health and accident insurance contracts. The Internal Revenue Service has concluded that guaranteed renewable health and accident insurance contracts do not qualify for either the 3 percent premium deduction under section 809(d)(5) or the 2 percent of premium deduction under section 809(d)(6). In other words, all forms of health insurance contracts—group or individual, noncancelable or cancelable—will qualify for either the 3 or 2 percent of premium deduction but one—guaranteed renewable health insurance.

This result is clearly contrary to the intent of the Congress. It defeats the purpose of Congress in enacting sections 809(d)(5) and (6). Moreover, it gives a company a greater tax incentive to sell cancelable health and accident insurance rather than guaranteed renewable health insurance. Under guaranteed renewable health and accident insurance the insured is guaranteed the policy cannot be terminated merely because he has become an uninsurable risk. The reinstatement of the 3 percent premium deduction will encourage companies to provide guaranteed renewable health insurance. This is in the public interest.

It was because the congressional intent seemed so clear to me in this area that after I heard of these ruling of the Internal Revenue Service I decided to introduce a bill making more specific what I believe is the intent of Congress in this regard. The bill I am introducing amends section 809(d)(5) of present law so that it specifically includes guaranteed renewable life, health, and accident insurance contracts for purposes of the 3 percent of premium deduction. This amendment, since it is clarifying in nature, is made applicable with respect to the effective date of the Life Insurance Company Income Tax Act of 1959; namely, taxable years beginning after December 31, 1957.

By Mr. CURTIS (for himself, Mr. HRUSKA, Mr. BAKER, Mr. DOLE, Mr. HANSEN, Mr. PEARSON, and Mr. TOWER):

S. 3262. A bill to amend the Occupational Safety and Health Act of 1970, and for other purposes. Referred to the Committee on Labor and Public Welfare.

TOWARD A FAIRER OCCUPATIONAL SAFETY AND HEALTH LAW

Mr. CURTIS. Mr. President, on the 29th day of December, 1970, a little over 1 year ago, an Act of Congress pertain-

ing to the health and safety of employees in their occupations became law.

This law, Public Law 91–596, known as the Occupational Safety and Health Act of 1970, was ordered reported by the conferees of the House and Senate on December 16, 1970, and thus received final congressional action in the waning days of the 91st Congress.

At the time that the Occupational Safety and Health Act was considered in the Senate, a better proposal was under consideration. This proposal had the support of the administration. It was introduced by Senator DOMINICK of Colorado in the nature of a substitute for the bill that was passed.

Had it been enacted into law, the Dominick substitute would have done much more to advance the cause of industrial health and safety. It was a bill that our people could live with. It placed more emphasis on cooperation and education, which are essentials if any program is to work.

The Dominick substitute, if it had been enacted, would have avoided much of the trouble that we are now experiencing with the present law. This amendment, however, was defeated by a rather close vote. On a vote of 41 to 39, the motion to table the Dominick substitute was carried. I supported the Dominick amendment and I regret that it did not prevail.

Now, a year later, we are seeing the results of the law in action, and it is becoming abundantly clear that there are major defects in the law.

Last December 14 I said, in a statement here in the Senate, that I intended to propose remedial action to cure some of the defects which have been called to my attention. I know other Senators have also received mail regarding the inequities of the act. I have been investigating the problems and their causes, and have found that, contrary to the belief of some, the problems are not basically due to ill-advised administrative actions by the Secretary of Labor in carrying out the law. The problems are rooted in the basic law which Congress passed. It is, therefore, not a matter which the Secretary of Labor or the President can remedy. Rather, the problems to which I refer are the responsibility of Congress.

Today I am introducing a bill that I believe includes the amendments necessary for a responsible reform of the 1970 act while reinforcing the basic purpose for which it was enacted.

There is no doubt in my mind that these amendments will hasten the day when employers will have taken all necessary steps to provide for the health and safety of their employees as they carry out their jobs, because the act would be rewritten to retain the goal of further protection. But my amendments would end or lessen the effects of provisions which have proven to be completely unworkable and unfair to the employers, especially the owners of small businesses, who, struggling to keep pace with competition, are laboring under the additional paperwork burdens imposed by Federal wage and price control requirements, equal employment opportunity requirements and myriad other such Federal laws.

Businesses, as a result of the 1970 Occupational Safety and Health Act, are deluged with a multitude of so-called health and safety requirements with which they must comply or face sanctions that include civil and criminal penalties and even the closing down of their businesses.

These requirements have been imposed upon them en masse, without any administrative determination whatsoever that they will improve occupational health and safety, that they are necessary or even that they are the best way of accomplishing the desired result. I am speaking of what the act denominates as "national consensus standards." These are various criteria and guidelines which in the past have been set forth by a number of private organizations. The act Congress passed, in effect, made these rules the law of the land without a prior specific review of them to see what they do, how they should be applied, or whether or not they are adequate. As a guide or base point, these standards could serve a useful purpose, but the result of adopting all of them, without an administrative rulemaking procedure, is that the employers of the country have been required to find out what the rules are and which ones—if any—apply to them, and to expend time and money in trying to put them into effect when the employer very well knows in many cases: First, that they will not improve employee safety, or second, there are better ways of doing it, or third, there are less expensive ways of doing it, or fourth, that all three of these statements apply to the particular rule with which he must comply. The final irony is that, sometimes, employers simply find it impossible to comply.

I mentioned some examples in my previous statement, and it is necessary to mention examples again because it is so evident from these relatively few examples that there must be thousands of other instances of similar nature which have been thrust upon employers by this act, detracting from, rather than adding to, the purpose of the law.

Employers are required to install coat hooks in toilet compartments. In the first place, I do not believe this qualifies as a "safety" requirement. Secondly, even if it does it has been applied to businesses where the employees have no use for such hooks and the employer knows they will not be used.

Under another rule, employers are required to color code switches red and green even though they may already have their plants and equipment color coded with other different colors which their employees have been using for years and understand. To change over to red and green and the resulting loss of equipment time will cost many employers thousands of dollars.

A similarly ridiculous regulation imposed upon farmers requires every farm truck to contain a first aid kit and a fire extinguisher. As one of my constituents pointed out, neither is likely to be there "the night after we mount them in the vehicle because they will be stolen." He further points out that, in my State of Nebraska, the first aid kit required will cost $16.

Protections for window openings in building construction, which may be appropriate in the construction of multistoried buildings, are required for all construction—even a one-story residence where the distance to the ground is no more than a few feet. The employer knows there is no reason he should have to spend his funds to comply, but the regulations make no provision for such in-business differences.

A load moment computer is required to be installed at considerable expense on all existing cranes. The ostensible purpose is to advise when the crane will tip over, but the requirement fails to reflect the status of the essential factor—the base of the crane—with the result that it obviously does not fulfill the intended purpose. Nevertheless, the act required the Secretary of Labor to put this regulation into effect.

Under the national concensus standards, which the 1970 act required the Secretary of Labor to adopt, farmers must install a roll bar on their tractors. However, no provision is made for the many tractors on which the roll bar cannot be attached, or for those to which it can be attached but the place of attachment is too weak to allow the roll bar to hold up in a rollover. Neither is there any consideration given to the fact that the roll bars, which in my State I am advised, run from $200 to $250 each, will in many instances cost more than the tractor itself is worth. Nor is any allowance made for the physical area or conditions where the tractor is being used or might be expected to be used. Many of my farmers advise me that their tractors are never driven on anything but level land and blacktop roads. Why impose the same requirements under these conditions that are imposed on tractors used on hilly or terraced terrain, or under other circumstances which might logically lead to an upset? Why? Because, as in the other cases, without any idea that Congress would ever make it an all-encompassing requirement, some safety-standard-setting organization once set it forth as a good idea, thinking, of course, about specific tractors, probably new ones, and specific conditions where an effective roll bar might prevent death or injury. I ask: Is it in the farm employee's best interest to have him believe that he is protected by the roll bar that will not protect him, or the crane operator to believe the load moment computer will protect him when it will not? I think not. It is better that the employee drive the tractor or operate the crane with the caution that full knowledge of the facts gives. It is far better for us to be fully assured that every dollar we require an employer to spend is for a needed and useful safety requirement in his particular field, and that this determination is made pursuant to the usual rulemaking procedures prescribed by the Administration Procedures Act.

Right now, many of the requirements employers must meet are known to be ones which will be replayed at a future

date, resulting in loss of the investment made in meeting them. The conference report called these national concensus standards, only interim standards, and the act makes provision for their later replacement.

The Senate report said of these "national consensus standards" which were foisted upon employers:

> These standards may not be as effective or as up-to-date as is desirable, but they will be useful for immediately providing a nationwide minimum level of health and safety.

I repeat, the majority of the Labor and Public Welfare Committee concluded that these standards, which the law required to be put into operation immediately, likely were not the best and were probably out of date.

Nevertheless, the law requires the employers to spend the time and the money necessary to understand them and to put them into effect.

This does not, in my judgment, promote respect for the law in this country, in general, and specifically will work against the improvement of employee health and safety and further constitute an intolerable burden upon employers.

Or take another example of the inequities of the law. Employers are not given actual notice in the mail that they must take various required and specific steps in their business operation, as they are with respect to withholding taxes, for instance. Instead, they are supposed to read the reams of requirements, which the law says the Secretary need only publish in the Federal Register, and then try to figure out, at their own peril, which ones apply to them. Parenthetically, I might say here that there is no requirement of notifying the employers that they are even expected to meet certain requirements which they will find in the Federal Register. It is "presumed" that every person in the country who has an employee and is thus an "employer" knows this and can and will do it. For the man who is a carpenter by trade and employs a helper, the pharmacist who has his own pharmacy and an employee to help him, or the farmer with hired hands, for instance, we are talking about something which is too much to expect. Yet it is what the law requires.

What happens when one of these people writes the Secretary of Labor wanting to know just what he or she must do? As an example, I have a letter before me from the Labor Department responding to such an inquiry. It is short and to the point. I quote:

> Your request for a visit to your shop . . . can be arranged in the near future.
>
> However, if a compliance officer visits your place of employment, he is obligated to conduct a complete walk around inspection. . . . If he finds any alleged violations it could subject the company to assessment of monetary penalties.
>
> If you still desire a visit under these conditions, please let us know.

This person requested assistance in complying with the act and received in reply a threat of the imposition of sanctions, together with a suggestion that he reconsider his request. Does this lead to the improvement of the health and safety of employees? Hardly: But it is the position in which the 1970 act puts the Labor Department. I think we need an affrmative provision in the act to encourage voluntary compliance, with the assistance of the Labor Department. That assistance should include interpretations of rules, an indication of which rules apply and how to comply with them, and flexibility for the Department, if it finds the employer is out of compliance at the time of his request for assistance, not to institute sanctions. After all, that is the reason the employer seeks and needs help—because he believes he may not be in compliance and because he wishes to obey the law.

My bill seeks to give us a law which employers, employees, administrators, courts, and the public will respect. Without such respect, this Occupational Safety and Health Act will fail to achieve its purpose.

The amendments which I propose as the "Occupational Safety and Health Act Amendments of 1972" are as follows:

First. An amendment to exempt small employers, both agricultural and nonagricultural, from the act. I propose to exempt businesses of 25 or fewer employees from the rigors of this national safety law. Congress has exempted businesses with 25 or fewer employees from the Equal Employment Opportunities Act, which we have recently had under consideration. The same reasoning which sustains that exemption supports the exemption I propose for employers under OSHA.

My perusal of the hearing records in the Senate and the House in considering the 1970 act indicates little attention was given to this question, and I assume the reason is that the witnesses, other than those from the administration, were mainly representing big business and big labor while the corner druggist and the small farmer could not afford to appear, even if they knew of the hearings and had an idea what was in store for them, which they did not.

The administration bill in both Houses did have an exemption for small employers, but that practical and precedented suggestion from the Department of Labor was completely disregarded in the reported bills.

I did find a statement in the hearings by a representative of one of these private setting organizations, whose relations are with big business, who said that he saw no reason for the exemption of small business. But when that statement was made, the witness was talking about the bills then before the committee, which were quite a bit different from the final act insofar as their effect on a small businessman is concerned. He, of course, was also speaking without the benefit of the experience which has developed since this act became law.

When then Secretary of Labor Shultz testified before the Senate committee, he supported an exemption for small business and he mentioned the lack of experience with the law as one reason. The last year has certainly proven the administration right in that regard, and I think that if we are going to have the unreliable, "trial and error," off-again-on-again, standard setting procedure the present law provides, we should exempt small businesses, at least until such time as the bugs are worked out and the standards have been shifted and sifted and made more reasonable in form. It is bad enough to subject any employer to this sort of standard setting, but, in my opinion, these people who are in business for themselves with only a couple of employees simply cannot afford even to try to keep track of what the requirements are. Imagine a man in business for himself—a TV repairman with one helper, for example. As an employer, he stays up all night to read up on the safety regulations, with which he has heard he must comply, only to find out that the coat hook in his bathroom does not measure up to national standards. How many more nights is he going to stay up to read these volumes?

Why should a small farmer have to install some alleged safety device on his tractor when he and the same employee have been driving tractors over the same farmland for the last 15 years and can do it with their eyes closed? Those regulations are for big companies and big farming businesses where there is a constant turnover of employees, who work on different equipment from day to day, who are under different supervisors and are generally participating in our automated society.

I mentioned the witness who said he saw no reason why small employers should not be covered by the act. I would have asked him why, in that case, the law should not be equally applicable to the man who works by himself without employees? That question was not asked; yet neither the witness nor those who eliminated the small business exemption suggested these requirements should apply to one-man businesses. Against the background of that unanswered question, I feel the reason for the small business exemption is brought sharply into focus, and the action of Congress is shown to have been quite arbitrary. Congress many times in the past has recognized that small business should, and must, be distinguished from big business.

Second. An amendment to delay for 1 year the effectiveness of the act with regard to the employers who have more than 25, but fewer than 100 employees. In my part of the country, at least, it is going to be impossible for businesses in the category to meet the requirements of the act overnight. Not only would the financial burden drive many out of business, but, for those who could afford the modifications, there simply is not the expertise available to accommodate the overnight changes. One of the few qualified safety engineers in Nebraska advises me that the act covers matters requiring the expertise of fire engineers, safety engineers and industrial hygienists. Yet there is not a single industrial hygienist in the entire State, only a few qualified fire engineers and almost no safety engineers or safety consultants to aid

trade associations and small employers in bringing their operations into compliance.

He estimates it would take 15 qualified people working 3 years to prepare Nebraska for the act through training academies, actual inspections and close work with trade associations. But there are not 15 qualified persons in the entire State.

Third. An amendment to section 6 of the law which required the Secretary of Labor to put all these national consensus standards into effect without complying with the usual rulemaking procedures. This amendment would not set aside the procedure which Congress elected but, instead, would require the Secretary of Labor to evaluate all of the regulations, distinguish the various facets of a given general form of business, and determine if the rule should apply to each facet. Experience shows that requirements which may be reasonable for a "hazardous" form of business can be oppressive when applied to a "nonhazardous" facet, and that the current requirements often fail to make appropriate distinctions.

In the construction business, the difference between "heavy construction" and "light residential construction" is a case in point.

The farming industry provides a different sort of example. Here, the requirement of a half-inch mesh screen shield on all motors and power ventilating fans may be appropriate for some enterprises, but in the poultry business, the feathers and down would completely plug such screened outlets in a matter of 2 or 3 days. Such arbitrary rigidity cannot possibly be so beneficial to health and safety as to outweigh the damage it does to the peoples' respect for law and lawmakers.

Fourth. A further amendment to section 6 to require the Secretary of Labor to publish as to each present and future rule, the estimated maximum and average cost of compliance, and to determine that it is in fact possible to comply.

I do not see how anyone can quarrel with the idea that the Secretary should at least know the cost and feasibility of compliance and second, that the employer should be given some idea of what the cost will be, as contemplated by the Secretary, and assured there is a device or procedure available that will permit him to comply. There is no such provision in the law at present.

Fifth. An amendment to require the Secretary of Labor to provide technical advice and consultation to employers of 100 or fewer employees to assist them in complying with the act.

I have chosen the figure of 100 or fewer employees to denominate those which will receive this help. As I said, the Equal Employment Opportunities Act presently exempts all employers from its operation if they have 25 or fewer employees. I propose the same exemption for OSHA. However, I do feel that for small businesses in the 25 to 100 employee bracket, we are going to see compliance with the requirements much more quickly and easily if they get some help.

I quoted earlier a letter received by one employer from the Labor Department when he asked for help. He was told that the result likely would be a finding that he was in violation of the act, together with the imposition of penalties.

Large businesses may be able to afford lawyers and engineers to advise them on what is required and how it should be done, but these small employers cannot. As long as Congress included them in the act, it is incumbent upon Congress to help them, particularly in view of the imposition of these consensus standards which the Committee Reports call "out-of-date" and subject to almost immediate replacement. This is the fair way of getting employees in these small businesses covered.

Sixth. An amendment providing that as to these "national consensus standards" or any other non-emergency requirements, they shall not have equal status with other requirements which were adopted in the usual rulemaking proceedings, by specifying that no penalty or other action will lie as to such deficient requirements unless the Secretary has seen to it that the employer actually receives a copy of the requirement and was given 30 days in which either to comply or to request an administrative review.

Right now the occupational safety and health law provides only for publication of these requirements in the Federal Register and, when the requirements were not even adopted pursuant to the Administrative Procedures Act, it is not fair to expect the employer to know of them and to have complied with them the day an inspector happens to walk in.

In "Additional Minority Views" in the House, Representative SCHERLE and five other committee members said of the Occupational Safety and Health Act provisions:

> When Congress passed the Administrative Procedures Act we recognized the importance of requiring government agencies to follow uniform procedures . . . that compelled fair methods of developing and enforcing regulations.

In the reported bills and the act, however, Congress cast aside the procedures it had established, and, in so doing, cast aside the fairness which the "adversary" agency rulemaking procedures were intended to insure.

The procedure in the act which gave the Secretary authority to block a national consensus standard was of no merit. To be able to use it, the Secretary, on his own volition, was required to isolate a specific standard out of the multitude and to make a judgment that there was no possible way it could be of benefit. There is no procedure specified and, if he did make such a judgment, the Secretary had to do it without the benefit of a hearing or other airing of the pros and cons. He also must have done it in face of the committee report language which said Congress knew the standards were likely deficient, and contemplated their promulgation, regardless. In effect, he would have been overriding a congressional determination.

Now that these requirements have been put into effect without the usual procedures and we have observed the results, I propose to inject some fairness by my amendment. I do not think Congress should have directed that the Administrative Procedures Act be abrogated, and this amendment is an alternative to repealing the rules adopted pursuant to the act's "irregular" requirements.

Under my amendment, by publishing the rules he believes are proper, and adopting them in the usual form prescribed by the Administrative Procedures Act, the Secretary can relieve himself of the responsibility of actually sending each employer the regulation and giving the 30-day period for corrections.

I hope the Secretary will subject each requirement to the test of the usual agency procedures, if this amendment is adopted, and I believe he will.

I cannot accept the reasoning which supports the different procedures for "national consensus standards" on grounds they were adopted by the private agency under circumstances where interested parties could participate. There was nothing involved in the events surrounding adoption of these standards by the private standard-setting agencies which gave notice to every affected employer in this Nation that what the agency was doing was at some later date going to become a binding Federal rule, adopted without the usual administrative procedures for nationwide application. Furthermore, if some employer had suspected that might happen, and had sued the private organization to get the standard changed because it might later be a Federal rule, that employer would have landed on his ear outside the courthouse. Finally, given the "nonmandatory" nature of the rules adopted by private standard-setting agencies, many employers would not have taken the trouble to participate, even if they knew of the proceedings.

Seventh. An amendment to compensate employers for the additional expense of having to comply, initially, with one rule, and then having to comply with a different one when the first one had not been adopted pursuant to the Administrative Procedures Act.

At the beginning of this statement, I quoted the incredible statements in the committee reports indicating the committees knew many of the initial requirements imposed upon employers were probably out of date and were not the proper ones, with the result that they later would have to be replaced. This means that an employer can be required to install one safety device by the rules Congress required to be put into effect and then will have to take that device off or alter it to comply with later substitute rules adopted under normal procedures. If those normal procedures had been followed in the first instance, they likely would have resulted in the correct requirement being adopted initially. I believe the Federal Government, not the employer, should pay the extra expense in such instances.

The Department of Labor submitted to both committees a 1968 Labor Department Report on the status of safety standards adopted by private organiza-

tions—page 1444, Senate hearings. That report clearly stated:

(1) 32% of the standards were 10 or more years old.

(2) 28% of the standards were 5 to 10 years old.

(3) Only 40% (were) considered current.

(4) In the first two categories, 60% were in need of 'revision, updating or faster action.' In the second category, 14% would pass out of the 'current' classification by 1969.

(5) It can be anticipated that the current backlog will increase.

This is the background for the admissions in the committee reports and the reason the additional costs of meeting two or more safety changes instead of one must be a Federal obligation. It is also another reason for the exemption of small business from this act, as I propose, and it fortifies the arguments for most of my other proposed amendments as well.

My amendment would not apply to cases where the replacement requirement could not have been adopted initially, as in the case of newly discovered procedures or devices. It also does not apply to cases where the normal rulemaking procedures were followed in adopting the first requirement.

Eighth. An amendment providing that if the usual administrative procedures for adoption of rules were not followed, the failure to comply with the rule cannot be used as evidence of negligence or wrongdoing on the part of the employer.

It is a usual rule of law that where a person is injured and he can prove a relationship between his injury and the absence of compliance with a governmental safety requirement, the fault of the person who failed to comply is presumed, so that the burden is upon him to prove he was not at fault. In the case of the safety rules which were not adopted pursuant to the usual governmental procedures, it is my belief that this rule of evidence should not apply. It appears it could cause unnecessary litigation and should be answered in the same law which created the problem.

Ninth. An amendment to relieve employers from the absolute liability provisions of the act.

At present many of the regulations require the action of employees to implement them. The employer may have done everything in his power to get the employee to do what he should, but if the employee fails to do so, the employer is still held responsible and subject to fines or the closing of his business.

My amendment would permit an employer who is assessed a penalty under the act to show that he has posted notices and exerted all reasonable efforts in accordance with rules to be adopted by the Secretary to cause his employees to comply with the regulation.

If the employer cannot establish that he did this, he will still be held responsible, but he should have this right.

Tenth. An amendment to provide that no employer shall be responsible for fines and other penalties under the act if he can prove that the requirement he is alleged to have violated would not have effectively constituted an improvement of the health and safety of his employees.

Particularly because these consensus standards were adopted without following the Administrative Procedures Act, there are many requirements which clearly do not effectively improve health and safety at all—again I come back to the example of the bathroom coat hooks.

Additionally, there are many requirements that may appear necessary when trying to set up national guidelines, but when a specific employer in a specific factual situation sees them, it is clear to him and his employees that compliance will not do a whit of good for employees safety and health in his given factual situation. As a matter of fact, in many cases the employer may have a safety device which he has chosen to fit his specific needs and which is far superior to the one adopted by people totally unfamiliar with what this particular businessman actually has or is doing. I do not think it takes any imagination at all to be able to see why the act is hopelessly deficient without the specific availability of this defense.

I would hate to learn that an employee has been hurt or killed by a machine which had had an effective safety device removed in order to install one required by a national standard which did not take into account vital distinctions in a particular employer's operation.

Eleventh. An amendment to permit the Secretary, where appropriate, to make provision for initial medical exams for employees and followup exams thereafter at periodic intervals. This will assist the recordkeeping proviso of the bill and enable the employer and the Secretary to better ascertain the effects of a particular job upon employee health.

Twelfth. An amendment to aid the purposes of the act by permitting the formation of employee safety committees to identify areas of concern at a particular business and to endeavor to find the best solutions for their health and safety.

Although this seems a logical and beneficial way of particularizing employee health and safety, other laws, particularly the National Labor Relations Act, appear to prohibit it or to establish preconditions. Thus, it is necessary to grant specific authorization to permit the employees to so participate in order to further the purposes of the Occupational Safety and Health Act.

Thirteenth. Last, an amendment to assure the earliest compliance of employers with the safety and health requirements by making available to the Secretary of Labor, in the case of an alleged violation, the option of entering into an agreement with the employer for prompt compliance, in lieu of using the present provisions and imposing a penalty for having failed to comply.

In some cases, to protect himself legally under the present act, an employer who learns he is believed not to be complying with an applicable standard is deterred from prompt compliance because to do so may constitute a tacit admission that he was out of conformity, which fact can be used against him in imposing penalties and sanctions.

If such an employer was not willfully violating the act, the best way to achieve the purposes of the act may well be for the Secretary to forego collecting the penalty or imposing other sanctions in exchange for the employer's prompt agreement to do what is necessary. This procedure is common in other areas, and in this case, besides accomplishing the change in the shortest period of time, it may avoid a shutdown of the business and loss of income to the employees. Such an amendment could also avoid unnecessary expenses to the Government in litigation and in trying to convince a court that the employer was not in compliance.

My amendment does not require this procedure; it only makes it available as a tool to the Secretary of Labor for use in appropriate cases.

I will, of course, welcome any cosponsors who find my bill suited to the relief of their own constituents, as I strongly believe many will. And even those whose constituents have not yet felt the injustice of its provisions will, I believe, share with me a concern for making this act respectable law.

Abraham Lincoln once said, in a speech at Springfield in 1837:

I know the American people are much attached to their government. I know they would suffer much for its sake; I know they would endure evils long and patiently before they would ever think of exchanging it for another—yet, notwithstanding all this, if the laws be continually despised and disregarded . . . the alienation of their affections from the government is a natural consequence. . . .

As lawmakers entrusted with the duty of securing the common good of all and living in a time when disrespect for law is of growing concern, we can ill afford the luxury of enacting legislation which imposes arbitrary, capricious, and unnecessary burdens upon the people, further alienating their affections from representative government. The rectifying of this Occupational Safety and Health Act may well become a major test of our good faith in this regard.

Mr. HRUSKA. Mr. President, it is with tremendous interest and much sympathy that I listened to the remarks of my distinguished colleague from Nebraska concerning the Occupational Safety and Health Act.

My mail has been heavy with complaints about the unfair application of this law, about the way that small businessmen have been harassed. These are complaints from sincere, hardworking businessmen who have no quarrel with improvements in safety and working conditions, but who also know that the application of this law has produced true chaos and heavy burdens.

Senator CURTIS' proposed amendment to this act may not be in its final form, but it will bring about a thorough discussion of all the points that need to be raised so that this law can be made workable. It is with these thoughts in mind that I have agreed to be a cosponsor of his bill. It is my hope that quick action will be taken.

Mr. HANSEN. Mr. President, I am pleased to join with my colleague Senator CURTIS in sponsoring this important

legislation. Full credit needs to be given to Senator CURTIS for his full recognition and keen analysis of the significant problems that have come forward from the Occupational Health and Safety Act which was passed by Congress in 1970.

As my colleagues will remember, this legislation was passed by Congress and signed by the President with the intent of improving the working conditions of American employees. I fully support and endorse this objective and I voted for the bill on final passage after the Dominick substitute was tabled by a vote of 41 to 39.

However, Mr. President, the Occupational Safety and Health Act has turned into a nightmare for the small businessman.

As implemented by the Department of Labor, many small businessmen in my State are asking if the objective of the Occupational Safety and Health Act is to eliminate work, not improve working conditions for the employee.

Mr. President, I think it is extremely unfortunate the act has been administered and implemented in a way that has created such a burden on small business.

The alarming part of this is that the original legislation was not intended to be oppressive to small business. That was not the intention. But it has been the result.

The problem seems to lie with the regulations that have been promulgated by the U.S. Department of Labor and the manner in which the act has been administered in the several States. It is in this area where my constituents are facing real problems and I am most sympathetic to their dilemma; thus the Curtis-Hansen bill.

Unfortunately, small businesses—with only a few employees—simply do not have any way to go through thousands uopn thousands of words of regulations in order to try and find out how and why and where their businesses are not in compliance; and, more significantly, in a number of instances already called to my attentiton, these same businessmen will not be able to put together enough capital to bring their businesses into compliance with the new regulations once they do learn where they are in violation.

For example, Mr. President, how many of my colleagues had any idea that there would be seven pages of Federal Register regulations on stepladders alone as a result of this act?

This, to my mind, avoids th real intent of the act—safety for employees—and only adds an intolerable extra layer of unneeded, and sometimes, unfair, bureaucracy.

Mr. President, the legislation which I am joining with my colleague, Senator CURTIS, in sponsoring would amend the Occupational Safety and Health Act. It would not disturb the basic concept of that act, but it would reorient the thrust of the legislation to one of education for the employer and employee and help the employer come into compliance with the Department of Labor's regulations.

Our amendment to the act would redirect enforcement to assist the employee in situations where major problems exist, not harass the small businessmen.

I am pleased to join in this effort and hope that it will receive favorable consideration so that the original intent of the Occupational Safety and Health Act can be carried out.

Mr. President, on Saturday, February 26, 1972, Senator CURTIS and I met for over an hour with the Secretary of Labor to inform him of the hardship which rules and regulations promulgated by the Department is working on the citizens in Wyoming and Nebraska. In my opinion, many of these standards are uncalled for and do not lead to healthier and safer working conditions for employees.

I urged the Secretary to institute a program to inform all employers of the provisions of the law and the rules and regulations and to direct labor officials to work with employers to protect their employees rather than harassing employers to take action which has little if any, relation to employee health and safety.

The Secretary recognized that a problem exists in the application of the Occupational Safety and Health standards to small employers. He assured me that the Department is now working to correct this problem. The Secretary promised to arrange for labor officials to visit cities in Wyoming to inform employers of the new standards and exchange views with them.

For example, a meeting is set for Riverton on March 16.

The Secretary indicated that it was the intention of the Department to work with employers and not to intimidate them and that he would work to see that this policy is carried out in the field.

Recent developments have convinced me that the Occupational Safety and Health Act of 1970 must be amended to correct inequities. If left unchanged, I believe many small businesses will close and their employees will be out of work. Therefore, Senator CURTIS and I introduced legislation following our meeting with the Secretary of Labor to remedy the situation.

Our proposal would exclude all employers with fewer than 25 employees from the provisions of the act. All employers covered by the act would be given a 1-year phase-in period to comply with the law.

It would require the Secretary of Labor to make certain determinations before adopting a new standard and provide for flexibility in the application of the standard.

In enforcing the standards, the Secretary would have the burden of proof to show that negligence or wrongdoing of the employer arose out of the violation charged.

Our proposal would also provide the employer with four affirmative defenses to charges that he is in violation of the act.

All Americans support healthy and safe working conditions for our workers.

I regret that legislation intended to promote the health and safety of employees is so broad and new standards so inflexible that it has become an unreasonable and unnecessary burden. The application of standards not resulting in healthier and safer working conditions in a specific case only serves to endanger the survival of the business, to cause the loss of jobs by employees in that business, and to increase costs to consumers.

I hope that the Secretary of Labor will do what he can to mitigate the burden and I intend to do everything I can to see that the Congress enacts legislation which will provide a permanent solution to this problem.

By Mr. McGOVERN:

S. 3263. A bill to amend the National School Lunch Act to provide for a universal school lunch pilot program. Referred to the Committee on Agriculture and Forestry.

PILOT UNIVERSAL SCHOOL LUNCH

Mr. McGOVERN. Mr. President, today I introduce a bill calling for the establishment of a pilot universal school lunch program as a step toward providing every American schoolchild one nutritious meal a day.

The bill closely follows recommendations laid out in a recent comprehensive Select Committee Study on the National School Lunch Program, "Hunger in the Classroom: Then and Now."

Representative CARL PERKINS, chairman of the House Committee on Education and Labor, is introducing a similar bill in the House of Representatives today.

It should be clear that the present structure under which the national school lunch program operates has failed to achieve its stated goal of safeguarding "the health and well-being of the Nation's children." Progress in reaching the hungry has generally been too little, too late. Assurance that all children receive at least one nutritious meal a day has not yet been attained. At a time when it can now be said that adequate income does not guarantee an adequate diet, we have yet to at least reach the point where those with a clearly inadequate income are provided with just a portion of their minimum daily nutritional requirements.

The time has come for a thorough reconsideration of the child nutrition concept. The recent report of the select committee has been aimed at a complete review of our progress, an account of our shortcomings and the recommendations stated are meant only to deal with the immediate problems under the present structure. More fundamental problems exist which these recommendations cannot deal with. In the coming year it is apparent that the universal school lunch concept, a free meal for every schoolchild in America regardless of his family's income, is likely to be at the center of the debate as to the basic structural deficiencies in our present efforts. Legislation to this effect has been introduced in both Houses of Congress and has been endorsed by many prominent members of the interested public.

Those who oppose the universal school lunch program do so because of its cost; or, because they feel that the role of feeding the child should not be taken

away from the family by the State. Those who favor the program point out that adequate nutrition during childhood acts as a preventive medicine—it reduces medical problems and the expenses necessary to correct them; it reduces dropout rates and disciplinary problems in school; and, it teaches children proper eating habits. In short, they say, tax money spent on the child is tax money saved when many of the problems associated with malnutrition subsequently fail to appear. Proponents claim that, given the current state of nutrition education, adequate income does not guarantee adequate nutrition; and that only with a universal program will all of the needy truly be fed, and only then will the economic segregation of the present system also disappear.

Change is needed. What form that change should take must be more thoroughly evaluated. The Select Committee on Nutrition and Human Needs has approved plans to thoroughly investigate the validity of the arguments stated above. In order to complement our investigations the following pilot programs should be established so that an accurate appraisal of the cost, necessity, and value of the universal school lunch concept may take place.

For that reason, I am introducing this bill today. A bill that was prepared in cooperation and consultation with citizens groups, the food service and management industries, and the American School Food Service Association. This bill would:

First, study the concept of a universal school lunch program under which all preschool, elementary, and secondary school students in the United States would be provided free lunches, to determine the feasibility of such a program, to identify and seek solutions to problems of establishing and operating such a program, to evaluate the nutritional, educatonal, health, social, and other benefits of such a program, and to determine the probable cost of such a program the Secretary is authorized and directed to establish in geographically dispersed areas of the United States, pilot programs, under which all preschool, elementary, and secondary school students in the areas will be provided free lunches;

Second, authorize pilot programs in 10 different schools throughout the United States, two such programs would be carried out in schools located in each of the U.S. Department of Agricultural regions. One of the schools selected in each such region would be an elementary school and one a secondary school;

Third, in carrying out the pilot programs, direct the Secretary to:

(a) utilize various innovative food delivery systems to determine the most efficient means of preparing, distributing, and serving nutritious, appetizing, and economical meals to large numbers of students;

(b) utilize student preference tests to determine the types and kinds of foods that will be appealing as well as nutritious and economical. Explore the use of engineered foods, fortified foods, and use the latest technological advancements in food preparation facilities and equipment;

Fourth, authorize the pilot projects for fiscal years 1973, 1974, and 1975 at $7.5 million per year; and

Fifth, direct the pilot programs to seek the advice and cooperation of the various segments of the private food industry.

The pilot programs shall complete their operation by June 30, 1975, and the Advisory Counsel shall report, not later than October 30, 1975, their recommendations regarding the feasibility and desirability of a nationwide universal free school lunch program. In the interim, the Advisory Counsel shall submit annual reports to the President and to the Congress regarding the progress and results of such programs.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 350

At the request of Mr. HATFIELD, the Senator from Arizona (Mr. FANNIN) was added as a cosponsor of S. 350, the American Forestry Act.

S. 2574

At the request of Mr. MCGEE, the Senator from California (Mr. TUNNEY) and the Senator from California (Mr. CRANSTON) were added as cosponsors of S. 2574, the National Voter Registration bill.

S. 2951

At the request of Mr. PERCY, the Senator from Minnesota (Mr. MONDALE) and the Senator from New Mexico (Mr. MONTOYA) were added as cosponsors of S. 2951, a bill to amend the Labor-Management Reporting and Disclosure Act of 1959 with respect to the terms of office of officers of local labor organizations.

S. 2981

At the request of Mr. AIKEN, the Senator from Massachusetts (Mr. BROOKE) and the Senator from Indiana (Mr. HARTKE) were added as cosponsors of S. 2981, a bill to amend the Bankhead-Jones Farm Tenant Act and Watershed Protection and Flood Prevention Act.

S. 2994

At the request of Mr. MCCLELLAN, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 2994, a bill to provide for the compensation of innocent victims of violent crime in need; to make grants to States for the payment of such compensation; to authorize an insurance program and death and disability benefits for public safety officers; to provide civil remedies for victims of racketeering activity; and for other purposes.

S. 3063

At the request of Mr. SCOTT, the Senator from Kansas (Mr. DOLE) was added as a cosponsor of S. 3063, a bill to amend the Internal Revenue Code of 1954 so as to permit certain tax exempt organizations to engage in communications with legislative bodies, and committees and members thereof.

S. 3152

At the request of Mr. CHILES, the Senator from Montana (Mr. METCALF) was added as a cosponsor of S. 3152, a bill to amend the Internal Revenue Code of 1954 to provide that no interest shall be payable by a person to whom an erroneous refund is made if the erroneous refund is made due to error by an officer or employee of the United States.

S. 3182

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

S. 3212

At the request of Mr. GAMBRELL, the Senator from Georgia (Mr. TALMADGE) was added as a cosponsor of S. 3212, a bill to amend the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970.

S. 3227

At the request of Mr. TUNNEY, the Senator from Illinois (Mr. STEVENSON) and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of S. 3227, a bill to amend the Internal Revenue Code of 1954 to allow a business deduction under section 162 for certain ordinary and necessary expenses incurred to enable an individual to be gainfully employed.

SENATE JOINT RESOLUTION 15

Mr. NELSON. Mr. President, I ask unanimous consent that the name of the Senator from Florida (Mr. CHILES) be added as a cosponsor at the next printing of Senate Joint Resolution 15, a joint resolution designating Earth Week, 1972.

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

Mr. NELSON. Thus far, 70 Senators with wide bipartisan representation have cosponsored the Earth Week resolution, and additional cosponsors are welcome.

This year, Earth Week will be April 17–23.

SENATE JOINT RESOLUTION 67

Mr. ALLOTT. Mr. President, I am pleased to join as cosponsor of Senate Joint Resolution 67, to authorize the President to issue a proclamation designating the last full calendar week in April of each year as National Secretaries Week.

Secretaries comprise one of the largest and most significant components in the work force that makes America function. Indeed, we in Government can appreciate, perhaps even better than most persons, just how vital is the role played by secretaries.

One thing is certain: the first duty of representative government is to communicate with its constituents. In this process, our many secretaries are the vital link that makes democracy vital.

To the extent that our cumbersome Government works at all, and is responsive to the needs of our constituents, the dedicated and competent secretaries in Congress deserve a large share of the credit.

I urge all Senators to acknowledge our common debt to our secretaries by supporting National Secretaries Week.

SENATE JOINT RESOLUTION 117

At the request of Mr. MCCLELLAN, the Senator from Mississippi (Mr. EASTLAND), the Senator from Florida (Mr. GURNEY), the Senator from Michigan (Mr. HART),

and the Senator from California (Mr. TUNNEY) were added as cosponsors of Senate Joint Resolution 117, to establish "National Hunting and Fishing Day."

ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 232

At the request of Mr. CHILES, the Senator from Wyoming (Mr. MCGEE) was added as a cosponsor of Senate Resolution 232, expressing the sense of the Senate that the remainder of a the amount appropriated for the rural electrification program for fiscal 1972 be immediately released by the Office of Management and Budget.

SENATE CONCURRENT RESOLUTION 65—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO THE PROTECTION OF THE CAPITOL COMPLEX

(Referred to the Committee on Rules and Administration.)

Mr. GRAVEL submitted the following concurrent resolution:

S. CON. RES. 65

Resolved by the Senate (the House of Representatives concurring), That the Architect of the Capitol, under the direction of the Committee on House Administration and the Senate Committee on Rules and Administration, is authorized and directed to procure and install security apparatus for the protection of the United States Capitol, including the procurement and installation of a video surveillance system, an intrusion detection system, and a parcel inspection system, in the Capitol Buildings, as such term is defined in section 16(a)(1) of the Act of July 31, 1946, as amended (81 Stat. 277; 40 U.S.C. 193m(a)(1)). The cost of the acquisition and installation of such security apparatus, not to exceed $3,000,000, shall be paid from the contingent fund of the House of Representatives.

SOCIAL SECURITY AMENDMENTS OF 1972—AMENDMENTS

AMENDMENT NO. 958

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

H.R. 1 AND NURSING HOMES

Mr. RIBICOFF. Mr. President, I am submitting today a series of amendments to H.R. 1 to insure that medicare and medicaid standards for nursing homes are not weakened. My proposal would also require the Department of Health, Education, and Welfare to develop a single set of standards for medicare and medicaid nursing facilities, and would authorize the establishment of nursing home pilot projects to test out innovative methods of providing care to elderly citizens in community as well as institutional settings.

One million elderly Americans live in nursing homes—sometimes referred to as extended care facilities. Perhaps the majority of these senior citizens receive adequate care. They will spend their remaining days of life in comparative comfort. But thousands of others will find their waning days filled with despair, filth, boredom and unsafe conditions in what have been called halfway houses between life and death.

Of the 4,500 medicare-approved nursing homes, nearly 3,300 have significant deficiencies. These homes are allowed to operate because they are in "substantial" compliance if not "full compliance" with Federal standards.

A 1970 survey by the Associated Press confirmed that poor conditions and services abound in American nursing homes. Physician care for the nursing home patient was found to be extremely scarce. One-seventh of the drug prescriptions to nursing homes were administered improperly. Heavy use of tranquilizing drugs to make patients easier to handle and less expensive to care for was found.

The National Fire Prevention Association lists nursing homes as the most unsafe places in which to live. Study after study—by groups ranging from a Ralph Nader Task Force on Nursing Homes to nursing home crusaders in Congress—has found filth and patient neglect to be the rule rather than the exception. President Nixon recognized the problem when he called for a massive upgrading of nursing homes last August.

H.R. 1 would bring many of these nursing homes into compliance with Federal law by lowering certification standards rather than by requiring the homes to improve their quality and performance. Our senior citizens deserve more than this avoidance of the problem.

My proposals would delete those sections of H.R. 1 that weaken medicare and medicaid standards for nursing care institutions. A discussion of the specific changes follows.

SOCIAL SERVICES

The aging patient entering a nursing home has left his home, his friends, and his family behind. He is likely to be confused, frightened, and alone and needs personal attention which doctors cannot provide. The social workers can alleviate this suffering and fright by providing counseling, letterwriting assistance, consultation with the family, and companionship. The social worker in the nursing home assures the patient that there is someone to care for his personal and emotional needs.

Present regulations specify that an extended care facility must have effective arrangements with a public or private agency to provide social service consultation. The nursing home industry claims that many facilities have had difficulty obtaining such services and that they are often expensive.

Section 265 of H.R. 1 deletes the provision of medical social services as a condition of participation for a nursing home.

Most extended care facilities currently licensed by medicare are privately owned and operated for profit. They tend to meet only the minimum requirements set by medicare and do not, as a rule, provide optional, extra services for their patients. If section 265 were enacted, many facilities would therefore eliminate social services. Figures in December 1969 showed that the highest number of nursing home deficiencies, 37 percent, occurred under the social services requirement for extended care facilities.

My amendment, therefore, continues the requirement that social services be provided.

The northern Connecticut chapter of the National Association of Social Workers has described to me the effects of section 265. I ask unanimous consent that this statement be inserted at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). Without objection, it is so ordered.

(See exhibit 1.)

MEDICAL STAFFING REQUIREMENTS

Mr. RIBICOFF. Mr. President, skilled nursing homes under medicaid must now have at least one full-time registered professional nurse on their staff.

Section 267 of H.R. 1 authorizes a waiver of requirement for a full-time nurse where the nursing home is in a rural area, the facility is necessary to meet patient needs and is making a good faith effort to comply with the requirement. My amendment deletes section 267 and retains the requirement that a full-time registered nurse be on the staff.

At any time of day or night major medical problems can strike a nursing home patient. Without the assistance of skilled medical personnel to meet these problems, the quality of care offered by "skilled nursing homes" would be little more than custodial. The shortage of skilled nurses does not justify eliminating the requirement that skilled nurses be present on a 24-hour basis.

The absence of 24-hour nursing service has proved to be one of the major deficiencies of nursing homes applying for participation in medicare. Seventeen percent of the deficiencies in nursing homes were traceable to nursing services, according to the December 1969 survey. The Federal Government is paying out over a billion dollars in medicare and medicaid payments to "skilled nursing homes." At the very least it should require that these homes be staffed by skilled nurses.

ADMINISTRATIVE QUALIFICATIONS

Administrators of skilled nursing homes under medicaid must presently be licensed by the State, which involves satisfactory completion of a licensure examination.

Section 269 of H.R. 1 permits States to establish a permanent waiver from licensure requirements for those persons who served as nursing home administrators for the 3-year period prior to the establishment of the State's licensing program. My proposal retains the requirement that all administrators be subject to the licensure requirements.

The provision permitting permanent waiver would throw the licensing programs of the States participating in title XIX into chaos. States have already licensed thousands of administrators, some of these provisionally. To obtain their permanent licenses, provisional licensees have been required to complete preparatory educational programs. Section 269 would negate these efforts and costs expended in establishing education programs specifically designed to prepare provisional licensees for licensure by examination.

A competent administrator should be able to undergo a test of his skills as a condition for continued receipt of Federal funds. The December 1969 survey

indicated that deficiencies in clinical records accounted for 13 percent of deficiencies.

The American College of Nursing Home Administrators has taken the responsible position that the present licensing system should be continued. As the college stated:

It must be realized that an individual's exposure to an administrative position alone is an insufficient measure of his ability to provide proper patient care. Education and demonstrated ability in addition to the successful passing of a specifically designed process must also be required.

COORDINATION OF MEDICARE AND MEDICAID STANDARDS

At the present time there is one set of standards for medicare-approved nursing homes and a less stringent set of requirements for medicaid-approved homes which provide care to those receiving public assistance or classified as "medically indigent." As in so many other programs, the poor receive a lower standard of service.

The difference in nursing home standards for medicare and medicaid patients results from the fact that two different agencies administer these programs. Medicaid is a public assistance program administered by the Medical Services Administration of HEW's Social and Rehabilitation Service. Medicare is administered by the Social Security Administration.

My proposal would require HEW to develop a single, comprehensive set of regulations applicable to both medicare and medicaid nursing home facilities. The applicable standards would be no less than the higher of the medicare or medicaid standard applicable under the present system.

NURSING HOME PILOT PROJECTS

We must begin to look at our entire system in light of increasing evidence that the care provided for our elderly citizens is inadequate, demeaning to human dignity and a waste of tax dollars.

Nursing homes as they are operated today are a self-perpetrating system that assures that the elderly will have a chronic need for chronic health care. Our extended care institutions all too often reduce our elderly citizens to a state of permanent dependence on the institution, rather than providing varying levels and types of care and services that would encourage the elderly to remain a part of their community.

At least 15 to 20 percent of those elderly citizens presently institutionalized are absolutely misplaced according to the Levinson Gerontological Policy Institute of Brandeis University. In Massachusetts, for example, where intensive studies of nursing home disability evaluations have been made, it was found that only 37 percent of the nursing home residents in the State require full-time skilled nursing care. Fourteen percent needed no institutional care whatsoever for medical reasons. Another 26 percent required minimal "supervised living," and 23 percent needed limited or periodic nursing care that might, for some, be provided on a home visit basis.

Approximately $2 billion is expended annually for nursing home care, one-fourth to one-half of which is now spent for patients who do not, medically, need such care. A more flexible use of funds now narrowly channeled into traditional nursing home settings would encourage the development of more imaginative and innovative forms of care for the elderly.

My proposal authorizes a series of pilot projects to explore new methods of providing care for the elderly. The purpose of these demonstration programs would be to generate alternatives to long-term, institutionalized nursing home care. Such programs would include: maintenance and care services provided in noninstitutional, neighborhood settings; increased use of home health and maintenance care; continuing care at various stages of illness through a coordinated program utilizing acute care hospital facilities, extended care facilities, "day" hospital services, and home care; and ongoing community responsibility and involvement in such programs.

These pilot projects would provide field testing of differing solutions in varied demographic and health care delivery areas. Other issues to be explored in field tests would include the administrative issues involved in setting up innovative personal care organizations, definition of the optimal population to be covered, testing of alternate quality control measures, analysis of manpower alternatives, and measurement of cost levels.

The costs of providing adequate care for the elderly are rising dramatically. We cannot continue to waste and misallocate the limited resources we have to devote to this problem. More effective programs must be developed. Working with such programs in action is the only way this can be done.

I ask unanimous consent that a report prepared by the Levinson Gerontological Policy Institute describing a model alternative to present nursing home care be printed at this point in the RECORD.

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

MOBILIZING COMMUNITY RESOURCES TO PROVIDE ALTERNATIVES TO NURSING HOME CARE—A MODEL DEVELOPED BY THE LEVINSON GERONTOLOGICAL POLICY INSTITUTE, WALTHAM, MASS., OCTOBER 1971

INTRODUCTION

*Necessity for alternatives to institutional living**

Studies of the characteristics and needs of the nursing home population in Masachusetts and elsewhere in the country indicate that 15–20 percent of such persons are absolutely misplaced in the institutional environment.[1] Their residence in such settings is directly associated with the absence of intermittent services and flexibility applied home care supports to daily living in the neighborhood from which they came.[2]

One out of six Massachusetts elderly is a recipient of public welfare. Thirty thousand of these 103,000 are in licensed nursing homes, chronic hospitals, and public medical facilities as recipients of Medicaid. On the basis of systematic disability evaluations of nursing home patients, the Massachusetts Department of Public Health has disclosed that only 37 percent of the residents require full-time, skilled nursing care. Fourteen percent needed no institutional care whatsoever for medical reasons: another 26 percent required minimal "supervised living;" and 23 percent needed limited or periodic nursing care that might, for some, well be provided on a home visit basis. (Figures are not printed in RECORD.)

A complementary study of the use and misuse of nursing homes in the Buffalo, New York area indicated that 27 percent of that institutionalized population did not need this type of care. Most significantly, of nursing home residents in the 65–74 age group, 41 percent of former city residents were inappropriately placed as opposed to only 20 percent of those whose former homes had been out of city, or rural.[3]

The national implications of this research are that the absence of supportive persons and services to the elderly and disabled living especially within highly urban environments forces decisions to institutionalize on doctors, social workers, families, and friends.

The persons now in institutions represent only a small fraction of the seriously disabled population in Massachusetts and in the United States. From the larger base is drawn the continously growing institutional population. Inadequate efforts to deal with disability while individuals still live in their own homes represent a basic failure in prevention. This does not mean that no institutional care is ever needed—it often is—but lack of attention during the pre-institutional phase leads to an over-use or abuse of institutions, and results in a tendency to use the most costly, but not necessarily the most beneficial forms of care. Thus, the total population of the disabled—the source of difficulty—requires as much attention as the number currently in long-term or nursing institutions.

In addition to the currently institutionalized population, it is estimated that at least 16 percent (or 2.9 million) of the 19 million non-institutionalized elderly in the United States are unable to carry out their daily activities as a result of chronic disease and disability.[4] Provision of organized community services and personal helpers for these senior citizens, in addition to the nearly 3 million younger disabled, is whimsical and meagre. Translated into Massachusetts figures, this means at least 100,000 disabled elderly and at least 75,000 younger persons living at home but unable to carry on their daily activities. Their management at home is dependent upon the durability and accessibility of helping relatives, neighbors, and friends. Little assistance is provided to prevent the ultimate bankruptcy of these natural supports

I. LIMITATIONS OF PARTIAL SOLUTIONS

A. Medicare and medicaid

It is becoming apparent that disproportional amounts of Medicare and Medicaid money is being spent to maintain elderly and disabled in institutions. The allocation of public monies toward institutional rather than neighborhood solutions to the plight of the elderly and disabled becomes apparent by contrasting the 32 percent of vendor payments which go to nursing homes with the 0.3 percent provided to Home Health Services under Title XIX alone.[5] Public expenditure to nursing homes, nationally, amounted to $1.8 billion in 1970. In Massachusetts nearly $100 million per year is being spent for nursing home care by the Department of Public Welfare. An increase of 137 percent in Medicaid dollars to nursing homes was reported for the whole country from 1965–1968,[6] and the supposed policy of increasing choice, by states with major welfare rolls, turns out to be the transfer of elderly acute and chronic hospital patients to nursing homes rather than to attempt alternative community placement.

It is widely reported that Medicare's attempts to provide a national network of Home Health Agencies has been relatively ineffective as an alternative to institutionaliza-

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tion. The excessively restrictive service benefits and the limitations on duration of stay for those elderly who qualify for home health services severely limits the usefulness of this portion of the program. Program and professional responsibility is for the episode of illness, rather than for the long-term support of the elderly individual in his home environment.

What has not been appropriately recognized is that this long-term support predominantly requires social-maintenance rather than specifically medical types of services. Home Health Aide personnel currently employed by Medicare-certified agencies are legislatively limited to medical care related tasks and are, therefore, not able to be responsive to the continuing multiple needs of the individual or his family unit.

B. Housing

Public housing, nationally, had provided approximately 140,000 residential units especially for the elderly at the beginning of 1970.[7] It has become apparent, however, that this housing is for the "well elderly." [8] While housing authorities have not necessarily discouraged on-site services and have, in some cases, provided space, no active planning, coordinating or sustaining role has been assumed by housing authorities for the provision of needed services, personnel or facilities within their publicly funded shells.

Modern housing has typically been built, in Massachusetts and other states, which, in its design, severely limits the development of personal care alternatives within a living unit. Efficiency apartments, which dominate these structures, make mutual help living arrangements between related and/or non-related adults virtually impossible. Further, the absence of personal care services, available in the neighborhood on an intermittent basis, exacerbates the difficult living conditions of the vast majority of aged who do not reside in public housing.

C. Existing community agencies

Public and private health and welfare agencies which operate within local areas respond to individual crises with specific limitations on the services they can afford to provide. They are aware but ill-equipped to deal with the ongoing human needs which the elderly and disabled sustain in choosing to remain in their own homes. The historically defined roles of existing agencies do not allow for flexibility. Invited intrusions in life problems of a known neighborhood population of elderly and disabled is atypical and antithetical to established referral mechanisms. Agencies usually wait for the elderly to come to them, to avoid intrusion into their privacy; but the elderly are usually reluctant to approach an unknown social agency first.

D. Coordination of Services

It has long been assumed that coordination of services will produce a more efficient system, relying on existing programs without requiring the creation of new ones. This approach assumes that the requisite programs do, in fact, exist to lend themselves to coordination. The foregoing analysis of Medicare, housing, and voluntary agencies has already outlined some of the flaws in this assumption. The fallacy is reinforced by a recent survey of homemaker and accredited home health agencies available in a survey month in eastern Massachusetts.[9]

Forty-seven major home health and homemaker agencies were identified in public listing. On inspection, only fourteen of this number actually employ and provide home aides; the remainder purchase such services through contract with these working fourteen. In a survey month, the total volume of delivered home health aides and home helps reached only 2.5 percent of the persons estimated to be in serious need of these services. A similar study in New York found about 10 percent actually served.

This gap between supply and demand is even more pronounced in less populous and in rural areas. Coordination can contribute little to the solution of this problem until this gap is closed by an increase in the supply of alternative programs.

II. A PROPOSED PERSONAL CARE SERVICE SYSTEM: THE MASSACHUSETTS MODEL

The absence of adequate existing alternatives to nursing home and institutional care has led the Massachusetts Department of Public Welfare, burdened by enormous vendor payments to institutions, to consider the development of a Personal Care Service System. A model of such a system, testable for the Department in a clearly defined community and for a designated population, has been proposed by The Levinson Gerontological Policy Institute, Brandeis University.

Based upon a careful analysis of needs and resources, it appears to the Institute and the State Department of Public Welfare that public money could be more advantageously spent in the provision of maintenance and care services for the elderly and disabled in non-institutional neighborhood settings.

Underwriting a personal care service system promises a reduction in the inappropriate use of both long-term care and acute care institutions, especially if it is made readily available to all who are found in need of such services. With the State Department of Public Welfare functioning in a planning and contracting capacity, a contract would be made with at least one local agency to provide a range of core services essential to maintain the disabled and the partially disabled elderly in their homes, complementing the natural helping relationships which already exist. Such a local Personal Care Organization (P.C.O.) would assume responsibility for the population at risk in its "catchment area," focusing, initially, upon the recipients of Old Age Assistance and Aid to Blind & Disabled. For each case deemed eligible, the Department of Welfare would reimburse the P.C.O. a flat sum each month in return for which the P.C.O. assumes full responsibility for providing or developing alternatives to institutional care wherever that seems desirable.

A. Nature of Needed Services

Practioners and researchers in gerontology and long-term care concur that the most needed services to the aged and disabled at home are intermittent home helpers. The Levinson Gerontological Policy Institute surveyed the current utilization of available "homemaker-home health aide" personnel in the State of Massachusetts. Based upon a reasonable conservative estimate of the elderly population at risk in the state (i.e., that proportion unable to perform usual daily tasks), only one in forty elderly in probable need of such services were receiving personal care assistance.[10]

The types of maintenance and support needs that could be met by a local Personal Care Organization include assistance with food shopping and meal preparation; mobility assistance within and outside of the home; transportation to health services or delivery of prescription drugs; assistance with laundry or home maintenance; dressing and personal care; guidance in financial, legal and relocation matters; counseling of client and family on available health and social services (including completion of written forms); and telephone availability in crisis. A recent Columbia University study of patients on home health services indicated that 85 percent of those over the age of 55 needed help to shop or cook.[11]

As is apparent from this listing, a Personal Care Organization would consist, dominantly, of non-professionals supervised by appropriate professional staff, but offering a very diverse and flexibility delivered range of homely and personal tasks.

The location of better residential accommodation and providing minor structural improvement and adaptation of existing housing for the elderly and disabled population would be another package of tasks for a Personal Care Organization. Such service activities have been fragmentary and unsystematic to date, even in the Model Cities programs, although they could easily tap into the existing skills of the retired and the youth.

Current programs tend to emphasize the more complex and costly services, since they have been dependent upon physical, that is medical perceptions. A comprehensive personal care service can be established which will give proper weight to simpler home care tasks which are social and not medical in nature. Appropriate incentives can be introduced for the Personal Care Organization to use the simpler and more homely services wherever these will serve the needs of the disabled person.

B. Estimated costs per case

Current assessments of the cost of providing a corps of personal care service personnel are based upon experiences in Massachusetts and elsewhere with "homemaker-health aide" categories. An aggregate cost for the state is dependent upon variables which have yet to be explored in the proposed pilot service. These include: the distribution of services by complexity and intensity or volume; the average per capita cost per day; case turnover and average case load; and cost of administration, supervision and overhead to provide an on-going staff of full-time and part-time personnel ready to serve a known population.

Massachusetts' local experience with "homemaker-home health aides" indicates the average current client receives ten hours per week of service at a per client cost of $3.00–$4.00 per hour, inclusive of administration. This range tends to be supported in other, albeit service-limited, programs around the country. A complete personal care system is necessary to find out whether this is a realistic average; or whether many can be helped with less time, to offset the needs of a few for much more service.

C. Source of financial support

Appraisal of existing budgetary allocations by the Massachusetts Departments of Public Welfare and Public Health indicates the potential availability of adequate funds to maintain an on-going, if initially selective, program. However, the earmarked character of much public money and the statutory limitations on alternate use of these moneys is, at this point, a substantial stumbling block in the development of a deliverable personal care service system. The capacity of State agencies to influence Federal and State legislatures and, administratively, to effect transfer of costs and savings between hitherto separately funded programs is a continuing problem.

Despite these obstructions, a significant part of current expenditures for institutional care, now paid by Medicaid and by assistance funds, can be shifted to support a part of the present welfare population in their own homes. Such a shift will provide the stable financial foundation for a personal care system.

In Massachusetts, direct monthly payments to "skilled" nursing home vendors amounted to $395 per patient in fiscal 1970. The average annual cost per case ranged from $3850 in nursing homes to $4900 in chronic hospitals; a substantial portion of this is attributable to overhead, plant maintenance and non-professional personal care services. The estimated average monthly cost for maintaining a welfare client in a skilled nursing home is $512 per month. By contrast, the maximum basic budget available to

Footnotes at end of article.

Old Age Assistance recipients is approximately $230 per month in Massachusetts. The margin of $280 between nursing home and basic relief costs should be more than sufficient to support the organization of an improved range of services needed to maintain welfare recipients in non-institutional community settings.

D. Estimates of population to be covered

Firm estimates of the population which might be covered by the proposed program are difficult to establish with present data, since the point of eligibility can be varied by legislative and administrative policy. However, usable working estimates can be derived from studies already cited. One target population could be the 40 percent of those 30,000 Medicaid recipients now in nursing homes, chronic hospitals and public medical facilities, who, in the words of the Massachusetts Department of Public Health survey, either need no institutional care for medical reasons or who require minimal supervised living—a total of 12,000 persons in a given month. Some of these are too demoralized from long institutional life, or are too confused for a normal residence, having lost all family and friendship supports long ago; but the proportion who are thus limited is unknown at this writing. Ten thousand represents a more realistic minimum figure.

At the next higher estimate level, one could add perhaps another 6,000 new admissions or applicants for admission to nursing homes each year, who do not require such care for medical reasons but who will be admitted if present programs are not altered. These cases represent the best opportunity for preventive intervention in the institutionalizing cycle.

At the highest estimate level, one would have to add all those elderly who have severe functional handicaps due to physical disability—perhaps 100,000 aged in Massachusetts. However, many of these have substantial family supports, or require only such minimal help as can be given by neighbors. In projecting a workable program, this population must be studied in the context of a working personal care-home care system to ascertain how many require and would use a P.C.O. and how many could afford to pay for its services out of personal or family income.

E. Criteria for selection of client population

Concern for the problem of defining the appropriate recipient for personal care services suggests the need to review criteria used in establishing disability by such programs as the Veterans Administration. That agency's experience with an "Aid and Attendants" program for homebound veterans sets a precedent for the Massachusetts proposal and may provide organizational and administrative experience. Assessment of functional capacity with respect to activities of daily living and behavior that is instrumental to health and social maintenance is particularly complicated in the case of the elderly. Many have ongoing and multiple chronic diseases and disabilities which only partially or periodically impair function. A personal care service must be sufficiently flexible to take on a case at first contact even though the service requirements may change later, since the elderly are particularly loath to deal with red tape. Equally, a procedure needs to be devised for periodic review of needs for addition or elimination of services. Consideration needs to be given both to the types of decisions and the locus of the decisionmaking in the proposed Personal Care Organization.

An openness to sources of referral and provision of services implies a new approach to administrative controls, one which concentrates on desired results but which is not overly rigid as to details. Such questions as: who decides on the range and amount of services to be provided, frequency of review, and the nature of reviewing mechanisms need to be addressed.

At the start, medical personnel, especially those in hospitals and in health maintenance organizations, will play a key part in deciding what patients could remain in or could be discharged to their own homes. The Personal Care Organization will have its own criteria as to the range of difficulty it can handle. The Department of Public Welfare staff must decide that the referred case is eligible for public support (i.e., is an assistance eligible case).

From this point of view, the Personal Care Organization would be free to do whatever is necessary, in its judgment, to help the patient/client maintain himself in his home for as long as he wished. Full use, of course, would have to be made, as it is today, of medical and rehabilitation services, but the Personal Care Organization would work, within the money assigned to each referred case, trying whatever seems necessary and not restricted by arbitrary limitations on what specific services will or will not be paid for.

A disability rating scheme is thought to be feasible for the population here at risk. Early considerations of the distribution of disability among the aging and disabled suggests that the largest proportion of potential clients would generally be only slightly disabled. Finer selection criteria, which incorporate environmental as well as personal-physical limitations to function, will evolve as the Department of Public Welfare works with the Personal Care Organization and with health professionals. For example, a chronically ill client whose domicile is over three miles from the nearest store might be considered to have an environmental disability qualifying him for periodic transport or delivery services. Similarly, a hemiplegic or arthritic client whose apartment is on a third floor could qualify for different and perhaps more frequent ambulation assistance than a comparably afflicted client whose residence has immediate access to the street.

This proposal is designed to complement the appropriate role of nursing homes, access to which by the very disabled will be enhanced. The focus is on appropriate use of institutions and the creation of real choice for the elderly and the disabled as to where they will live.

F. Projected program costs

Program cost estimates, as distinguished from case costs, can only be roughly estimated for reasons noted above—variability in eligibility criteria, uncertainty about variations in volume of services which can accomplish chosen results, etc.

If one accepts recent Massachusetts experience, the following estimates can be made, assuming that per case costs of home health agencies are reliable and that estimates of the nursing home population who can live in their own homes are accurate.

Estimate Level 1: For 10,000 persons now in nursing homes who are presumed capable of living elsewhere; $19,200,000 per year. Against this can be offset an estimated $40,000,000 probably spent in 1971 by Massachusetts for nursing home care for this population.

Estimate Level 2: Add the 6,000 persons reasonably likely to seek admission to institutions for conditions no more severe than those noted in Estimate 1. (Some of these, of course, will replace persons who die or who are discharged from nursing institutions; while others represent new additions to the nursing home population): $11,520,000 plus $19,200,000 listed for Estimate 1—a total of $30,720,000. Note that this figure is still over nine million dollars below the estimated expenditures for the unnecessarily institutionalized in 1971.

These calculations must be seen as indicative only of the potential in the new program. The costs and their distribution among the under 65 as well as among the over 65 who are disabled need to be firmed up in an operating program, as must the average case costs. However, these estimates are believed to be conservative, and permit true alternatives to develop within the limits of current expenditures and appropriations.

G. Agency linkages

Implicit in the proposal for a Personal Care Organization system is the requirement that it provide the linkages to services (e.g., medical care) which are not included in its own portfolio. Perhaps the greatest inadequacy of the present multiple agency system in the United States is the inability or unwillingness of a single agency to act as ombudsman for the multiple needs of its clients or patients. A form of capitation system is here being proposed which would hold the Personal Care Organization accountable for a specified population to help them remain at home if they chose to.

This organization, once it accepts a referred case, is held accountable, by its contract with the Department of Public Welfare, for taking *whatever action is called for* to keep its client well at home. Such actions include: flexible use of its own staff, which are paid for under the contract; procuring medical or rehabilitation services from other agencies; etc. The sum paid the Personal Care Organization is expected to be adequate to cover a variety of such tasks.

H. Alternatives in Administration

The Massachusetts pilot program for a Personal Care Organization is to be administered through the Secretary of Human Services and his State Department of Public Welfare, since it controls a major allocation of funds for the population under consideration. It is believed to be essential that State level planning and control be required to assure maintenance of equal standards and the guarantee of ongoing support to local communities. Once established, this program will be available to other than relief recipients: those with modest incomes able to pay part or full cost for these services.

The choice of the appropriate agency to transform itself into a Personal Care Organization is a matter of community history and style. In one locale, a Visiting Nurse Association may, with guidelines and consultation, be quite ready, able, and acceptable to develop and adapt its program. In another locale, a community action group or senior citizens organization may already be providing the nuclear services needed for its population of elderly and disabled residents. A family service agency, a health maintenance organization, even a proprietary organization (such as Homemakers, Inc., of The Upjohn Company) could equally well develop into a P.C.O. In any event, room should be made for a wider policy voice from senior citizen organizations. They can provide advisory resources, members for policy positions, and can act as ombudsmen.

I. Manpower Requirements and Implications

Whatever the service agency of choice, a new flexibility with regard to personnel selection and use is imperative for a program such as is proposed. Just because the areas of greatest service need and greatest underemployment coincide in the most urban settings, new opportunities for full- and part-time employment could well be one of the social and economic by-products of a Personal Care system for the elderly and disabled. An urban area with one to three million residents could well generate several hundred, and even several thousand part-time of full-time jobs. These jobs range from those requiring little skill and limited special training, to jobs which require certain organizational, administrative, or technical skills. This range provides for career growth and personal improvement for those seeking

it. It also can assure stable employment for those who supplement family income by part- or full-time work.

These jobs differ from the conventional maid service—daily housecleaning performed by an hourly or daily maid. The jobs are related to a definable physical condition; their content is determined by professional personnel—medical and supervisory; performance is subject to quality control by supervising staff and by opportunity for consumer opinion expression. Above all, these positions carry with them the dignity and compensation of regularized employment: a respected status, regular pay, regular hours of work, fringe benefits of insurance, vacation, etc.

Employment of the elderly themselves, application of construction skills by youth, and the reimbursement of present occasional helpers who are neighbors, friends and relatives would provide a new dignity to human caretaking tasks.

III. ROLE OF FEDERAL GOVERNMENT

The Federal government is already embarked on a major overhauling of provisions for medical care and for welfare services, some of which are now financed by state or local governments, some by private individuals, and the balance by Federal grants. In the search for a better model for both health and welfare, the requirements of the disabled occupy a strategic position.

The role of the Federal government, in taking advantage of this strategic position, is a blend of policy guidance, financial support, and research to fill in vital knowledge gaps. It can clearly articulate a policy of choice in alternatives to institutional care; it can provide incentives which will help a personal care system come into being; it can support experiments which will test our alternate populations which are to be covered, alternate service modules, and alternate control systems.

In the development of models for a Personal Care service system, it will be necessary to commit specific funds for demonstration and evaluation purposes. Equally vital is a relaxation of constraints over the use of funds from hitherto rigidly separated programs. For example, a more free use can be made of funds presently allocated to Medicaid and Old Age Assistance, but only if administrative staff is free to use—and to account for—both sets of funds on behalf of alternate living arrangements for the sick elderly. Under present accounting procedures, obstacles exist which interfere with a free choice to move sick persons into or out of nursing homes.

Given the economic and social implications of a system which could minimize both the short and long-term use of institutions, the Federal government, perhaps via the Social Security Administration or the Social and Rehabilitation Service, should provide the monetary incentives to States, both to design personal care systems and to support evaluation of such programs. A particular need will be for start-up money to allow for States and localities to shift present dollar allocations, retain requisite personnel and reorder past program emphasis.

Specific areas of programming which will need to be evaluated in connection with a personal care system have to do with: (a) the staging of inclusions of population segments at risk or of expanding feasible and needed services; (b) alternate methods of linking existing programs (e.g., rehabilitation, medical services, and housing); (c) substitutions of personnel and services which reduce program costs (e.g., provision of housing repair and relocation service, family and neighborhood care-training programs, etc.); (d) alternative reallocations of local and State funds to maximize service flexibility; and (e) mechanisms for control of utilization and cost.

SUMMARY

A Personal Care Service system is proposed for the purpose of maximizing residential choice for the elderly and disabled. The objectives of such a service would be to decrease inappropriate institutionalization and to optimize the capacity of the elderly and disabled to function in the housing and neighborhoods of their preference.

The mechanisms by which such a service would be delivered is seen to be a single, localized organization, accountable to a state-level agency and responsible for a specifiable population within an explicit geographic area.

Services to be dispensed would be defined in terms of the intermittent functional needs of residents and incentives would be provided to encourage flexibility of methods and innovative solutions. Maximum use of existing natural helping relationships and services within a community would be encouraged.

FOOTNOTES

* Developed by institutional staff Dr. Francis Caro, Dr. Sandra Howell, Mrs. Helen Kistin, assisted by Dr. Ruth Berger, Dr. Susan Pettiss, and Miss Elizabeth Harris.

[1] Pettigrew, A., and D. Kinlock, *Background Information* for Long-Term Care Facilities Proposal. Prepared for internal circulation, Massachusetts Department of Public Health, 1971.

[2] Trager, B., "Home Health Services and Health Insurance," *Medical Care,* vol. IX, No. 1 (January-February 1971), pp. 89–98.

[3] Davis, J. W., and M. J. Gibbs, "An Area-wide Examination of Nursing Home Use, Misuse, and Nonuse," *American Journal of Public Health,* 61 (1971), pp. 1146–1155.

[4] National Center for Health Statistics "Chronic Conditions and Activity Limitations," Vital and Health Statistics, Public Health Service Publication No. 1000, Series 10, No. 17 (1965).

[5] U.S. Department of Health, Education, and Welfare. Social and Rehabilitation Service. *Medicaid, and Other Medical Care Financed from Public Assistance Funds.* Selected Statistics, 1951–1969, NCSS Report B–6 (1951–1969). Washington, D.C.: Government Printing Office, 1970.

[6] U.S. Department of Health, Education, and Welfare. Social and Rehabilitation Service. *Number of Recipients and Amounts of Payments Under Medicaid, 1968,* NCSS Report B–4 (CY68).

[7] Robbins, I. S., "Background Paper on Housing for the 1971 White House Conference on Aging," chapter IV, p. 9 (1970).

[8] Lawton, M. Powell. Statement on Housing, Institutions, and Older People's Relationship to Their Environment. Prepared for the National Goals Research Staff, November 1969, pp. 19–20.

[9] Morris, Robert and Elizabeth Harris, "Home Health Services in Massachusetts, 1971: Their Role in Care of the Long-Term Sick," Working Paper, Levinson Gerontological Policy Institute, Brandeis University (July 1971).

[10] This statistic is based upon a survey conducted by Miss Elizabeth Harris and disability estimates made by Dr. Francis Caro, both of the Levin Gerontological Policy Institute staff.

[11] Van Dyke, F. and V. Brown, "Home Health Services Study," Columbia University School of Public Health and Administrative Medicine. Unpublished report submitted to Associated Hospital Service of New York, Health Research Council of the City of New York, and Social Security Administration, U.S. Department of Health, Education, and Welfare (April, 1971).

EXHIBIT 1

STATEMENT OF THE NORTHERN CONNECTICUT CHAPTER, NATIONAL ASSOCIATION OF SOCIAL WORKERS

If given the choice, most will certainly do away with social service in their facility as such service is designed to serve the patient and not the needs of the facility. It is unfortunate that the majority of our extended care facilities are built to appease the guilt by pleasing the eye of the elderly patient's family with little thought given to anything but the basic physical care of the individual who is placed there. The patient is expected to conform to the facility routine and if he does not, he is treated as a deviant. An individual in the process of aging, who has left his home, his friends, his family and his roots is quite a bit more than a physical hulk to be attended. He is lonely, confused, hostile or host to countless other emotions which the best of all possible medications simply will not help. It is in these areas, the areas of social and emotional needs, that social service makes its greatest contribution to the elderly patient and his family. The contribution cannot be tagged with a price. If it could, I am sure you would find it more than reasonable.

Some of the services provided by social workers in extended care facilities include group counseling, individual counseling, rehabilitation planning if possible and inservice training for staff as to needs of the elderly in geriatric institutions. Consultation with staff and families is an important on-going function of the social service consultant and is aimed at clarifying the social and emotional needs of individual patients. The social worker is the only consultant in the facility who's only function is to insure that the social and emotional needs of each patient is being met. He is the liaison, the advocate, the referral agent and the interpreter of such needs. He is also the only staff consultant who attempts to deal with the patient as a total person by dealing with the older person's total environment, both inside and outside of the geriatric facility.

It is hard enough for the elderly to adjust to the aging process, illness, convalescence, death or geriatric institutions. It is even harder to adjust to a return to the community after a major illness. We must not make these adjustments harder by allowing for reductions in professional services which deal with these problems. Extended care like all geriatric facilities are necessary and yet grim reminders of our own mortality and the fact that all too soon we will also be old and in need of someone who understands. I hesitate to estimate the value of such understanding for the elderly person who so desperately asks for it. It is for them and not the administration or ownership of the facility, our service is provided.

AMENDMENT NO. 959

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

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

improve the capacity for employment of members of such families, and for other purposes.

AMENDMENTS NOS. 962 THROUGH 971

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

SOCIAL SECURITY AND MEDICARE AMENDMENTS

Mr. HUMPHREY. Mr. President, I am introducing today a series of amendments to H.R. 1, the Social Security Amendments of 1972. My amendments have four purposes: First, to immediately lift those elderly presently living in poverty, out of poverty; second, to insure that no social security and railroad retiree reaches old age in disappointment and despair; third, to cut the financial burdens of social security and medicare; and fourth, to begin to change the attitudes of young and middle aged people toward the elderly.

I propose that we amend H.R. 1 to increase the minimum monthly payment to old age, blind, and disabled recipients to a federally funded level of $165 for a single individual and $215 for a couple, effective January 1, 1972. This amendment would make it a national policy that there will be no elderly poor.

Statistics can not tell of the tragedies of poverty—but they can give it some dimensions. During the past 3 years, approximately 100,000 elderly citizens have been added to the numbers of older poor. And, elderly Americans account for more than 25 percent of the Nation's poor.

We can and must change this intolerable situation.

There are other necessary amendments to our social security system. I propose that we change the definition of disability to make it more realistic for a person who is disabled to get assistance. I believe that we must increase the retirement earnings income ceiling—the amount of money older Americans can earn before they begin to have reduced benefits from $1,680 to $3,000. Too many senior citizens quit their jobs for fear of losing social security benefits.

There are additionally needed measures. I see no reason why a widow should receive anything less than 100 percent of his or her spouse's benefits. I do not believe that benefits should be reduced if older Americans marry. And, I will propose legislation to give workers extra dropout years—for we should be trying to increase the average benefits, not make it more difficult to get less.

Finally, we need an immediate 25-percent increase in benefits across the board. I have previously proposed legislation that would increase benefits and begin a system of general revenue financing. It is to this goal that I believe we must move now—for increases in social security must surely come each year, and the payroll tax burden on current workers—under present assumptions and present financing rates will become onerous. Changing our thinking, providing more for those who have less, lifting all elderly Americans out of poverty—these are honorable goals.

To complement these social security changes, I have introduced a series of medicare reforms. I believe that medicare must pay the full cost of prescription drugs, eyeglasses, hearing aids, and dental care.

I believe that the $50 deductible for supplementary medical insurance must be removed, as must the insurance premium you pay for doctors insurance.

The hospital copayments must be frozen at existing levels—not allowed to escalate and bite into fixed social security incomes.

And I intend to shortly introduce a comprehensive home health care program—so that care can and will be available in your homes and apartments, not a remote hospital.

Mr. President, it is wrong that 5 million senior citizens live in poverty, it is wrong that social security does not pay an adequate income, it is wrong that medicare costs are increased every year just because some Federal budget figure is not correctly balanced.

Life does not stop at 65. We must have the basic dignity, identity, and security that elderly Americans need and deserve.

Mr. President, I ask that the following list of Humphrey social security, railroad retirement, and medicare reform proposals be printed at this point in the RECORD.

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

HUMPHREY SOCIAL SECURITY, RAILROAD RETIREMENT, AND MEDICARE REFORM PROPOSALS

1. Immediate 25 percent increase in benefits.
2. Immediate payment of $165 per single individual and $215 per couple for Old Age, Blind, and Disabled recipients.
3. $100 minimum social security payment.
4. Raising the limitation on retirement earnings from $1,680 to $3,000.
5. Increasing the contribution ceiling to $15,000.
6. Providing additional drop out years for years of covered service.
7. Cost of Living Escalator.
8. General Revenue Financing to cut Payroll Cost.
9. Changes in definition of disability, and reduction of waiting period to receive benefits.
10. 100 percent widows or widowers benefits.
11. Elimination of the $50 deductible.
12. Elimination of the doctors insurance premium.
13. Freezing of the hospital copayment.
14. Comprehensive Home Health Care.
15. Home Nutritional Care for the Elderly.
16. Elderly Social Security Pass Thru Provisions
17. Prescription Drugs, Eyeglasses, hearing aids, dental care paid by medicare.
18. Additional life time reserve years.
19. No reduction of benefits if Older Americans Marry.
20. Hospital Insurance for Uninsured.

AMENDMENT OF THE COMMUNICATIONS ACT OF 1934—AMENDMENT

AMENDMENT NO. 960

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

Mr. McCLELLAN submitted an amendment intended to be proposed by him to the bill (S. 2993) to amend the Communications Act of 1934 with respect to the renewal of broadcasting licenses.

PROVISION OF HOME HEALTH SERVICES—AMENDMENT

AMENDMENT NO. 961

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

TREATMENT OF SPEECH AND HEARING DISORDERS FOR THE ELDERLY

Mr. HUMPHREY. Mr. President, I am introducing legislation today to provide treatment in the home and in community centers for 5 million elderly Americans with speech and hearing disorders, under medicare. This bill would permit these millions of elderly Americans to receive the treatment which is so essential to their health and continued participation as active citizens in society, without having their retirement savings destroyed and their retirement incomes decimated.

When I introduced S. 3107, I stated that it was imperative to remove the 3-day hospital stay provision as a requirement for receiving home health care services under medicare. I have discovered, however, that the provision in S. 3107 which requires that home health care services be covered only under the prescription of a physician, discriminated against those elderly with speech and hearing disorders. Speech pathology and audiological diagnosis and treatment are usually not physician prescribed and supervised. Treatment in the area of speech and hearing disorders is most commonly handled by speech pathologists and audiologists, and not necessarily by physicians. Thus, this provision of S. 3107 does not eliminate the inequities inherent in coverage of the elderly suffering from these kinds of medical problems. This is unjust and must be remedied.

Currently in the United States, there are 2½ million elderly Americans with severe bilateral hearing loss of sufficient magnitude to interfere with communication. Approximately 2 million other Americans suffer from unilateral hearing impediment. With respect to speech disorders, there are approximately one-half million elderly Americans suffering from various degrees of aphasia, a speech disorder which is most commonly caused by strokes. Almost 100,000 elderly suffer from various other speech problems. Thus, the legislation which I am currently introducing will permit almost 5 million elderly speech and hearing handicapped Americans to receive the treatment which is essential to their health and continued participation as active citizens in society, without having their retirement savings destroyed, and their retirement incomes decimated.

As I said when I introduced S. 3107, senior citizens have contributed a great deal to this country. We live in relative comfort and enjoy the fruits of technological advance because the generation of Americans who came before us sacrificed and worked to make this country what it is. Is it not now time that we say thank you to our senior citizens, say thank you by letting them enjoy their retirement years in dignity, free from the burdens of medical costs which can so easily and quickly destroy the dreams of a lifetime. I believe it is. It is fair, it is

just, and it is necessary. Thus, I urge this Senate to give every consideration to the amendment I am offering today, and to the bill to which it is attached.

EDUCATION AMENDMENTS OF 1972—AMENDMENT

AMENDMENT NO. 972

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

Mr. BROCK submitted an amendment intended to be proposed by him to the committee amendment offered as a substitute for the House amendment to the bill (S. 659) to amend the Higher Education Act of 1965, and related acts, and for other purposes.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 870

At the request of Mr. NELSON, the Senator from California (Mr. CRANSTON) was added as a cosponsor of amendment No. 870, intended to be proposed to the bill (H.R. 1), the Social Security Amendments of 1972.

AMENDMENT NO. 924

At the request of Mr. GAMBRELL, the Senator from Virginia (Mr. SPONG) and the Senator from Texas (Mr. BENTSEN) were added as cosponsors of amendment No. 924, intended to be proposed to the committee substitute offered to the House amendment to the bill (S. 659), the Education Amendments of 1972.

NOTICE OF HEARINGS BEFORE THE SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

Mr. McCLELLAN. Mr. President, as chairman of the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, I wish to announce the resumption of hearings on bills relating to the general subjects of compensation for victims of violent crime and group life insurance programs for persons engaged in law enforcement and related fields. The bills to be included in the hearings are:

S. 16, to provide civil remedies to victims of activities prohibited by title IX of the Organized Crime Control Act of 1970. [Senators McClellan and Hruska]

S. 33, to authorize the Attorney General to provide a group life insurance program for State and local government law enforcement officers. [Senator Kennedy]

S. 750, to provide for the compensation of persons injured by certain criminal acts, to make grants to States for the payment of such compensation. [Senator Mansfield]

S. 1946, to authorize the Attorney General to provide a group life insurance program for State and local government law enforcement and firefighting officers. [Senator Humphrey]

S. 2087, to provide benefits to survivors of police officers killed in the line of duty. [Senators McClellan and Hruska]

S. 2426, relating to crimes involving property in interstate or foreign commerce to provide a civil action for damages resulting from violations of section 659 of title 18, U.S.C. [Senator Bible]

S. 2748, to provide benefits to survivors of police officers, prison guards, and firemen killed in the line of duty. [Senator Boggs, et al.]

S. 2856, to provide for the compensation of persons injured by criminal acts. [Senator Hartke]

S. 2994, the Victims of Crime Act of 1972. [Senator McClellan, et al.]

S. 2995, the Victims of Crime Act of 1972. [Senators Kennedy, Hart, Humphrey, Metcalf and Moss]

The hearings are scheduled for Tuesday, March 7, 1972, at 10 a.m., in room 1202, New Senate Office Building.

Although we have held two previous sessions of hearings on this general area, I feel that an additional day is necessary to afford other interested Members and other persons to appear or submit statements. I know interest in the subject is widespread because I have been joined by 39 cosponsors of the omnibus Victims of Crime Act of 1972.

Any individual who wishes to testify or submit a statement during this hearing should communicate with the staff of the Subcommittee on Criminal Laws and Procedures, room 2204, New Senate Office Building, telephone 202–225–3281.

NOTICE OF HEARING CONCERNING REPRESENTATION IN CONGRESS OF GUAM AND THE VIRGIN ISLANDS

Mr. BURDICK. Mr. President, for the information of Members of the Senate and others, I wish to announce that the Subcommittee on Territories of the Committee on Interior and Insular Affairs has scheduled a hearing for Thursday, March 16, to consider H.R. 8787 and S. 1400, to provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives.

The hearing will begin at 10 a.m. in room 3110, New Senate Office Building. Anyone who wishes to be heard in connection with the legislation should contact the committee staff in order that a witness list may be prepared.

ADDITIONAL STATEMENTS

AMERICAN LEGION DAY ON THE HILL

Mr. COOK. Mr. President, it is a pleasure for me to speak today in recognition of the outstanding contribution of the American Legion to almost every aspect of contemporary American life. While inevitably associated with veterans and their particular problems and needs, few organizations have done so much for so many as consistently as the American Legion during the past 53 years of its existence. Let me urge every Senator and Representative to take the time to talk with those Legion representatives who have come to the Capitol today. I am confident that the scope and depth of their involvement in many of the most pertinent issues of today will be of tremendous values and interest to each of us on Capitol Hill.

Patriots who have given much in defense of this country and in the interest of peace and freedom throughout the world, the members of the American Legion who have come here today have earned our interest and deep respect.

EARTH WEEK

Mr. NELSON. Mr. President, Earth Week this year will be April 17–23. Early indications are that it will be widely observed as a continuing educational effort in our schools and communities.

We anticipate that the President will proclaim Earth Week nationally once again this year.

Also, the chances are excellent that 45 if not all 50 of the Governors will proclaim the week, as well as many Mayors.

In Congress, 70 Senators are cosponsoring a resolution for Earth Week, representing wide bipartisan support across the country.

The national environmental and education organizations are again strongly supporting Earth Week. Their joint statement describes the purposes of Earth Week this year and indicates how states and communities might observe it.

I ask unanimous consent that the national Earth Week statement be printed at this point in the RECORD, along with a list of the 70 Senators who have cosponsored Senate Joint Resolution 15, a congressional resolution for Earth Week, and a list of the Governors who have already confirmed they will proclaim or support Earth Week.

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

EARTH WEEK, 1972—APRIL 17–23—A STATEMENT OF SUPPORT

Earth Week in April of 1971 was a nationwide success. This second annual environmental observance was proclaimed by the President, 40 Governors, and more than 150 Mayors, and was widely supported by both parties in Congress.

Thousands of grade schools, high schools and colleges participated in Earth Week, highlighting their environmental studies with special projects.

In its short, three-year history, Earth Week has come to symbolize the new ecological consciousness of our nation and the growing concern of all mankind in preserving the capacity of this planet to sustain life.

As a consequence of this new citizen awareness, now, for the first time in history, the issue of environment is a part of the political dialogue of the country, with public leaders at all levels addressing environmental concerns.

With this coming of age the environmental issue, some successes have been achieved, including tougher laws, bigger budgets, stronger agencies, and greater consideration of the environment in our decision making.

Grass roots action all across the country are establishing new policies on air and water quality, land and resource use, transportation, technology, and urban and population growth.

But actually restoring and protecting the environment will be a matter of decades, not years, requiring a sustained commitment by all citizens and institutions.

Thus, we believe Earth Week should be established as a continuing educational effort, a time each year to renew the nation's environmental awareness, and for local environmental inventories and reviews as well as special public and media reports.

In this election year, Earth Week can also provide state and local groups the opportu-

nity to determine the positions and actions of political candidates on environmental issues.

Furthermore the nationwide review of environmental issues and our future needs provided by Earth Week would be especially useful in view of the United Nations Conference on the Human Environment scheduled for June in Stockholm.

Earth Week, 1972, will be April 17–23. All indications are that the week will be even more widely observed than it was last year.

We strongly encourage the support and participation in Earth Week of our schools, communities, churches, public leaders and citizen groups, and all interests including business, labor and government.

As was the case last year, the success of Earth Week will depend on participation at the community level, with local and statewide groups utilizing their own resources and establishing their own priorities for the observance. Because of Earth Week's grass roots emphasis, there will not be a national headquarters, and interested persons should contact environmental and citizen organizations at the state and community level to make Earth Week plans.

In an effort to preserve the integrity and livability of the American environment, and to join with all countries in meeting this task worldwide, a successful Earth Week in 1972 will be a timely and important step.

U.S. Senator Gaylord Nelson, United States Senate, Room 221, Washington, D.C. 20510.

Citizens Committee on Natural Resources, 1346 Conn. Av., N.W., Washington, D.C. 20036.

Defenders of Wildlife, 2000 N St., N.W., Washington, D.C. 20036.

Environmental Action, Inc., Room 731, 1346 Conn. Av., N.W., Washington, D.C. 20036.

The Izaak Walton League of America, 1800 N. Kent Street, Arlington, Virginia 22205.

Zero Population Growth, 620 C St., S.E., Washington, D.C. 20003.

National Audubon Society, 1130 5th Av., New York, N.Y. 10028.

National Recreation and Park Association, 1700 Penn. Av., N.W., Washington, D.C. 20036.

National Wildlife Federation, 1412 16th St., N.W., Washington, D.C. 20036.

Sierra Club, 235 Mass. Av., N.E., Washington, D.C. 20002.

The Wilderness Society, 729 15th St., N.W., Washington, D.C. 20005.

National Education Association, 1201 16th St., N.W., Washington, D.C. 20036.

The Population Institute, 100 Maryland Av., N.W., Washington, D.C. 20036.

American Federation of Teachers, 1012 14th St., N.W., Washington, D.C. 20005.

The Conservation Foundation, 1717 Mass. Av., N.W., Washington, D.C. 20036.

Ecology Center Communications Council, 2000 P St., N.W., Washington, D.C. 20003.

Friends of the Earth, 620 C St., S.E. Washington, D.C. 20003.

League of Conservation Voters, 620 C. St., S.E., Washington, D.C. 20003.

National Parks and Conservation Association, 1701 18th St., N.W., Washington, D.C. 20009.

Washington Ecology Center, 2000 P St., N.W., Washington, D.C. 20036.

LIST OF COSPONSORS

The 70 Senators who have cosponsored Senate Joint Resolution 15, for Earth Week:

Gordon Allott (R) Colo.
Howard Baker (R) Tenn.
Birch Bayh (D) Ind.
J. Glenn Beall (R) Md.
Henry Bellmon (R) Okla.
Lloyd Bentsen (D) Tex.
Alan Bible (D) Nev.
J. Caleb Boggs (R) Del.
Quentin Burdick (D) N. Dak.
Robert Byrd (D) W. Va.
Howard Cannon (D) Nev.
Clifford Case (R) N.J.
Lawton Chiles (D) Fla.
Frank Church (D) Idaho
Marlow Cook (R) Ky.
Norris Cotton (R) N.H.
Alan Cranston (D) Calif.
Robert Dole (R) Kans.
Peter Dominick (R) Colo.
Thomas Eagleton (D) Mo.
Sam Ervin (D) N.C.
Hiram Fong (R) Hawaii
J. William Fulbright (D) Ark.
Mike Gravel (D) Alaska
Edward Gurney (R) Fla.
Fred Harris (D) Okla.
Clifford Hansen (R) Wyo.
Philip Hart (D) Mich.
Vance Hartke (D) Ind.
Mark Hatfield (R) Oreg.
Ernest Hollings (D) S.C.
Harold Hughes (D) Iowa
Hubert Humphrey (D) Minn.
Daniel Inouye (D) Hawaii
Henry Jackson (D) Wash.
Jacob Javits (R) N.Y.
B. Everett Jordan (D) N.C.
Edward Kennedy (D) Mass.
Warren Magnuson (D) Wash.
Mike Mansfield (D) Mont.
Charles Mathias (R) Md.
John McClellan (D) Ark.
Gale McGee (D) Wyo.
George McGovern (D) S. Dak.
Thomas McIntyre (D) N.H.
Jack Miller (R) Iowa
Walter Mondale (D) Minn.
Joseph Montoya (D) N. Mex.
Frank Moss (D) Utah
Edmund Muskie (D) Maine
Robert Packwood (R) Oreg.
John Pastore (D) R.I.
James Pearson (R) Kans.
Claiborne Pell (D) R.I.
Charles Percy (R) Ill.
William Proxmire (D) Wis.
Jennings Randolph (D) W. Va.
Abraham Ribicoff (D) Conn.
William Roth (R) Del.
Richard Schweiker (R) Pa.
Hugh Scott (R) Pa.
William Spong (D) Va.
Ted Stevens (R) Alaska
Adlai Stevenson (D) Ill.
Stuart Symington (D) Mo.
Robert Taft (R) Ohio
Strom Thurmond (R) S.C.
John Tower (R) Texas
John Tunney (D) Calif.
Harrison Williams (D) N.J.

LIST OF GOVERNORS

Governors as of this date planning to proclaim or support Earth Week 1972:

Alaska, William A. Egan
California, Ronald Reagan (Will Support)
Colorado, John A. Love
Delaware, Russell W. Peterson
Florida, Reubin Askew
Hawaii, John A. Burns
Kansas, Robert B. Docking
Maine, Kenneth M. Curtis
Minnesota, Wendell Anderson
Montana, Forrest H. Anderson
Nevada, Mike O'Callaghan
New York, Nelson Rockefeller
Ohio, John Gilligan
Oregon, Tom McCall
Pennsylvania, Milton J. Shapp
Tennessee, Winfield Dunn
Utah, Calvin L. Rampton
Virginia, Linwood Holton (Will Support)
Wisconsin, Patrick J. Lucey
Wyoming, Stan Hathaway

A GROWING GLOBAL DILEMMA—WILL WE RUN OUT OF WATER?

Mr. PACKWOOD. Mr. President, another provocative article by Claire Sterling, dealing with the rapidly dwindling global supply of clean water, appeared in the Washington Post on February 27. The article serves as another of the growing landslide of reminders pointing out the problems being faced by most nations and the entire planet as a result of our continuing exponential rate of growth and resultant impact on the natural environment.

So many of our resources, particularly the globally ubiquitous ones like air, and to a somewhat lesser extent water, have all been taken pretty much for granted in the past. When scarcity or pollution descended upon these resources, much of the reaction has been to brush it off as a local affliction. But it has become greatly disconcerting in more recent years to become aware that much of what we thought to be local was, in fact, being repeated everywhere; there are in fact few global islands today which are free of these mounting problems of scarcity and pollution.

The frightening thing is the rate at which these problems are mounting, and the complexities we seem to face in bringing about their resolution. Certainly, we as a nation, and hopefully we as a planet, are beginning to recognize that there are physical limits to growth of any type in the finite space in which we live. There must be an optimum balance somewhere, and we surely need to find it and avoid exceeding it.

The biggest problem we currently face is whether we will recognize the seriousness of these problems with a sufficient sense of urgency to bring on corrective measures with enough potency and speed to reverse these adverse trends. It will not be an easy task, and it will unquestionably involve some strong changes in our ways of thinking and doing things.

If we are really concerned about our quality of life now, and what it will amount to in the near and distant future, we ought to get more methodically on with the task of identifying what we want, and then identifying what human forces we will have to redirect in order to assure the achievement of that quality on a sustained basis. There are many constraints we will have to face up to, and better now than later, as delay only makes the problems ever more difficult to solve.

I believe that all Senators will find this article of provocative interest. 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:

WITHIN A CENTURY—WILL WE RUN OUT OF WATER?

(By Claire Sterling)

ROME.—The U.N. Food and Agricultural Organization has just issued a report for the coming Stockholm environment conference saying that the human race is going to run short of water within a century. Jaded though we are about such pronouncements, this one still has some zing. Practically every state on earth is starting to worry about water, a recurrent theme in some 75 country reports for this planet-wide Stockholm meeting. Not all of them have a whole century to turn around in, either.

Among the planet's thickly settled regions already afflicted by water shortages are Spain, Italy south of Lombardy, the Dalmation Coast, Greece, the Antatolian Plateau, all

Arab states save Syria, most of Iran, West Pakistan, Western India, Taiwan, Japan, Korea, the Western and Southern belts of Australia and New Zealand, the Northwest and Southwest African coasts, the American Southwest, Panama, Northern Mexico, Central Chile and the Peruvian Littoral. Among those heading for trouble by the year 2000 are all of Soviet Russia except Siberia, most of Eastern, Central and Western Europe, the Northern parts of Great Britain, Ireland and the United States, nearly all the rest of India, the central Thailand Plains, Tasmania, the islands of Java, the rest of the American continent except Northern Canada and Alaska, the larger Caribbean islands, the rest of Mexico, and parts of Brazil and Argentina.

By FAO reckoning, the planetary shortage will be getting serious in just another 30 years, when the world's population will have doubled (from 3½ to 7 billion) and demands for water nearly tripled (from 2,000 billion to 5½ thousand billion cubic meters yearly). The demands in this case mean everything from swimming and fishing in it to making plastics and steel with it, cooling nuclear reactors, irrigating, flushing away residues of pesticides, fertilizers and livestock faeces, carrying off industrial and human waste and, of course, drinking.

Whether because they haven't enough water or are fouling, squandering or driving beyond reach too much of what they do have, rich and poor, industrial and agricultural, capitalist and socialist states are pretty much in the same boat. A dozen or more African states along a 4,000 mile front are losing precious groundwater irrevocably to the encroaching Sahara year after year, in good part because of over-grazing. Kenya and India, the one under and the other overpopulated, are both preoccupied, if for different reasons. East and West Germany have almost identical problems. Holland, at the receiving end of the dirty Rhine, is hardly worse off for drinking water than Rumania and Hungary, depending on the dirty Danube for four-fifths and nine-tenths of their supply respectively. Nowhere, in fact, is the problem's universality more stunningly clear than in Soviet Russia's pre-Stockholm report to the U.N.'s Economic Commission for Europe.

More generously endowed with water than most—Lake Baikal alone, in Siberia, is thought to hold about a fifth of the whole planet's fresh water reserves—the Soviet Union is a lesson to us all. At present, says the Russian report, nearly 25 billion cubic meters of waste water are dumped into the country's rivers and reservoirs every year. By 1980 the volume will be two and a half times bigger, and by the year 2000 about 15 times bigger: 375 billion cubic meters. Even if all the waste water were to be purified in advance, with a lot better techniques than those available now, it would still have to be diluted with at least six times as much pure water. That is only half of the 12-fold volume needed for purification now. *"But it would still use up the whole of Soviet Russia's river flow, or 2½ times more than there is now in the steady flow."*

Meanwhile, the actual river flow is declining, while levels of lakes and inland seas are falling: the Caspian has dropped two meters in the last two decades, and the Aral Sea has lost 1,000 billion cubic meters of water. This is believed to be happening because too much water is taken off the river-system by people and industry; too many hydro-electric dams divert still more; rivers and reservoirs are silting up with flood-borne sediment; and the floods themselves are carrying millions of tons of unrecuperable water off to sea. These floods are largely man-made too, provoked by erosion caused in turn by de-forestation: what with the trees that Russians have cut down and not replaced, and raging forest-fires, 45 million acres of Soviet forest have been lost in the last quarter of a century.

Assuming the Russians can find enough water to purify enough water to keep themselves going 30 years from now, they still couldn't eliminate the polluting substances entirely. About a fifth of the strongest pollutants would remain with even the costliest cleansing methods, their report says; and cleansing techniques so far are lagging behind the inexorably growing volume of polluted water. All in all, the report goes on, this water-polluting process is "the greatest danger for humanity." There is "widespread expectation of an inevitable exhaustion of rivers, and an awareness of the necessity to substitute new sources of water supply; desalination of sea water as well as melted ice from polar glaciers . . . but can this take the place of river waters? And can we . . . allow rivers to become qualitatively exhausted and, in fact, turn them into waste-water collectors?"

The Kremlin's answer, worthy of the Sierra Club or Friends of the Earth, is "no." Sooner or later, known methods to treat waste water are bound to prove invalid, it says. Distillation and de-salination will certainly be in use, but at steep cost. In the end, it concludes, the only answer is simply to stop dumping waste water into rivers and reservoirs.

How Russia or any other country can do that is something nobody has quite faced up to yet. The implication, though, is that water problems alone may be enough in the end to force world society to stop growing. Human excrement alone is peculiarly hard to get rid of. More people mean more livestock to feed them, adding to the excrement; more irrigation to grow more food, producing more runoff laden with DDT and nitrogen compounds; more mechanized farming for the same purpose (and a tractor needs more water than a mule); more energy requiring more hydro-electric dams and nuclear cooling; and more manufactured goods relying on more advanced technology requiring still more water (plastics need ten times more than steel, and world plastic production is doubling every 5 or 6 years now).

The question is not just whether the moment may come in our lifetime when we forget what real water tastes like—millions are forgetting already—but whether humans just one generation removed, though surrounded by a chemical substance known as H_2O, will be hard put for a drop to drink.

SENATOR CARL HAYDEN

Mr. HARRIS. Mr. President, I was deeply saddened by the news of Carl Hayden's death.

Carl Hayden was an outstanding man, both in his professional and private life. He served his State and its people as loyally as any man can.

One of the greatest honors a State can bestow on a citizen is to elect and reelect him to public office. Carl Hayden won every office he sought during his 67 years of public service. He served longer in the Senate than any other man in our history. A man who continuously earns the respect and love of his fellow countrymen over such a long period is a rare person.

Carl Hayden lives on through the legislation and the other accomplishments he is responsible for, which will continue to benefit Arizona and America for generations to come.

I extend my sympathy to the Hayden family and to the citizens of the State of Arizona for the loss of this unusual American.

PHYSICAL VIOLENCE IN DESEGREGATED SCHOOLS

Mr. BROCK. Mr. President, I am proud of the progress my State and others in the South have made toward achieving desegregation. In fact, my hometown of Chattanooga, Tenn., led the way in desegregation of public schools, even before the courts so ordered.

Because this is so, our parents and children are today reacting with unbelievable restraint in situations of violence in our schools created by the recent imposition of compulsory busing.

One such incident is related in a letter from Raymond Payne, whose son, Robert, a student at Brainerd High School, was beaten up last week by two students who had been bused to his school, two students the child had never seen before. He was beaten up, not because they knew him, or because they hated him, but because of a climate of hate inculcated into an institution as a result of judicial abuse over which neither the child nor his parents had any control. I ask unanimous consent that Mr. Payne's letter be printed in the RECORD.

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

FEBRUARY 16, 1972.

Hon. WILLIAM E. BROCK III,
Old Senate Office Building,
Washington, D.C.

DEAR BILL: My 17 year old son Robert is a student at Brainerd High School. As he was leaving school the afternoon of January 19th, he was beaten by two black students that he did not even know, had never said a word to before, during, or after the assault.

Robert is studying Bible and music and plans to make some form of youth ministry his life work, so it is highly unlikely that either of the boys who beat him could have had any reason for the assault.

My son received a cut left upper lip that goes up to the skin line of his face on the outside and nearly to his nose on the inside of his mouth. He has two teeth that are loose and Dr. Nichols is not yet certain he can save these teeth. His nose was swollen and we were afraid that it was broken at first, but thank the good Lord this was not the case. He was in a lot of pain for several days, could not eat solid food for a week, and the cut lip required over a dozen stitches to close. The plastic surgeon says Robert may never again have any feeling in this side of his jaw as the nerves may not knit back.

The students that did this to my son are bused in to our school. We have been able to identify only one of the boys and Dr. Von Schaff has suspended him and I have brought charges against him in our local Juvenile Court.

Integration was beginning to work in this school until last year when extensive busing of students was started. Since that time there has been trouble. The assaults on individual white students such as occurred to my son are not rare. Randy Thompson who was at Brainerd last year was assaulted by 5 blacks in the rest room. Another friend of Robert's, Paul Daniels was also assaulted by blacks.

The day that I took Robert to our family doctor Dr. Royal (this was immediately after the beating.) Dr. Royal's nurse told me that her daughter had been assaulted by black girls in her gym class the week before.

Neither my son nor any other member of my family are racists. He has had several good Negro friends at Brainerd Jr. High and

at Brainerd High. Several of my most loyal friends are Negro.

Busing has brought evils to Brainerd High that simply were unheard of years ago, even a very few years ago. One of the members of the Chattanooga School Board told me that his own daughter who is a student at Brainerd is afraid to eat in the cafeteria and like many other girls in this school, takes her lunch from home and eats it in study hall.

My son has been afraid to go to the rest room in this school for over a year. I had heard him tell of students being beaten, and thought that it was just teen gossip, but now I have had my eyes opened.

The white boys are afraid to fight back when attacked because they do not want to be suspended from school. At the time my boy was jumped, he was surrounded by several of the bused students and he would have been a fool to have fought.

I am at the end of my patience with our federal judiciary and must admit that Australia is looking better all the time. You can be sure that my daughter will not attend Brainerd High School, and that she will be bused only over my dead body.

All that keeps me holding on to my hope for this country is the knowledge that you and several fine men like you are trying to stop this outrage that our children are being exposed to.

Enclosed you will find a picture of Robert made the night after the beating, showing his cut lip, bruised eyes, and yellow bruises about his face.

Sincerely yours,

RAYMOND D. PAYNE JR.

(P.S.—I must add that Dr. Von Schaff who is the principal at Brainerd High is a wonderful man and is doing a superb job under terrible handicaps. I would not have his job for $10,000.00 a month even if it were tax free.)

LONG ISLAND SOUND STUDY

Mr. RIBICOFF. Mr. President, I am pleased to announce that beginning March 1, 1972, the New England River Basins Commission's Long Island Sound Study Office will be located at 270 Orange Street, New Haven, Conn. 06511.

As the congressional sponsor of the commission's comprehensive study of the future of Long Island Sound, I believe that the decision of the commission, which is headquartered in Boston, Mass., to move its study team to a site close to the sound and the people who know it best is a wise one. The 3 years allotted to the study is a relatively short time to develop ways to reverse the deterioration of the sound and the maximum use of its time and funds is essential to the program's success. In that regard, I am hopeful that the Congress will approve the full $1.6 million budget request submitted by the administration for fiscal year 1973.

TRIBUTE TO THE AMERICAN LEGION

Mr. BEALL. Mr. President, today is a significant day for one of our Nation's most prestigious and patriotic organizations. Today is "American Legion Day on the Hill," when Legionnaires from throughout our country visit the offices of their elected representatives to discuss the many issues with which all of us are so deeply concerned.

As a proud member of the American Legion, I wish to join Senators on this special occasion in recognizing the fine and unselfish accomplishments of the Legion. Since its incorporation by an act of Congress in 1919, no group has done more to advance the principles upon which the Nation was founded. In countless ways, they have contributed greatly to the strength of character of our people. In short, the American Legion, in effective and nonpartisan fashion, has worked steadfastly for 62 years to promote those ideals which make our Nation great.

Foremost among the goals of this dedicated aggregation is to render aid and assistance to its sick and disabled comrades. Working tirelessly to promote the cause of all veterans, the Legion's success has been seen in the establishment of an adequate medical program, education and training programs, and compensation and pension benefits which have enabled our disabled veterans to remain self-sufficient members of their community. But in spite of all the successes, much still needs to be done for our former servicemen who have sacrificed so much. Thus, the American Legion continues its work for the veterans of this land. Let us in Congress heed their cry, and do all we can for our veterans. That would be the highest tribute possible to the Legion.

In addition, the American Legion labors continually to strengthen the future of our society by developing our youth intellectually, spiritually, and physically. I can think of no better investment. Of particular note is the Boys State program, an activity of high educational value, born out of a need for youth training in practical citizenship. It has been my good fortune to be able to participate in the last three Boys State programs held in Maryland, and, thus, I have firsthand knowledge of the splendid work done by the Legion with the youth of our country. Other programs, such as American Legion baseball, National High School Oratorical Contest, school medal awards, education and scholarship program and Boy Scouts, to name a few, further attest to the organization's devotion to youth. By these efforts they are planting the seeds for another generation of responsible and patriotic Americans.

Mr. President, the American Legion cares about America. They know what is necessary to maintain our Nation's strength now and in the future. I commend them on their devotion to duty. May this country never forget the principles for which they stand.

CHIPPEWA, WIS., HERALD-TELEGRAM QUESTIONS HIGH DEFENSE BUDGET

Mr. PROXMIRE. Mr. President, the Chippewa, Wis., Herald-Telegraph, on February 24, published an editorial entitled "Tell Us Why," concerning the astronomical $83.4 billion requested for national defense in the 1973 budget.

At a time when the incremental costs for Vietnam have fallen from $26 billion to the $5 to $6 billion range, when President Nixon tells us that from now on our friends and allies will have to provide a greater share of the manpower for defense, when 1.1 million men and women have been discharged from the military services and personnel reduced from 3.5 to 2.4 million, and when our commitments to Taiwan, Korea, and other places have been reduced, why is the military budget going up? That is what the editorial asks.

For $70 billion a year this country could provide general purpose forces equal to those we had before Vietnam, pay for the all-volunteer army, and provide a strategic force with an assured destruction capability sufficient to reduce the Soviet Union to rubble if she were so foolish as to launch a "first strike" attack on the United States.

The editorial concludes:

Before any taxpayer supports an increase of $6 billion between the estimate of the 1972 fiscal defense budget and the request for 1973, we think this explanation must be forthcoming.

Why should we pay out $83.4 billion when everyone from former Deputy Secretary Packard to the blue ribbon panel charges waste and overruns in procurement?

Why should the taxpayers be burdened with this colossal spending when we have excessive and redundant bases overseas?

Why should the American taxpayer pay through the nose for the defense of Western Europe when the developed European countries pay half as much in support of military forces as we do?

Why should we continue to pay, pay, pay—for fighter planes which cost 10 times what they should, for carriers vulnerable to both surface-to-surface missiles and attack subs, and bomber defenses which are redundant?

As the editorial states, "Tell Us Why."

I ask unanimous consent that the Chippewa Herald-Telegram editorial be printed in the RECORD.

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

TELL US WHY

In 1971, experts on military spending ranging from Wisconsin's senior Senator, William Proxmire, to the Brookings Institution, presented a detailed study which showed that the defense budget of the United States could be lowered to at least $70 billion.

In 1970, a study done for the United States Arms Control Agency set a figure of $60 billion, and, in fact, Senator Proxmire has often talked of a security sound defense budget in the area of $50 to $55 billion.

With all of these facts in mind, the Herald-Telegram was saddened to see Wisconsin's own very bright Melvin Laird join the ranks of previous defense secretaries, like Clark Clifford and Robert McNamara, and call for a 1973 fiscal year defense budget of $83.4 billion.

Said Defense Secretary Laird, "This figure is the absolute minimum amount necessary to safeguard our national security."

If the Laird statement is to be taken seriously we would, at first suggest that the Defense Department get more precise in much of the rest of its budgeting. If the amount is $83.4 billion—and that is a very precise figure—then before the Defense Department can suggest that the American people are going to buy the accurateness of that number, they're going to have to stop being so incredibly inaccurate with cost overruns and projections of costs in getting new weapon systems, etc.

Second, and more important, the real heart of strategic protection from the United States in our nuclear weapons arsenal. Yet, it is interesting to note that nuclear weapons amount to only about one-tenth of the total defense budget, and that there would have to be no increase in fiscal 1973, if we're only talking about nuclear weapons since that category of the budget is not going up greatly at all.

Moreover, we firmly believe that the Defense Secretary owes the American taxpayer, who must come up with such an astronomical figure as $83.4 billion, a substantial explanation of why such responsible and pro strong defense experts at the Brookings Institute, the U.S. Arms Control Agency, and our own senior Senator cite a figure that is so much below the supposed "absolute minimum" that Laird requests for '73.

In that defense, Mr. Laird should also explain to the American public what he is proposing this country do to get out of the business of maintaining large, general purpose forces. The maintenance of these kinds of forces led us into the folly of Viet Nam.

Surely every American wants this country to be strong, and within that regard, we know the absolute necessity of having strategic forces around the world on bases that protect our national security.

Just as surely, however, the last decade in Viet Nam should have taught every American of every political persuasion the folly of our using hundreds of thousands of our men to fight the wars of other countries only to find that we really weren't wanted by our friends or our foes.

Before any taxpayer supports an increase of $6 billion between the estimate of the 1972 fiscal defense budget and the request for 1973, we think this explanation must be forthcoming.

A SALUTE TO THE SPARTAN BAND

Mr. PACKWOOD. Mr. President, it gives me a great deal of pleasure today to bring the outstanding accomplishments of the Spartan Band of Hillsboro Union High School in my State of Oregon to the attention of the Senate.

The Spartan Band has the signal honor accorded to a select few of being invited to participate in the International Band Festival in Vienna, Austria, this summer.

Less than 2 percent of the high school bands across the United States were even considered by the Festival Invitation Committee, and the Hillsboro band is the only one chosen from Oregon. We all are proud of the musical prominence this band has attained, and I am sure our Nation as well as the State of Oregon will be proud to have the Spartan Band represent them at the international festival.

Fine bands are a tradition at Hillsboro and I think much of the credit goes to band leader, Mr. Carl A. Gutmann. Under his direction the past 20 years, the band has established itself as one of the outstanding bands in the Northwest. And, certainly, each member of the Spartan Band deserves our applause and best wishes.

ALASKA NATIVE CLAIMS CONTROVERSY

Mr. McGOVERN. Mr. President, the January issue of Field and Stream magazine contains an editorial which was extremely derogatory to the Indians, Aleuts, and Eskimos covered under the terms of the Alaska Native Claims Act. It is my hope, Mr. President, that the Nation's fine sportsmen who read this otherwise outstanding publication will agree with me that the editorial was a hastily conceived and ill-advised venture in bad taste. It is also my belief that the editorial was also an affront to Congress, which passed the bill, to both the Senate and House Committees on Interior and Insular Affairs, and to the Department of Interior, which all worked so long and hard on this legislation.

The National Congress of American Indians has responded to the editorial in a point-by-point analysis of the shortcomings and outright errors. I commend Franklin Ducheneaux and Leo Vocu, of the National Congress of American Indians, for their excellent response. I ask unanimous consent that it be printed in the RECORD.

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

JANUARY 7, 1972.

CLARE CONLEY,
Editor, Field and Stream,
New York, N.Y.

DEAR MR. CONLEY: Re your editorial in the January, 1972 issue of *Field & Stream* concerning the long overdue settlement of the land claims of the Indians, Eskimos, and Aleuts of Alaska by the Congress. A fair assessment of that editorial is that, where you are not in apparent ignorance of the facts, you have intentionally misrepresented them. In addition, you either disregard or are abysmally ignorant of the American Native, the non-Indian settlement of this land, and the relationship between our people and the United States.

The United States has generally failed to live up to its treaty obligations to provide the Indian people with an adequate education. However, even with this shortcoming, perhaps we can instruct you in some history you should have learned in *your* schools.

It is said that Alaska was "discovered" in 1741 by some wandering Russians. In truth, Alaska was discovered by our ancestors when your ancestors were living in the chalk caves of southern France and hunting the mastodon with stone spearheads.

After "discovering" Alaska, the Russians established a few small settlements in the Aleutian chain and along a small part of the immense coast of mainland Alaska and, on that basis, claimed ownership of and dominion over the vast land mass of Alaska. That is tantamount to an Indian buying a copy of *Field & Stream* (Why he would do so, I do not know) and, on that basis, claiming ownership of the entire publication (Why he would want to, I do not know).

Somewhat akin to Ivory soap, the land mass of Alaska was 99 and $^{1}/_{100}$ per cent pure of white settlement and exploration in 1867. Yet, in that year, the United States purchased Alaska from Russia for $7,200,000. Russia did not own Alaska, even the small part they were squatting on, and therefore did not have the right to sell it. The United States knowingly purchased property for which the seller had no title; in short, stolen property. But it is a known fact that concepts such as ownership, justice, and morality fly out the window when two thieves are engaged in a transfer of stolen property.

But even thieves have their moments of morality and conscience. In the thieves agreement between the United States and Russia—officially designated the Treaty of Cession of March 30, 1867 (15 Stat. 539), the parties agreed that:

"The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time, adopt in regard to aboriginal tribes of that country."

While this may sound like more of the racial immorality of the thieves, it should be noted that it does not confer the rights on a racial basis and admits that if there are "civilized tribes", they, too, are entitled to protection of their property under the law of the thieves. It was a small foot in the door granted by the thieves in a weak and foolish moment.

But worse was yet to come for the mighty white hunters and fishers of 1972. In the Act of May 17, 1884 (23 Stat. 24), organizing Alaska as a territory of the United States, the Congress recognized that:

"The Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use and occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress . . ."

The Natives have used and occupied the Alaska peninsula for over 10,000 years. They claimed it then—they claimed it in 1867—they claimed it in 1884—they claimed it when Alaska was admitted to statehood—and they claimed it—all of it—prior to passage of the Alaska Native Land Claims Settlement Act of 1971.

What are they going to get?

The 1970 Census indicates that there are 52,062 Natives in Alaska which has a total population of 300,382. The Natives, the true owners of Alaska, represent approximately 15% of the total population.

Out of the greatness of the American heart, they are being awarded 40,000,000 acres of their own land. Alaska has a total acreage of 365,481,600 acres. So the Alaska Native—the owner of Alaska from time immemorial—must accept less than 11% of the total 365,481,600 acres stolen from them.

Congress, of course, did make a payment on the 100 year use of the Native's land and for their loss of the remaining 325,481,600 acres. The payment is set at $962,500,000. Your editorial implies that this is fantastically outrageous compensation and a raid on the taxpayer's pocketbook. First, let us tell the truth about the compensation.

$462,500,000 is to be directly appropriated from the United States Treasury: $12.5 million in the first year; $50 million in the second year; $70 million in each of the third, fourth, and fifth year; $40 million in the sixth year; and $30 million in each of the next five years. These are, in effect, annuity payments and, as such, must be discounted to arrive at present worth. The discounted value figures out to be less than $350 million.

The Natives are then reluctantly permitted to have a 2% overriding royalty on all mineral revenues derived from leases of Alaska lands which are now public under the Mineral Leasing Act of 1920, as amended and supplemented, up to a total of $500,000,000. The time needed to arrive at that total may be up to 50 years—or even more. That sum, too, must be discounted. It would probably wind up being around $300 million in current value. So, at discounted rates, they are receiving about $650 million.

For what?

During the hundred years the whites have illegally used Alaska, they have probably taken out untold billions of dollars worth of

gold, various other minerals, timber, fish, and other wildlife one cent of rent or lease being paid to the owners. Locked up in the 325 plus million acres of land the Natives have, in effect sold to the United States for a paltry sum are billions of dollars of oil deposits and trillions of dollars of other ntaural resources. If the United States got a bargain when they knowingly purchased stolen merchandise for $7,200,000, they are now getting a fantastic windfall to get it all from the real owners for a paltry billion dollars—nondiscounted, at that.

Now to your specific misrepresentations.

You state in the third paragraph of your editorial that the Natives are being given an almost unlimited right to select the 40 million acres anywhere they wish out of the 365 plus million acres available in Alaska. You state further that there are only 80 million acres of land in Alaska below the 3000 foot level and that the Natives will, quite naturally, select all their 40 million acre entitlement from this 80 million acres, leaving only (only?) 40 million acres for the use of the great white hunter and fisher.

Here again you show a total ignorance or disregard for the facts. Under the Act, the 40 million acres of land is to be divided between the 220 existing Native villages and 12 regional corporations. Each village will receive surface title to 18½ million acres on the following basis:

Population and acreage entitlement

25 to 99	69,120
100 to 199	82,160
200 to 399	115,200
400 to 599	138,240
600 or more	161,280

In addition, the villages will receive surface title to an additional three and a half million acres to be divided among the villages by the regional corporations on some equitable basis, making a total of 22 million acres for the villages.

The regional corporations, in addition to receiving the subsurface title in all lands selected within their region, will select an additional 16 million acres for their own use and development. A further 2 million acres is to be used for special purposes, such as retaining title to existing Native cemeteries and historical areas or for Natives who are not members of existing villages. This is a total of 40 million acres.

Had you read the Act, you would know that the Natives *do not* have an unrestricted right of selection. The 18½ million acres to be selected by the villages and the 16 million acres to be selected by the regional corporations must come from the 25 townships surrounding each of the 220 villages. For your information, a township is a survey unit of 36 sections of land at 640 acres per section for a total of 23,040 acres per township. In addition, the Natives are precluded from selecting any land upon which there are currently existing valid rights or from any land now in the National Park system or withdrawn for national defense purposes, except the Naval Petroleum Reserve Numbered 4.

Your point, now shown to be almost totally inaccurate, was that the Natives (Those sly, shifty devils.) would select all the good lands, particularly those valuable for hunting and fishing and leave none for the white sportsmen. Quite obviously, the 40 million acres remaining below 3000 feet is not enough for the hunting and fishing crowd. Your editorial does not mention that a large part of the sports hunting and fishing activity in this country takes place above 3000 feet.

But suppose you were right. Suppose a choice had to be made between the white hunter and the Native people. Where does the equity lie?

The Alaska Native has lived upon the peninsula of Alaska from time immemorial. They hunt and fish for their very existence. That activity provides them with their daily food, their housing, clothing, utensils, and their trade goods, not to mention their recreation. Deprived of this right, their race might well become extinct. During the thousands of years they have lived in this fashion, they have not been the cause of the extinction of a single species of animal life—they have not killed or trapped an animal for which they did not have an immediate and pressing use or which they did not put to the most efficient use in sustaining their livelihood—nor have they polluted the rivers and streams, eroded the land, or destroyed the balance of the ecology. Rather, they have lived in, been a part of, and conserved and preserved their land and its resources.

And the great white hunter? What is his equity in the land?

Once or twice a year, he must prove his manhood and emulate his chalk-cave ancestor. Instead of a spear with a stone head, he uses a high-powered repeating rifle equipped with a high-powered scope to make the killing easier. Having already destroyed the land, air, and game potential of his own environs with fumes, chemicals, buildings, and people, he yearly treks into the virgin, unspoiled wilderness with his beer cans, whiskey bottles, gas fumes, and other mementos of this "civilization" for the brief pleasure of the chase and the momentary thrill of sending a 180 grain, 30-06 bullet crashing and tearing through the heart of some frightened, desperate bear or moose or deer. Why? So he can cut off the head and skin as visible, living-room proof of his manhood while the flesh, sinew, and bone of the animal rots and whitens in the wilderness sun—flesh, bone, and sinew that may well have supported a Native family for a month.

And now for the Big Lie. In your last tear-jerking paragraph, you state: "Friends, we are victims of the biggest hoax ever perpetrated in the name of the Noble Savage by any legislative body." What, allegedly, is the big hoax and fraud upon the American people? Let us quote your fourth paragraph:

"But there is more to this unforgivable bit of law making. The Naval Oil Reserve near Point Barrow—"

If you had read the Act carefully, which obviously you did not, you would know the official name for this area is Naval Petroleum Reserve Numbered 4:

"Was not exempted from the land the Indians could grab up. There are a million acres up there that will be worth billions of dollars."

Back to your last paragraph:

"Actually, the big corporation—largely oil—were strongly behind this Indian grab bag, because getting it settled takes the big stumbling block out of the way of the Alaska pipeline, and because it will be easier to get at the oil and other resources if the land is privately owned. The oil companies could not drill for oil known to exist in the Naval Oil Reserve, which is right beside the Prudhoe Bay field."

The Eskimos of the Arctic North Slope deserve every drop of oil below the surface of their land the whites call Naval Petroleum Reserve Numbered 4. But the truth—the mind-sickening, gut-twisting truth—is that the Natives have been cheated of their right to this resource under their land by the Act. I direct your attention to Section 12 (a)(1) of the Act which reads in the last proviso as follows:

"When a Village Corporation selects the surface estate to lands within the National Wildlife Refuge System or Naval Petroleum Reserve Numbered 4, the Regional Corporation for that region may select the subsurface estate in an equal acreage from other lands withdrawn by subsection 11(a) within the region, if possible."

And you can bet the Secretary of the Interior, whoever he may be, will determine that it is "possible" because the Senate-House Conference Report on H.R. 10367 as set out in the December 13, 1971, Congressional Record states on page 46592 that:

"No subsurface estate is granted in Naval Petroleum Reserve Numbered 4 or in the National Wildlife Refuge, but in lieu selection of subsurface estate in an equal amount of acreage *outside* (emphasis added) these areas is provided for the regional corporation."

Furthermore, the Natives will not be able to benefit from the oil under their lands through the revenue sharing provisions. The Conference Report states, on page 46592 of the December 13, 1971, Congressional Record that:

"The Natives will be paid . . . an additional $500,000,000 from mineral revenues received from lands in Alaska hereafter conveyed to the State under the Statehood Act, and from the remaining Federal lands, *other than Naval Petroleum Reserve Numbered 4*, in Alaska." (Emphasis added)

In short, the Natives will not benefit at all from the oil reserves under their lands in Naval Petroleum Reserve Numbered 4.

If your magazine was devoted to the principles of professional journalism, you either knew or should have known the true facts as stated above and should have *reported* them in your editorial, regardless of the interpretation you chose to place upon them. That you did not means you either lied or distorted and twisted the truth beyond recognition or engaged in totally irresponsible journalism.

The rest of your untruths, half-truths, misrepresentations, and distortions in the editorial we will write off to emotional fervor with unfortunate racial overtones and unprofessional, irresponsible journalism.

Most people associated with the Indian cause in the United States regard the settlement of the Native land claim to be inadequate and a sell-out of their rights. A few, such as yourself and your readers, regard the settlement as a windfall for the Natives. Your readers, great white hunters all, would have been indignant enough with the truth. There was no reason to distort it as your editorial did.

We invite you to make such use of our letter as you deem appropriate.

Sincerely,

LEO W. VOCU,
Executive Director.
FRANKLIN DUCHENEAUX,
Legislative Consultant.

MANPOWER TRAINING

Mr. BROCK. Mr. President, on February 7, 1972, President Nixon sent a message to Congress urging the swiftest review and enactment of his Manpower Revenue Sharing proposal. The purpose of this measure is to decategorize, decentralize, and consolidate existing Federal and federally assisted manpower programs.

The President's proposal for enactment of manpower Revenue Sharing has already sat through the first session of Congress while unemployment hovered around the 5-million mark.

The development of the manpower training effort originated with the initial passage of the Manpower Development and Training Act of 1962. Today, there exist at least a dozen separate, narrow grant programs funding 10,000 direct grants and contracts with public and private organizations. These programs have attempted to meet needs as identified in continuing and new surveys of the unemployed. These programs include among others, MDTA institutional train-

ing, MDTA on-the-job training, Neighborhood Youth Corps, New Careers, Operation Mainstream, JOBS, and the Concentrated Employment Program.

Ten years ago the Nation was emerging from the psychological shock that emerges from a pair of back-to-back recessions. The doubts of the strength of the economic system were as strong as some would have us believe they are today.

Today we have in hand a manpower training effort which in fiscal year 1970 recorded first time enrollments in federally assisted work and training programs of 1.8 million persons. In fiscal 1971 enrollments were expected to reach the 2-million-person mark and if manpower revenue sharing had been available, it would have funded enrollments of 2.3 million persons in work training programs in fiscal year 1972.

This effort has concentrated especially in the area of training the disadvantaged. About a third of all enrollees during 1970 were receiving public assistance at the time they entered the program or in the case of youth in the Neighborhood Youth Corps program were from families on public assistance.

Thus, the program has grown from one adopted in despair and doubt 10 years ago to one committed to the maximum best use of our most important resource, the human resource today. Our economy, rather than falling by the way since 1962 has passed the 1-trillion mark in its production of goods and services.

Ten years ago the program was an experiment; today manpower training is an integral part of the Nation's effort to foster sustained real peacetime economic growth.

Ten years ago States and counties were convinced only the Federal Government could solve the complex problems of a stagnant economy; today, the States and counties urgently look to the Congress to return decisionmaking back to them in the form of revenue sharing.

Manpower revenue sharing, to be funded at $2 billion for its first year, takes into account the wide diversity in community employment, unemployment, and training problems. It relieves communities of the requirements to continue funding types of programs unfit for their individual needs, freeing community training programs to be more relevant to community needs. Manpower revenue sharing strips bare the thousands of requirements, rules, regulations and guidelines that have siphoned off limited State and local government resources in an effort to force individual community needs into rigid categorical training programs. In its place, it provides a flexible 100 percent financing program, a new partnership between the Federal and local governments.

Under this partnership, the program would:

First, allow city governments to bring jobless ghetto residents onto city payrolls in education, health safety and antipollution work while preparing them to move into permanent jobs;

Second, allow State governments to reach out to isolated rural poor people with training and job programs shaped to their special need; and

Third, allow county governments to provide skill training and transitional employment to welfare recipients to move them toward self-support.

My colleagues in the Senate Subcommittee on Employment, Manpower, and Poverty have scheduled hearings for this piece of legislation for March 6 and 8, 1972. At a time when the President is being criticized, for what his critics term inaction in reducing unemployment, swift review, and enactment of manpower revenue sharing would serve to enforce the Nation's conference that Congress shares its concern. The American economy can maintain peacetime economic growth while I remain convinced that retraining the disadvantaged as well as persons seeking to upgrade their employment skills.

SENATOR CARL HAYDEN

Mr. PEARSON. Mr. President, all of us in the Senate are aware of the role of this great body in the shaping of the Nation's history. Yet rarely has any Senator had a broader or more significant impact on the development of his State and country than did Carl Hayden during his illustrious career.

Beginning as a country sheriff when Arizona was still a territory, becoming its first Congressman upon statehood, elected to the Senate in 1926, Senator Hayden's influence spanned a turbulent and crucial time, one which demanded the highest quality of leadership and perseverence. Through it all, the prestige of this unpretentious and dedicated man grew, culminating in coveted committee chairmanships and the unbounded respect of his colleagues.

Of his many legislative accomplishments, perhaps one of the most significant was enactment of his proposal creating the Farmers Home Administration, a major factor in the revitalization of our rural areas. Other achievements congressional approval of major legislation involving conservation and minority rights, as well as passage of the Hayden-Cartwright Act, which opened the way for construction of sorely needed highways in the West and the Southwest.

In spite of his great power and influence, however, Senator Hayden was ever an accessible and helpful individual, particularly to younger, less experienced legislators. In this regard, I will always fondly recall the assistance and consideration he afforded me during my early years in the Senate.

Mr. President, Carl Hayden leaves behind him a legacy of achievement and service unparalleled in the history of this Nation. In his lifetime, he not only helped shape history, but he was also, in a very real sense, a part of history itself. With his passing, the State of Arizona and the Nation have lost a courageous and honorable spokesman.

PROTECTION OF MARINE MAMMALS

Mr. PACKWOOD. Mr. President, the Senate Subcommittee on Oceans and Atmosphere has been holding hearings during the past several weeks on a variety of proposals for the protection of marine mammals. Recently, I had the opportunity to testify before this subcommittee in behalf of S. 2639, the Marine Mammal Protection Act of 1971.

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

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

STATEMENT OF BOB PACKWOOD

MARINE MAMMAL PROTECTION ACT OF 1971

Mr. Chairman, and members of the Subcommittee, I would like to thank you for asking me to appear before you today, and for holding hearings on this important legislation.

There is certainly no controversy, either here or on the other side of the Capitol, over the fact that marine mammals need more attention and enlightened protection than they have received in the past. I am certain that you have heard adequate testimony on this point already.

To meet this problem, two alternatives have been urged upon this Subcommittee. One, generally described as the "protectionists'" view, and encompassed by Senator Harris' bill, S. 2579, would impose an absolute ban upon the taking or importing of all marine mammals. The other, sometimes described as a "managers'" bill, represented by my bill, S. 2639, and also by similar legislation proposed by Senators Williams, Stevens and Hollings, would respond to the problem by authorizing an extensive and intensive program of management of species and stocks of marine mammals.

The controlling issue in the controversy between these two views must necessarily be what is best for the animals themselves and for the ecosystems upon which they, and possibly we, depend. Under this criterion, I can only conclude that enlightened, effective management of marine mammals is the better course of action to pursue at this time.

Critics of management programs point to failures of other management programs, such as the International Whaling Commission, as evidence that the concept itself is no good. While it is undeniable that some programs—including the IWC—have been inadequate, it is no more rational to conclude from this that the management concept should be abandoned than it would be to throw out our system of criminal justice because miscarriages of justice have occurred in the past. The answer, it seems to me, is to improve the system, and not to scrap it altogether. My bill, and the other similar bills, attempt to do just this—to see that management systems are devised—in ways, I might add, that have never been tried before—which will be responsive to the needs of society and of the animals themselves.

A notable, and I believe, basic defect in the proposal of the protectionists lies in its complete lack of a research program designed to improve our knowledge of these animals. You have already heard evidence of the almost nonexistent research efforts that have been developed by the Federal Government in the past—with the exception of the Alaska fur seal program, which must surely stand as an outstanding example of what can happen under a sound management program.

The significance of an adequate research program becomes apparent when one considers the fact that the species and stocks of animals described in this legislation are almost without exception migratory and/or international—or at the very least live in waters that may go beyond the territorial limits of U.S. jurisdiction. What this means, of course, is that these animals may be, and often are, considered "fair game" by citizens of other countries: citizens for whom a self-

imposed U.S. ban would mean only that there would be more animals for them to take. While I understand the temptation to adopt a moralistic posture, banning all killing of marine mammals by U.S. citizens, and to urge all other nations to follow our lead, I think that we must recognize the cold reality that they will not do so today.

A case in point might be the recently negotiated treaty to regulate the catching of Antarctic seals. We were very clearly told by the other 11 nations at the London conference early this month that they were not at all interested in creating an Antarctic preserve for seals. Faced with scientific statements that there may be as many as 50 million seals in the waters of Antarctica, the decision was made by all the countries present to permit limited and controlled taking of Antarctic seals, with that taking heavily weighted toward conservative limits, pending the development of more and better information to tell us how these resources can be best used without sustaining serious damage.

Few other nations of the world consider themselves as highly favored as we are today, having adequate supplies of protein and other raw materials. For the less favored countries, marine mammals are not a luxury, but are rather a potential source of food or cash. I doubt if anyone here likes the idea, but it does no one any good to pretend that it is not there.

I believe that such nations can be reached, however, by being shown that marine mammals are resources which can be depleted by overuse, and that this will result in long-term losses for all concerned. The fable of the goose and the golden eggs is told in many other languages than English.

This is in fact the argument that finally seems to be prevailing with respect to the great whales, although even here it appears that there is no lack of opportunists who may be quite willing to destroy resources for all time for the sake of a quick return.

For this reason, and since we know that the pressure for exploitation of these and other resources is on the increase, it becomes imperative that we develop a sound, broadly based research program to define accurately the limits of what can safely be done without endangering the resources themselves.

I do not think that it would be a responsible act for this Congress to adopt legislation which imposes a flat ban on our taking of marine mammals without providing a sound research program to help us plot a course for the future. I say this not because I am unsympathetic with the motives and concerns of the protectionists, but because I am convinced that their proposal just will not work. And that therefore it is not responsible to the best interests of the animals themselves.

I might add that the position of the ostrich is not only undignified, but it is extraordinarily vulnerable.

There are elements in each of the "management" proposals now before the committee which have much to commend them. By way of putting my own bill into perspective, I might say that it was introduced as a "first generation" effort, at a time when it appeared that Senate hearings might be imminent and when no alternative was available for consideration by the committee. I would say that many of the modifications that have been proposed upon my original bill have improved considerably upon it.

It appears to me that the essential elements of a sound and responsible bill for the long-term protection of marine mammals would at least include these:

First, a management program, open to full public review and keyed to the needs of the animals themselves;

Second, a comprehensive research program already described;

Third, the existence of an independent agency, to review the ongoing program without management responsibilities and with some research capability of its own; and

Fourth, adequate controls to prevent misbehavior of U.S. citizens and agencies, coupled with a flexible capacity to restrict imports from other nations where less responsible management programs may be in effect.

If this committee can produce legislation which will satisfy these basic objectives, I think that it can justifiably be proud of having done a responsible job. No doubt there are improvements that will suggest themselves in the future, and it may be that total protection will ultimately become possible. In the interim, this bill will prevent the loss or significant diminution of animal species and stocks—insofar as we are able to do so today.

GENOCIDE: THE THREAT OF MENTAL HARM

Mr. PROXMIRE. Mr. President, article II of the Genocide Convention states that:

> The crime of genocide shall include the act or the intent to cause serious bodily or mental harm to members of the group.

Although this would seem self-explanatory there are critics of the Convention who question the use of the phrase "mental harm." This, they maintain, is far too ambiguous for inclusion in an international agreement.

For most the language of the treaty itself is quite straightforward, but the implementing legislation recently introduced disspells any remaining doubts. Mental harm is described as:

> Any act which causes the permanent impairment of the mental faculties of members of the group by means of torture, deprivation of physical or psychological needs, surgical operation, introduction of drugs . . . or psychiatric treatment calculated to permanently impair the mental process.

The atrocity which is herein described could be condoned by no civilized society. Nor can there be any doubt as to what is meant by the phrase "mental harm" for the implementing legislation is explicit. We need only remember the activities of Nazi Germany 30 years ago to find wretched examples of the most inhuman mental torture. Brainwashing and brainbreaking are not unknown to our civilization.

Therefore, to prevent the recurrence of these horrible crimes against humanity, I call upon Senators to move swifty to approve this implementing legislation and ratify a very necessary treaty to outlaw genocide.

PERSECTION OF JEWS IN THE SOVIET UNION

Mr. McGOVERN. Mr. President, reports emerging from the Soviet Union indicate that conditions for Jews in that country are intolerable.

Reliable word indicates that Vladimir Slepak, a leading Jewish scientist who has been trying to emigrate to Israel, has been under orders to report to work as a laborer in a Moscow concrete construction factory. His refusal could bring in a charge of "Parasitism," an offense which carries a year's prison sentence.

Many young Jews in Leningrad are being denied entrance to their synagogue and are prevented from congregating near the only institution through which they can express their Jewish religious or cultural identity. The local militia has gone to the extreme of barring access to these young people.

Numerous other instances of harassment paint a discouraging picture of continued denial to Jews of their right to live as Jews in the Soviet Union or to leave.

The mass trial in 1970 of the Leningrad "hijackers" resulted in an international outcry against this mock injustice and put the Soviet Government on notice that the world is watching. The new tactic of picking off individual Jewish activists must be met with similar indications of protest. Silence can only mean indifference.

We must sustain the worldwide protest. It has helped in the past. It will help now.

Mr. President, I ask unanimous consent that two releases issued by the American Jewish Conference on Soviet Jewry, which describe in detail the alarming new developments in the plight of Soviet Jews, be printed in the RECORD.

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

JEWISH SCIENTIST THREATENED WITH PRISON BY SOVIET UNION

NEW YORK, N.Y.—The National Conference on Soviet Jewry has learned that Vladimir Slepak, a leading Jewish scientist who has been trying to emigrate to Israel, was ordered by Soviet authorities to report to work as a laborer in a Moscow concrete construction factory. If not, he was threatened, he would be put on trial charged with "Parasitism" with the possibility of going to prison for a year.

The 44-year-old Slepak, a physicist, electronics engineer and graduate of the Aviation Institute, applied for an emigration visa in March, 1970. He was subsequently fired from jobs in the Geophysics Trust and in the Institute of Organic Chemistry of the Russian Academy. He has been completely unemployed since September, 1971.

According to a telephone call from Moscow, Slepak was summoned, and without warning, on the afternoon of February 23rd to a special meeting of the executive council of the Frunze district in Moscow. In the presence of the district procurator, a resolution the council had already adopted was read which accused Slepak of being a "parasite." The resolution ordered him to go to work in a concrete construction factory in any job the factory manager wished to assign him.

(The law on "parasitism" went into effect in the early 1960's and was originally intended to be used against alcoholics and similar socially "undesirable cases." In the past, it has also been used against some non-Jewish dissenters in the Soviet Union. As far as is known, this is the first time the law has been invoked against a Jewish dissident.)

Slepak refused the order and was informed by the procurator that he would have five days to reconsider. If he did not accept the job, he was told, his case would be sent to the courts and, under law, he could be sent to prison for a year.

Slepak has a wife and two children. In similar cases, the families of such persons are made to suffer because of the stigma attached and because they become economically deprived.

Slepak has been among the most vocal of the Jewish activists in Moscow. He was pres-

ent in the home of Professor Alexander Lerner in Moscow when U.S. Representative James H. Scheuer was arrested and detained by Soviet police as a suspected "dangerous criminal" on January 12th. Professor Lerner, a leading Jewish scientist, has also been periodically harassed by the KGB (secret police) since he expressed his desire to emigrate to Israel.

Jerry Goodman, executive director of the National Conference on Soviet Jewry, branded the action against Slepak as "part of what appears to be an ominous trend by the Soviet authorities to move against Jewish activists in Moscow. On February 7th, the police arrested Ilia Glezer, a Moscow State University student, at his home on vague and uncorroborated charges of 'anti-Soviet activity' and of 'defaming the Soviet state and system'. Glezer is still being held in prison until the completion of an investigation now underway by the KGB.

"Unlike the Leningrad trials of a year ago, when 11 Jews were sentenced to prison, the Soviet authorities now seem to be isolating the Jewish activist leaders in Moscow and harassing them one by one. In this way they may be trying not to generate attention and to avoid the glare of negative worldwide publicity that greeted the Leningrad and other trials last year."

Mr. Goodman called for widespread protests to Soviet officials "to discourage these and any other moves against individual Jewish activists and to forestall further direct Soviet police action against Jews that may foreshadow new trials in a campaign against so-called 'parasites'."

The National Conference on Soviet Jewry represents a mobilization of 34 major national Jewish organizations as well as of local Jewish community councils and federations in support of Soviet Jews.

SOVIET SECURITY AUTHORITIES REPORTED SETTING UP FRAUDULENT MOVEMENT TO PROVIDE ARRESTS OF JEWS

NEW YORK, N.Y.—The National Conference on Soviet Jewry has learned of rumors circulating in Moscow that sometime last month—the exact date is unknown—several Jews and Russians met to create "The People's Liberation Movement of Jews in the Soviet Union."

According to the Conference, Moscow Jews have expressed their fear and suspicion that these rumors are a provocation by Soviet security organs who may be preparing the background for a new campaign of arrests and trials of Jewish activists in the Soviet Union, especially those who want to go to Israel.

Jerry Goodman, executive director of the National Conference on Soviet Jewry, said that "there is reason to suspect, if reports from Soviet Jews are accurate, that this new move is really a provocation by Soviet authorities.

"What the Jews in the Soviet Union fear is that the so-called 'movement' will be a creation by the Soviets themselves to be used against Jews who have been trying to leave the Soviet Union legally.

"The suspicion now is that an organization, obviously illegal, will give the secret police (the KGB) an excuse for moving against and arresting Jews for eventual trial in order to destroy the Jewish activists and the movement for emigration.

"This suspicion is strengthened in the wake of recent police actions against Jews throughout the Soviet Union."

In Kiev, four Jews were tried and sentenced to 15 days in prison for alleged "hooliganism" when, together with about 60 young Jews, they tried to enter a synagogue on February 19th. The police refused them admission on the grounds that "this is not for young people." There have been other recent instances of police actions against Jews at the synagogues in Kharkov and in Sverdlovsk.

Furthermore, in recent days, several OVIR offices around the country have reportedly denied exit permits for Jews, who were qualified to leave. In most instances, no reason was given, but blunt and brusque refusals were announced.

Mr. Goodman pointed out that "the Jews in the Soviet Union have, in the past two years, been struggling defiantly and boldly, but it has always been in the open and, therefore, legal. All the petition seekers were acting legally under Soviet law. They themselves have denounced illegal activities."

The National Conference on Soviet Jewry represents a mobilization of 34 major national Jewish organizations as well as of local Jewish community councils and federations in support of Soviet Jews.

SENATOR CARL HAYDEN

Mr. MILLER. Mr. President, for more than a half century, our late and beloved colleague, Senator Carl Hayden, served with distinction and honor in these Halls of Congress. His devotion to public service and to his State and country was reflected in his being returned to Congress by his Arizona constituents for term after term for 56 years, a record which long will stand.

Senator Hayden was a taciturn man, not given to making long and flowery speeches; he felt that his deeds—and they were many—spoke louder than words. He was proud of the fact that he was a "workhorse" and not a "showhorse." And his ability to obtain legislation of benefit to his State as well as the Nation was legendary.

Senator Hayden left a mark on the books of history which will never be forgotten.

LITTLE MUDDY CREEK

Mr. PACKWOOD. Mr. President, it is always a source of pride to me when I learn that citizens in my home State of Oregon are able to work together in order to solve their common problems. The Upper Willamette Valley resource conservation and development project in western Oregon typifies this kind of unified effort.

One of their most important undertakings has been the control of flooding along Little Muddy Creek. This creek used to flood farmlands in the broad, flat valley of the Willamette River in western Oregon several times each year. The flood water washed away fertilizer, reducing seed yields, and making pastures unusable for days at a time.

The Upper Willamette resource conservation and development project has helped to solve this problem. I recently read an article which tells the story of the Little Muddy watershed project. The author is Lynn Barnes, a seed producer in the Willamette Valley, and chairman of the Little Muddy Water Control District.

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

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

LITTLE MUDDY—NO MORE A MENACE

(By Lynn Barnes)

The author: Lynn Barnes is a seed producer in the Willamette Valley, south of Portland, Oregon. He is chairman of the Little Muddy Water Control District, which sponsors the Little Muddy Watershed Project in the Upper Willamette Resource Conservation and Development Project.

The area: The Upper Willamette RC&D Project area in west central Oregon, includes Linn, Lane, Benton, and Lincoln Counties and part of Douglas County. The area—5,509,440 acres—is predominantly forest land. Privately owned land mostly in the valleys and foothills totals 2,762,229 acres.

The broad, flat valley of the Willamette River in western Oregon has been my home since I was a boy. My neighbors and I make our living mostly by raising grass and legume seed—ryegrass, bluegrass, orchardgrass, and white clover, to mention a few. Ryegrass is the principal grass seed crop because much of our land is poorly drained and wet for days, especially after flooding. We raise sheep, too, because sheep fit in with the production of grass seed.

Little Muddy Creek flows through our area, and every year, for as long as I can remember, it flooded not once but two, three, four, or more times. The floodwater washed away fertilizer and cut down on our seed yields. It deposited weed seed on our land and reduced the quality of the seed we grew. Many times it drowned out a newly established stand of grass. And it made our pastures unusable for days.

The flooding damaged farm fencing and roads. On Powerline Road, one of our main routes, traffic would be stopped until the water went down. School buses, mail trucks—everything and everyone had to go around the floodwater.

Our efforts to control flooding along Little Muddy Creek, which wasn't little then—it was a mile wide in some places—brought us into the Upper Willamette Resource Conservation and Development Project.

There are 142 farms in the Little Muddy watershed, and most of the farmers are interested in our RC&D project. Not all the farms get flooded, but most have excess water.

When the Upper Willamette RC&D Project was announced, we realized we had a chance to get something done. Most of us along the Little Muddy had long been cooperators with the Linn Lane Soil and Water Conservation District, a sponsor of the RC&D project. The Soil Conservation Service, already familiar with our problems, had developed a Little Muddy Creek watershed work plan. Because of the project size and cost—about $600,000—it was decided to spread out the work over a 4-year period.

Our application for assistance with this watershed work was accepted by the RC&D sponsors early in 1964. Our next step was to form a water control district because we needed a legal instrument to carry our plans forward. O. E. Mikesell, head of the Linn County Extension Service, was a great help to us.

Owners of more than half the acreage in the Little Muddy Creek watershed signed petitions favoring a water control district. The Linn County Commissioners, after hearing all the opposition, declared the Little Muddy Creek Water Control District formed.

Mrs. Lucille Foster, who owned 93 acres adjoining my land, was one of the opponents at this time. The acreage she owned was part of a farm her grandfather, John Cogswell, homesteaded in 1872. Mrs. Foster was active in several conservation organizations including the Nature Conservancy. She and the Currin Millers, who owned adjoining land, felt deeply about disturbing the natural values along the stream.

Dr. Stanton Cook, a professor at the University of Oregon in Eugene and head of the Nature Conservancy chapter in Oregon, was interested in the Foster tract because it is relatively undisturbed and considered an ideal place for studying the plants and animals of this area. Mrs. Foster in time deeded the acreage to the Nature Conservancy.

Though the Water Control District law allowed us to condemn property to get necessary easements, we moved slowly, hoping we could work out solutions through conference. Time after time we met with those few who questioned the need for the plan as we had developed it.

I can't say enough about the cooperation we got during these months. Jim Cuykendall, SCS project engineer, and Frank Gurgurich, SCS district conservationist at Harrisburg, were always ready to help the Water Control District Board, as were other SCS people from the agency's state office in Portland. And the board members, Stan Davidson, Dean Gustafason, Dave Malpass, Merle Cook, Orie Kropf, Ben Christensen, Floyd Kropf, George Lynch, and our attorney, John Bock, worked hardest of all. I seometimes called meetings on an hour's notice and at an inconvenient time. Still, I don't recall ever having a meeting of the board attended by less than seven members. We paid innumerable visits to the creek with opponents to the plan, seeking friendly ways to settle differences.

SCS engineers came up with several ways of doing the job. We settled on one that called for the improvement of only 75 feet of the channel running through the Nature Conservancy tract and for the construction of a low 2-foot dike on their northern boundary.

The Nature Conservancy assumed responsibility for maintaining its part of the channel and dike following completion of the work. In this way, the conservation group could control any disturbance in that area. Fortunately, nearly all of this stretch of channel was large enough to handle the volume of floodwater most of the time.

The contract for the first phase of the project went to a road contractor, Roy Norquist of Sweet Home. We couldn't have asked for greater care in the job that Norquist did.

The right-of-way reached 20 feet back from the stream on either side. Trees that offered esthetic value were marked and left untouched wherever possible. Shaped streambanks were seeded and mulched immediately after completion.

Spoil from the work went into oxbows no longer used by the stream. These areas were leveled and seeded to ryegrass and fescues.

We had to call on power companies, the gas company, the State Highway Department, the Pacific Bell Telephone Company, and the Southern Pacific Railroad to move power and pipe lines and give us the necessary easements. Linn County built two bridges and awarded contracts for the construction work.

Last winter and early in spring when heavy rains fell, the work done on Little Muddy got a thorough test. Water in the creek stayed within the banks where the channel has been improved.

The improved channel curves gracefully through the countryside. There are fish in the creek—bass, perch, catfish, and carp.

When the work is completed in another year, any of us can begin to grow higher return crops if markets are available. These would include clover, beans, and small grains—crops we could not consider before because of soil wetness.

Since the flooding was controlled, I have titled 15 acres as an experiment in improving drainage. That area, now safely fenced, is perfect for a lambing pasture for my ewes. The animal waste stays on the pasture and is absorbed for the organic contribution it will make. Water flowing into Little Muddy from the drainage system is crystal clear and free of contamination.

Economists say our total saving in flood damages will be about $55,000 a year. My guess is that, when you consider all the improvements, it will amount to much more. The good part is we accomplished our task with patience, communication, and understanding. Its a process we heartily recommend.

RESTORATION OF THE RIGHT TO HOLD GOLD

Mr. ALLOTT. Mr. President, I continue to receive a steady flow of reasoned support for S. 3162, my bill to restore to Americans the right to hold gold.

Recently I received a copy of a fine editorial from the Milwaukee Sentinel of February 23, urging the passage of this measure. I ask unanimous consent that the editorial be printed at this point in the RECORD.

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

LIFT BAN ON GOLD

What do heroin and gold have in common? Sen. Gordon Allott (R-Colo.) asks this question in connection with a bill to permit American citizens to own gold.

The answer is obvious: The American government forbids Americans to hold either gold or heroin in this country.

Of course, many things distinguish heroin and gold, Allott points out, including the fact that the government forbids Americans to hold gold abroad but does not forbid them from holding heroin abroad.

Allott has joined Rep. Philip Crane (R-Ill.) in introducing legislation to restore to Americans the right enjoyed by most people in the world, and the right enjoyed by Americans until 1934—to hold gold, at home or abroad.

"To my mind," remarks Allott, "there never has been any valid reason for denying individuals the right to own gold. There never has been a valid reason for treating gold any differently from peanut butter in this regard."

There is, to be sure, a reason why President Franklin D. Roosevelt expropriated privately held gold and why administrations ever since have continued to deny citizens the right to hold gold. That reason is to enable the government to indulge in the deficit spending that is the root cause of the inflation now threatening to consume the nation.

The damage has been done. Whether restoring the right to private ownership of gold would undo any of the damage is debatable. It certainly wouldn't hurt to try. The ban on American citizens holding gold should be ended forthwith.

Mr. ALLOTT. Mr. President, it is my earnest hope that the Committee on Banking and Currency will move with appropriate dispatch in scheduling hearings on this popular and equitable measure. Such hearings will satisfy the impatience of the many Americans who are anxious for the long overdue restoration of the right to hold gold. The justifiable desire for the restoration of this right should be satisfied soon, one way or another.

KOREAN INDEPENDENCE DAY

Mr. PERCY. Mr. President, on March 1, 1972, the Korean community of Chicago, which numbers more than 10,000, will join with Koreans everywhere in celebrating Korean Independence Day.

This year marks the 53d anniversary of the Korean Declaration of Independence of March 1, 1919.

The Korean March First Independence Movement proved to be a binding force in the friendship which has long existed between the United States and South Korea.

Most of the Koreans in Chicago emigrated to this country within the last 20 years, and in that short time they have made a significant contribution to the commercial, religious and cultural life of the city. The Korean Association of Chicago, under the able leadership of Yung Joon Chang, deserves special praise.

Chicago is honoring the anniversary with a city council resolution designating March 1 as Korean Independence Day in the city. Governor Ogilvie will hold ceremonies which will include the issuance of a proclamation commemorating the day.

I am pleased to have this opportunity to pay tribute from the Nation's Capital to our fine citizens who are celebrating Korean Independence Day.

BISHOP JAMES ARMSTRONG

Mr. McGOVERN. Mr. President, the February 1972 issue of the Christian Advocate contains a sensitive and perceptive article by Bishop James Armstrong, Methodist bishop for the area of North Dakota and South Dakota, concerning the role of a religious leader in political action. In my view, the bishop embodies the best attributes of a clergyman and a concerned American voter, and I should like to have Senators share his views. I ask unanimous consent that the text of Bishop Armstrong's article, entitled "A Churchman's Involvement in Partisan Politics," be printed in the RECORD.

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

A CHURCHMAN'S INVOLVEMENT IN PARTISAN POLITICS

(By Bishop James Armstrong)

Who can forget 1968? Eugene McCarthy, New Hampshire, and "the children's crusade." . . . LBJ's dramatic withdrawal from the presidential race. . . . Sirhan Sirhan and Senator Kennedy in a pool of blood. . . . Chicago (the one word says it all). . . . Richard Nixon's promise to "end the war" and "pull us together."

Now—four years later—the fever is upon us again. Will the President be reelected? What will Mr. Agnew's fate be? Who will emerge from the plethora of Democrat candidates to be his party's standard bearer? What can a clergyman do to affect the outcome? What *should* he do? Does a clergyman have a right to become involved in partisan politics?

The precedent has been long established. In January of 1776, Pastor J. P. G. Muhlenberg pronounced the benediction in his German Lutheran church, stripped his pulpit robe from his back, and stood before his congregation in a colonel's uniform of the Continental army. John Witherspoon, Presbyterian minister recently arrived from Scotland, signed the Declaration of Independence and the Articles of Confederation. Revolution is partisan politics.

In the 1850s, Boston's Theodore Parker railed against slavery and urged Americans to disobey the Fugitive Slave Act. Civil disobedience is political.

Bishop Matthew Simpson of the Methodist Episcopal Church was Abraham Lincoln's confidante. The president used him to try to convince his cabinet of the tragic severity of the developing Civil War and later to modify Secretary Stanton's bitter antagonism toward Confederate sympathizers in the

border states. Hobnobbing with presidents is political.

Today more ministers are becoming involved in partisan politics than ever before in this nation's history. They are working as precinct committeemen, sitting on platform committees, endorsing candidates, and running for office. A *New York Times* reporter after talking with Bob Hope about his political activism, wrote, "He feels that the country is in such a crisis that ordinary rules do not apply."[1] Many clergymen would agree.

But, what are the rights and responsibilities of the clergymen? Because of the delicate nature of his leadership role, should he, like a judge or civil service employee, remove himself from the political arena? Or should he, in seeking to demonstrate the meaning of involved concern, be willing to run the risks of partisan struggle?

The minister of Jesus Christ does not surrender his citizenship at the time of his ordination. *It is my firm conviction that he has the perfect right to advocate those causes and support of those candidates that reflect the values of the Christian faith as he understands and experiences them.* But, there are some stringent provisos involved.

First, *as the clergyman becomes politicized, is he willing to be honest with himself?* Does his new association with persons and issues in the news provide for neurotic, ego-needs that have little to do with faithful obedience? Does he relish the controversy that sometimes accompanies his public posture? Does this commitment to political action offer a substitute vocation for him? Ironically, activism can be a cop-out. It can provide an escape hatch for the man who has grown weary of the emotional and spiritual drain of a truly person-centered ministry. Political action should be viewed as the logical expression and extension of discipleship into a real world and not as an alternative for those who have given up on the ministry.

Second, *the clergyman must understand the element of compromise present in virtually every political decision and relationship.* Ministers are accused of oversimplifying issues and of being inexcusably naive. Too often the accusations are true. The person who does not see compromise as a legitimate Christian strategy should have nothing to do with public affairs.

Political rhetoric aside, politicians are not new messiahs. They are imperfect men proposing imperfect programs. The John F. Kennedy revealed in the "Pentagon Papers" was partially responsible for the insanity of the Indochinese war. Time and again Eugene McCarthy seemed to put petulance above principle in the 1968 campaign. And by his use of Vice-President Agnew and Attorney General Mitchell, Richard Nixon has appeared to deliberately violate his promise to unite us all.

Faithful Christians have supported each of these men because they have assumed that the good has outweighed the bad, but the clergyman, of all persons, should refuse to deify candidates for public office or canonize legislative programs. Robert Hudnut writes, "It is silly to talk about being 'above politics.' . . . Politics is the same as the rest of life, only rubbed a little rawer, perhaps. There is self-interest and compromise and fighting. But these are in the church, too, and throughout life. The important thing is to channel this self-interest and compromise and fighting into laws for the betterment of man."[2]

Third, *the clergyman should accept the fact that his political judgments can be wrong.* Reinhold Niebuhr's early bitter criticism of Franklin Roosevelt changed to a deep appreciation for his role in history. Most of us who have taken stands on issues or identified with public figures have come to regret some of our actions. Babe Ruth was the greatest home-run hitter baseball has known. He struck out a lot, too. Jesus, in selecting his disciples, made one glaring mistake. Anyone who bears heavy responsibilities and acts boldly runs risks and will make mistakes.

Who can review the present issues before the American people: Viet Nam, foreign aid, welfare, busing, poverty, racism, and desegregation, attitudes toward Africa and Latin America, drugs, sexuality, and family life, and say, "My views on each of these issues have remained unchanged over the past ten years. And I've been right—100 percent right"? Yet, these are the issues that will shape our earthbound destinies. Should we refuse to face the issues and act upon them, because at some points time may prove us wrong?

Fourth, *we must understand that our public actions will have unavoidable consequences.* During the ten years I served a parish in Indianapolis, I was embroiled in a good bit of controversy. There was the House Un-American Activities Committee film *Operation Abolition* and the Supreme Court decision on prayer in public schools. There was racial strife, urban renewal, and Viet Nam. There was public support for a "reform" candidate for mayor and efforts on behalf of Senator McCarthy in 1968. Without question, these activities affected some fine church people. Their relationship to me as their pastor and to their church was affected. To take pride in this alienation, to see it as some sort of prophetic "victory," is to misunderstand the meaning of pastoral responsibility.

Shortly after his appointment, I wrote my successor in Indianapolis: "I made many mistakes in my administration at Broadway. Perhaps I was too active in community affairs and partisan political action. . . . But I believe in personal involvement and in the risks of democracy, so time will have to judge the propriety of these approaches to churchmanship." Since leaving the local church, I have continued my activities in the public sector. Time will be the judge.

I share this with you only to suggest that responsibility for alienation and misunderstanding should not rest lightly on the shoulders of any minister. If we choose to be involved, we must be willing to live with the consequences, appealing not only to time but to God as the judge of all things.

Fifth, *do we see ourselves primarily as reconcilers?* In the central declaration of the faith (II Cor. 5:16–21 NEB), Paul says, "[God]" has reconciled us men to himself through Christ, and he has enlisted us in this service of reconciliation. It is for this reason we will not turn our pulpits into political platforms, no matter what our private convictions or activities. This is why we will bend over backward to be fair to those who disagree with us and will try to understand and sympathize with those who challenge the free exercise of our citizenship responsibilities.

We talk about the freedom of the pulpit. The pew must be free also. The prophet who is not a pastor first, who does not grieve when his people are offended, has not carefully read the words, "I may give away everything I have, and even give up my body to be burned—but if I have not love, it does me no good." (I Cor. 13:3 GNMM)

But finally, *the faithful clergyman must accept the fact that the Christian faith is incarnational.* Unless the word becomes flesh, it remains abstraction. One of our fine young South Dakota ministers ran for the state legislature in 1970. In explaining his decision, he wrote: "God did not express himself in a resolution. He expresses himself through a created world and through human lives. . . . For me to seek to be a responsible disciple in a broken world means that I must be willing to choose those actions which are incarnational and which share in the brokenness, even it it means being labeled 'American' and 'Democrat.' These labels do not define the limits of my loyalty (in the same way that 'Jew' did not define the limits of Jesus' concern); rather, they are the vehicles through which I seek to live out my commitments. To be concerned religiously about the life of man is to be active politically in the life of man."

Most of us will not run for public office, but if we take the Word made flesh seriously, we will seek to demonstrate our faithfulness in that political domain where life-and-death issues (and they are literally that) are being resolved.

Have I made your choices more difficult for you? I hope so. To remain politically uncommitted and inactive is a frightfully serious choice in 1972. To become a political activist is equally serious. The style and form of our response may well measure the validity of our ministry in today's world.

[1] *The New York Times Magazine*, October 4, 1970, p. 87.

[2] Robert K. Hudnut, *The Sleeping Giant* (Harper & Row, New York, 1971), p. 87.

AMERICAN LEGION DAY ON THE HILL

Mr. ALLOTT. Mr. President, today is American Legion Day on the Hill, a day when Legionnaires visit us to share their views on veterans' legislation and other matters.

This is public-spirited civic action at its best. It is a privilege for us to receive the wise counsel of those men who have served their country well, and whose dedication to its welfare is such that they travel to Washington to help us.

This is a good day for all of us in Government, and for all Americans everywhere, to pledge renewed dedication to serving our veterans—with jobs, with aid, and with the respect which they have done so much to earn.

SENATOR CARL HAYDEN

Mr. ANDERSON. Mr. President, it was with pleasure that I worked in Congress with Senator Carl Hayden. Because we both represented Southwestern States and had been good neighbors, we were naturally drawn together into many areas of endeavor where cooperation was not only a political necessity but a natural bond.

Upon arriving in the Senate in 1949, I found the hand of friendship extended by Senator Hayden—a gesture which was entirely typical of this great leader and which was the start of many years of kindnesses on his part.

During those years, Senator Hayden and I had occasion to work together on many, many issues of minor and major significance, on both the national and regional level. Perhaps because we were from neighboring States, rather than despite it, we had occasion to disagree, but with Senator Hayden that could be done without being disagreeable. He had an ability to perceive areas of accommodation and to offer solutions which often brought accord out of discord. In short, he represented the best qualities of the U.S. Senate, and the people of Arizona evidenced its recognition of that fact by repeatedly returning him to his senior position in Congress.

The public, the Presidents whom he counseled, the Members of Congress with whom he worked so long and so well—all of us are the poorer for his absence.

ESTONIAN INDEPENDENCE DAY

Mr. PERCY. Mr. President, the 54th anniversary of Estonian Independence was celebrated on February 24. We should pay homage to the people of Estonia who have suffered Soviet domination since the beginning of the Second World War.

During its period of independence from 1918 until 1940, Estonia was the very model of a democratic state. Estonia fought valiantly for independence against both the Russians and the Germans and adopted a democratic constitution in June 1920. Following this the lands previously held by the Russian nobility were distributed to the common people of Estonia. Then, in 1940, the troops of the Soviet Union occupied Estonia.

But the fact remains that while modern Estonia has been under Soviet domination since then, the Estonian people have clung to their heritage and preserved their traditions. They deserve the admiration of freedom-loving men everywhere.

Mr. President, as Estonian Independence Day is commemorated, let us express our support for the Estonian people and reiterate our belief in the ultimate victory of freedom.

BENGAL TACKLE EYES MUSICAL CAREER

Mr. SCOTT. Mr. President, when Mike Reid played football at the Pennsylvania State University, his defensive play struck terror into the opposing team and joy into the hearts of the Penn State fans.

Mike graduated with a degree in music and thereupon became a professional on the keyboard as well as a professional on the football field with the Cincinnati Bengals. Mr. Reid is a classic example of the great versatility of youth today who make such great contributions to society. To further point out Mike Reid's individual achievements, I ask unanimous consent that an article published in the Christian Science Monitor be printed in the RECORD.

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

[From the Christian Science Monitor, Jan. 25, 1972]

BENGAL TACKLE EYES MUSICAL CAREER

(By Robert A. Wilkin)

One evening last April Mike Reid, the sensational defensive tackle of the Cincinnati Bengals, eased his 260 pounds of steel and sinew into flared pants and dinner jacket.

Dwarfing the concert grand at Cincinnati's ancient Music Hall, and flanked by one of the world's great musical organizations, the Cincinnati Symphony Orchestra, he attacked with competence and feeling the formidable "Funerailles" by Liszt.

That gave impetus to what may be called the "cultural side of professional football." It also spawned a phenomenon—the necessity for news media to double-team this versatile young man.

No longer is it wise for sports writers to attempt solo interviews with Mike Reid, football player. Without his paper's music critic in tow, a sportswriter may well find himself treading water in a sea of musicology.

In one typewriter breath, it is hard to cover all the gridiron accomplishments of Mike Reid, an athlete, who refers to himself as an erstwhile "fat little kid trudging through the snow to take piano lessons at 50 cents a half hour" back home in Altoona, Pa.

MAXWELL, OTHER TROPHIES

Enroute to a degree in music at Penn State University in 1969, his innovation and blinding speed enleashed trauma in so many enemy backfields that he was named to every All-America team, was the top lineman considered in Heisman Trophy voting, earned the Maxwell Trophy, the Outland Trophy as the outstanding interior lineman in college football, the Washington, D.C. Touchdown Club's Lineman of the Year accolades, and the designation Player of the Year in the Eastern College Athletic Conference.

First draft choice of Paul Brown's Cincinnati Bengals in 1970, he muscled down a starting position at defensive tackle his rookie year. And, although sidelined with a knee injury a good part of the season, he was third in NFL Rookie-of-the-Year voting. His propensity for sitting on quarterbacks and nipping opponents' plays in the bud found Mike, as a sophomore, twinned with Pittsburgh's mean Joe Greene as 1971's top defensive tackle in the American Football Conference.

One may venture the observation that the mutual exclusiveness considered to exist between physical mayhem and the performing arts may be a myth. One might even conclude that hands capable of stretching a thirteenth on a piano may just as easily stretch a quarterback on the ground.

MUSIC IS AN EXPRESSION

"Football," explains Mike Reid, "is an emotional game—at least it is with me. And music is an expression, or perhaps an outlet, of one's emotions."

Self discipline, motor coordination, and a limitless pool of motivation are indispensable to both endeavors. Mike Reid has these credentials in abundance and is employing them in the pursuit of two distinct careers. The predominant career at the moment represents the best in footballmanship. The other, the best in Baldwin pianomanship.

But the years will pass. And what will happen when Mike's astounding reflexes are no longer equated with lightning, and his muscle tone vibrates at less than perfect pitch—when the locker door clangs shut for the final time?

Offers to coach undoubtedly should be plentiful for this thoughtful, extremely articulate man. But, he says: "I sincerely want to end up in some facet of music."

As a concert pianist? No—he shakes his head at the prospect of "six, eight, 10 hours a day at the keyboard."

A TREADMILL OF PRACTICE

There are long, lonely blocks of virtual solitary confinement in the life of a concert artist. A treadmill of practice—alone. To see Mike Reid is to see an intense, creative individual with a need to share more of himself with other people than a concert career might allow.

Other areas of creativity beckon. He is a composer of serious promise. He is at ease and comfortably in command of the situation when dealing with large groups of people. His voice is pleasing and he has recently released a 45 single recording on which he sings and plays several of his compositions.

Immediate plans, however, call for him to appear in concert. His 1972 season will include performances with the Cincinnati Symphony and the San Antonio Symphony. He is in demand for television and has appeared on a host of shows at the network level.

Last July Mike appeared at Riverfront Stadium in Cincinnati in a pop concert featuring an artist of international stature, Van Cliburn. It's a wise piano player who knows that in such a situation a second piano player is one piano player too many. The audience thoroughly enjoyed another facet of Mike Reid as he narrated the poem "Abraham Lincoln!"

WORLD WATER CRISIS

Mr. MOSS. Mr. President, in 1967 I published a book entitled "The Water Crisis" which detailed the extent to which this generation is abusing a great natural resource, "is raiding the rivers and lakes, attacking the estuaries, and threatening the bays and seas which touch our land."

The well is running dry, I said, in many parts of the United States. Because of misuse, other areas are running out of water of acceptable quality. The lack of water, the misuse and competing use, and the conflicts growing out of water use, I called our "most critical national problem."

I mentioned briefly that elsewhere in the world people were facing similar water problems—that in many areas water was already a matter of "life and death."

The dimensions of the worldwide water crisis have now been delineated in a report issued by the U.N. Food and Agriculture Organization which has just been issued for the environmental conference soon to be held in Stockholm, Sweden. This report predicts that the human race as a whole will run out of water in a century.

Claire Sterling writes of this frightening possibility in the Washington Post of February 28, under the heading "Will We Run Out of Water?" She does not pull any punches. I commend her column to Senators who may not have seen it, and 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:

WITHIN A CENTURY—WILL WE RUN OUT OF WATER?

(By Claire Sterling)

ROME.—The U.N. Food and Agricultural Organization has just issued a report for the coming Stockholm environment conference saying that the human race is going to run short of water within a century. Jaded though we are about such pronouncements, this one still has some zing. Practically every state on earth is starting to worry about water, a recurrent theme in some 75 country reports for this planet-wide Stockholm meeting. Not all of them have a whole century to turn around in, either.

Among the planet's thickly settled regions already afflicted by water shortages are Spain, Italy south of Lombardy, the Dalmation Coast, Greece, the Anatolian Plateau, all Arab states save Syria, most of Iran, West Pakistan, Western and Southern belts of Australia and New Zealand, the Northwest and Southwest African coasts, the American Southwest, Panama, Northern Mexico, Cen-

tral Chile and the Peruvian Littoral. Among those heading for trouble by the year 2000 are all of Soviet Russia except Siberia, most of Eastern, Central and Western Europe, the Northern parts of Great Britain, Ireland and the United States, nearly all the rest of India, the central Thailand Plains, Tasmania, the islands of Java, the rest of the American continent except Northern Canada and Alaska. the larger Caribbean islands, the rest of Mexico, and parts of Brazil and Argentina.

By FAO reckoning, the planetary shortage will be getting serious in just another 30 years, when the world's population will have doubled (from 3½ to 7 billion) and demands for water nearly tripled (from 2,000 billion to 5½ thousand billion cubic meters yearly). The demands in this case mean everything from swimming and fishing in it to making plastics and steel with it, cooling nuclear reactors, irrigating, flushing away residues of pesticides, fertilizers and livestock faeces, carrying off industrial and human waste and, of course, drinking.

Whether because they haven't enough water or are fouling, squandering or driving beyond reach too much of what they do have, rich and poor, industrial and agricultural, capitalist and socialist states are pretty much in the same boat. A dozen or more African states along a 4,000 mile front are losing precious groundwater irrevocably to the encroaching Sahara year after year, in good part because of over-grazing. Kenya and India, the one under and the other over-populated, are both preoccupied, if for different reasons. East and West Germany have almost identical problems. Holland, at the receiving end of the dirty Rhine, is hardly worse off for drinking water than Rumania and Hungary, depending on the dirty Danube for four-fifths and nine-tenths of their supply respectively. Nowhere, in fact, is the problem's universality more stunningly clear than in Soviet Russia's pre-Stockholm report to the U.N.'s Economic Commission for Europe.

More generously endowed with water than most—Lake Baikal alone, in Siberia, is thought to hold about a fifth of the whole planet's fresh water reserves—the Soviet Union is a lesson to us all. At present, says the Russian report, nearly 25 billion cubic meters of waste water are dumped into the county's rivers and reservoirs every year. By 1980 the volume will be two and a half times bigger, and by the year 2000 about 15 times bigger: 375 billion cubic meters. Even if all the waste water were to be purified in advance, with a lot better techniques than those available now, it would still have to be diluted with at least six times as much pure water. That is only half of the 12-fold volume needed for purification now. *'But it would still use up the whole of Soviet Russia's river flow, or 2½ times more than there is now in the steady flow."*

Meanwhile, the actual river flow is declining, while levels of lakes and inland seas are falling: the Caspian has dropped two meters in the last two decades, and the Aral Sea has lost 1,000 billion cubic meters of water. This is believed to be happening because too much water is taken off the river-system by people and industry; too many hydro-electric dams divert still more; rivers and reservoirs are silting up with flood-borne sediment; and the floods themselves are carrying millions of tons of unrecuperable water off to sea. These floods are largely man-made too, provoked by erosion caused in turn by de-forestation: what with the trees that Russians have cut down and not replaced, and raging forest-fires, 45 million acres of Soviet forest have been lost in the last quarter of a century.

Assuming the Russians can find enough water to purify enough water to keep themselves going 30 years from now, they still couldn't eliminate the polluting substances entirely. About a fifth of the strongest pollutants would remain with even the costliest cleansing methods, their report says; and cleansing techniques so far are lagging behind the inexorably growing volume of polluted water. All in all, the report goes on, this water-polluting process is "the greatest danger for humanity." There is "widespread expectation of an inevitable exhaustion of rivers, and an awareness of the necessity to substitute new sources of water supply: desalination of sea water as well as melted ice from polar glaciers . . . but can this take the place of river waters? And can we . . . allow rivers to become qualitatively exhausted and, in fact, turn them into waste-water collectors?"

The Kremlin's answer, worthy of the Sierra Club or Friends of the Earth, is "no." Sooner or later, known methods to treat waste water are bound to prove invalid, it says. Distillation and de-salination will certainly be in use, but at steep cost. In the end, it concludes the only answer is simply to stop dumping waste water into rivers and reservoirs.

How Russia or any other country can do that is something nobody has quite faced up to yet. The implication, though, is that water problems alone may be enough in the end to force world society to stop growing. Human excrement alone is peculiarly hard to get rid of. More people mean more livestock to feed them, adding to the excrement; more irrigation to grow more food, producing more run-off laden with DDT and nitrogen compounds; more mechanized farming for the same purpose (and a tractor needs more water than a mule); more energy requiring more hydro-electric dams and nuclear cooling; and more manufactured goods relying on more advanced technology requiring still more water (plastics need ten times more than steel, and world plastic production is doubling every 5 or 6 years now).

The question is not just whether the moment may come in our lifetime when we forget what real water tastes like—millions are forgetting already—but whether humans just one generation removed, though surrounded by a chemical substance known as H_2O, will be hard put for a drop to drink.

THE PRESIDENT'S VISIT TO CHINA

Mr. ALLOTT. Mr. President, President Nixon has just returned from a sojourn in which he has been a polite and businesslike guest in an appalling country.

His trip was a bold and pragmatic gamble for peace. It was also an educational experience for all Americans, who now have had a glimpse of what really thoroughgoing totalitarians can do in their ceaseless effort to snuff out the freedom that makes mankind human.

Mr. President, in the flood of ink that the President's trip to China has caused to be spilled, no ink has been better used than that which printed the thoughts of the editors of the Wall Street Journal.

I quote from the editorial "China Chic" of last Friday:

The enormity of the problems China has come through should give us at least some pause in applying to it the standards that come naturally to anyone reared in Western civilization.

Still, are those standards meaningless, mere happenstance differences between West and East, democracy and Maoism? Or is there yet some meaning and validity in such touchstones as art for the sake of art, free educational inquiry, the inviolability of the home and above all, the dignity of individual man? No, these standards are not happenstance, they are what mankind has been struggling for throughout these millennia. And it is most doubtful that ever before have they been so systematically crushed, that man has been so completely dehumanized, as in China today.

So yes, for the most excellent reasons we should seek the most cordial relations with the People's Republic of China, relations governed by the spirit of each nation allowing the other to live as it will. But unless our own cultural sickness has reached the point where we can make no judgments at all, unless our failure of nerve has eroded even the bedrock standards, we must judge that what Communist China represents is not some new object of chic, but the antithesis of what civilized man has struggled to win.

Mr. President, so that all Senators can examine the full text of this admirable editorial, I ask unanimous consent that it be printed in the RECORD.

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

[From the Wall Street Journal, Feb. 25, 1972]

CHINA CHIC?

In sorting some sense out of the images and impressions flooding out of China this last week, it helps to separate two questions. The easier one is what relations the United States should seek with the People's Republic. The more profound one is what judgments we should make about Communist China as a culture and civilization.

Keeping these two questions separate is of course difficult, especially, it seems, given American history and habits of mind. There is a natural tendency to assume that judgments about whether a given state is ruled by good guys or bad guys ought to be the controlling factor in our diplomatic relations with it. Thus if we strike the necessary alliance of convenience against Hitler, we start to think of Stalin as "Uncle Joe."

In fact, policymakers are wiser to pay fairly little attention to the internal character of a regime, whether Chinese or Greek, and to concentrate instead on how its foreign polices affect the world order and American interests. That China builds a domestic system with an eerie resemblance to Orwell's "1984" is not in itself of crucial importance. What is of crucial importance is whether China wants to export that system by force, or whether it is willing to live side-by-side with far different societies.

The significance of the presidential trip is that China has made the latter decision, and that the Americans recognize as much. There are those who argue that the Chinese were all along interested purely in internal development, and that their apparent designs of world revolution were a figment of the American imagination. We are far from convinced of that; nor, given the history of instability in China and the unsolved problems of succession, are we entirely confident its present mood will prove permanent.

Still, it is a great leap forward if China and the United States do deal with each other seeking whatever overlapping interests they can find. President Nixon is quite right to do whatever he can to foster such realistic dealings, for they are the stuff from which a stable world order is made. And this hope is the great promise in the handshakes with Mao Tse-tung and the smiles from Chou En-lai.

None of which means we need to think of "Uncle Mao" or "Uncle Chou," or join the period of China chic that seems to impend in the smart department stores and apparel shops. For the stories and pictures out of China also show regimentation and indoctrination carried to appalling lengths—art reduced to political polemic, education reduced to mindless chants, even family relationships reduced to siring children for the greater glory of the state.

This is the picture that the Chinese leaders want to portray to the world; presumably the idea is that China is unified, disciplined and internally strong, and that Mao-think has produced a new, unselfish, higher form of the human animal. Well, we have little doubt whatever that in those chanting school children lurks a great deal more plain human cussedness than their leaders would have us believe. And though the regimentation draws on both unquestionably wide support for the present regime and vastly deep Chinese traditions of communal devotion, the restraint of this cussedness rests ultimately on force and terror. It is only short years now since the bodies were floating down the river to Hong Kong during the great cultural revolution.

Even after all this has been said, the question of how to judge today's China and its leaders is no easy one. Mao and the rest have, after all, extended effective rule over 800 million people where chaos or near-chaos reigned before; they are at least feeding their huge population better than it had been fed before, and they have restored to a great people some measure of their historic pride.

Certainly this marks Mao and his followers as one of the most remarkable groups of men of our century. Whether their methods were necessary to their achievements we shall never know. A good part of the achievement owes to the native ability of the Chinese people; while the problems of Taiwan were obviously far less the achievements have been dramatically better. But the enormity of the problems China has come through should give us at least some pause in applying to it the standards that come naturally to anyone reared in Western civilization.

Still, are those standards meaningless, mere happenstance differences between West and East, democracy and Maoism? Or is there yet some meaning and validity in such touchstones as art for the sake of art, free educational inquiry, the inviolability of the home and above all, the dignity of individual man? No, these standards are not happenstance, they are what mankind has been struggling for throughout these millennia. And it is most doubtful that ever before have they been so systematically crushed, that man has been so completely dehumanized, as in China today.

So yes, for the most excellent reasons we should seek the most cordial relations with the People's Republic of China, relations governed by the spirit of each nation allowing the other to live as it will. But unless our own cultural sickness has reached the point where we can make no judgments at all, unless our failure of nerve has eroded even the bedrock standards, we must judge that what Communist China represents is not some new object of chic, but the antithesis of what civilized man has struggled to win.

ABRAHAM LINCOLN THE POLITICIAN

Mr. GOLDWATER. Mr. President, February certainly is the most appropriate of all months for an Arizonan to pay tribute to one of this Nation's greatest Presidents. Not only was Abraham Lincoln born in the month of February, but on February 24, 1863, he signed the official declaration which made Arizona a territory of the United States.

We all know, Mr. President, that thousands upon thousands of words have been written and spoken about Abraham Lincoln over the years. However, I do not recall having seen a paper devoted entirely to Mr. Lincoln's attributes as a politician. He was, of course, a politician and an extremely able one.

And recently, one of my State's most prominent and beloved citizens, Dr. J. F. "Pop" McKale, who is known to thousands of students and alumni of the University of Arizona for his long and unusual record of athletic attainments, has addressed himself to this phase of former President Lincoln's career. He has written a highly informative and interesting booklet entitled "Abraham Lincoln—The Politician." I ask unanimous consent that it be printed in the RECORD.

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

ABRAHAM LINCOLN: THE POLITICIAN

(By J. F. McKale)

The University of Arizona Lettermen's Club, in tribute to Dr. J. F. "Pop" McKale, dedicates this tablet on November 8, 1964, in respect and gratitude for his fifty years of service to our alma mater as director and director emeritus of athletics and as teacher-coach and loyal friend for his manifold contributions to students and alumni and to athletic progress. His name will be honored always.

A WORD ABOUT THE AUTHOR

Few men have had the opportunity and tenacity to carry on a constructive work continuously for a period of over five decades, in one of the most vulnerable of occupations, in a multiplicity of capacities, in one city, and at one institution.

James Fred McKale, affectionately known as "Pop" to the thousands of University of Arizona students and alumni, is nationally recognized for his unusual record of college athletic attainments. He served for extended periods of time—at the beginning of his University career in 1914—as director of athletics, manager of athletics, and as the one-man coaching staff of football, basketball, baseball, and track. This was in itself an extraordinary achievement. I doubt if this record can be matched by any other man who was ever engaged in a directing and coaching athletic career.

"Pop's" youthful character was moulded, eastern style, at Michigan's Albion College, but his conservative manner and dress were gradually adapted to western life after his arrival in Tucson in 1911 to teach history and coach all sports at Tucson High School. This personal transition was brought about by his intimate association with such well known local characters as A. M. "Jake" Meyer, Charles P. Beach, Charles U. Pickrell, and Warren Grossetta.

Dr. McKale's alert mind and agile tongue have always been as quick to strike as an Arizona rattler. His retentive memory is often compared to that of an elephant. His wholesome humor, spontaneous wit, and appropriate stories have entertained hundreds of gatherings from coast to coast. His pen has been an artistic producer of intelligent, factual, and descriptive word pictures in the world of sports, politics, and history. And finally, his intense dedication to a chosen profession, which makes men out of boys, has won the admiration, respect and friendship of the entire University community, the collegiate world and the citizenry of Arizona. I am proud to have been one of his boys.

ORVILLE "SPEEDY" MCPHERSON,
UA 1917—Football 1913–14–15–16.

ABRAHAM LINCOLN—THE POLITICIAN

You may disagree with many of the statements I make, except the following:

The state of Arizona has neglected and been very unkind to the memory of Abraham Lincoln. There is not a forest, mine, village, town, city, or railroad siding; a mountain, valley, hill, pass, desert, or mesa; a river, lake, creek, or wash named after the man who signed the declaration making Arizona a territory of The United States on February 24, 1863.

Each year we pause to pay homage to America's greatest statesman and patriot. It will be my purpose to attempt to show you that Abraham Lincoln was also America's foremost and persistent politician and office-seeker.

I make no claim of being an authority. Many of the statements I will make you have heard before. I will quote from experts on the life of Lincoln, and not give them credit. I am not concerned whether or not you agree with me, and admit that I am speaking of Abraham Lincoln as I like to think of him.

The life of Abraham Lincoln presents a theme upon which much has been written and spoken, with many tributes paid. His humble beginning and his marvelous career has been eulogized by more than sixty authors who have attempted to be his biographer. I will not try to analyze his personality or his character. This would be impossible because his life was so full of contradictions, inconsistencies, and opposites.

Abraham Lincoln was one of the strangest characters in history—a man rated by the eminent English historian, H. G. Wells, as the fifth greatest person in the world following: Christ, Shakespeare, Aristotle, and Galileo.

To show you how inconsistent this man was, consider, for example, the temperance and prohibition question which was particularly acute during his entire life. We find him taking both sides at different periods. At times, he spoke against liquor, at other times, he sold grog.

Lincoln was physically lazy; he hated all forms of manual labor, but on the other hand we find that he was one of the best wrestlers and broad jumpers in Illinois. He did not shy from physical combat. Lincoln was also mentally lazy on small occasions. As a lawyer he often failed to prepare for cases in the minor courts, but in the Supreme Court of Illinois his record was second to none.

We know that Lincoln's habits and morals were beyond criticism and far beyond the average of the statesmen and politicians of his time, but we find also that he kept firm and lasting friendships with freethinking, bold fellows who got howling drunk, and who frolicked in sex.

We are led to believe that there never was a national leader who was such a stickler for the laws and the Constitution of the United States. Whether they were right or wrong, he expected them to be obeyed, and yet we hear him make this statement: "This country, with its institutions, belongs to the people who inhabit it. Whenever they shall have grown weary of its existing government, they can exercise their constitutional rights of amending its framework, or their revolutionary right to dismember or overthrow it." Our present day pink fellow-traveler does not desire more.

In his home life Lincoln had little control of his family, but in his political life he had power to bend the strongest of wills to his manner of thinking. He took two failures from private life and made them military heroes. Grant was a bankrupt woodtrader, and Sherman was an unknown school teacher whose sanity was questioned. He chose great men for his cabinet officers, although too many of his minor officers were thorough scoundrels.

We have read that Lincoln was ungainly, awkward, and homely; and yet as you stand by his statue, look at his photographs, or view the Lincoln Memorial, you must admit that he was a man of form, dignity, and majesty. He was a man who played marbles

with street urchins, but a man who never was addressed as "Abe"—it was always "Lincoln" or "Mr. Lincoln."

You are familiar with his native wit and humor. Hundreds of stories are accredited to him. Then you learn he was a man of sadness, sorrow, and suffering, a man who wondered at the time of his death if he were not a great mistake; a man who by his own admission at a certain period in his life did not carry a pocket-knife inasmuch as he had contemplated suicide; a man who, after winning a small lawsuit, was so happy that as a prank he stole a dinner bell from a hotel and played a French harp while riding on top of a bus en route to the depot.

You are inclined to believe that he was a statesman, and he was. In his cabinet were the most brilliant statesmen to ever surround any President, and Lincoln was easily their leader. Then you find that his only experience in national politics (outside of state and county) was as a country postmaster without a post office, carrying letters in his hat, and two years in Congress where he did not shine.

This man, who really was so kindhearted that he disliked to kill a chicken, gave this country a blood-bath in which one-half million casualties occurred, the majority of whom were boys under twenty-one years of age; and yet he was not bloodthirsty. After the war ended he said, "Let there be no retribution; these men are our brothers. They read the same Bible and pray to the same God. . . . With malice toward none; with charity for all let us bind up the nation's wounds. . . . Judge not, that ye be not judged."

Mr. Lincoln often spoke of equality between men, and said in his Gettysburg speech, "All men are created equal," but he never believed that a Negro was equal to a white man, and that there was any equality between the active and the idle, the intelligent and the dull, the frugal and the improvident.

We know that he was an inventor. The United States Patent Office credits him with two contrivances: one to rock a baby cradle and the other to remove a boat stuck on a sand bar. Neither of these inventions was useful.

You look upon Lincoln as a military genius, and so he was. It is no insult to the memory of Grant and Sherman to say that from the first day at Fort Sumpter to the end of the war at Appomattox Courthouse, Lincoln was the mastermind who moved the armies and navies of the Union. Then you find that his only previous experience in the art of warfare was as a captain of a volunteer company in the Black Hawk War where he neither engaged the enemy nor heard a gun fired in anger, and the only Indian he encountered was dead.

Lincoln was a lover of nature. He took great pleasure in roaming the woods and following the streams; but he landscaped his home only once, and the shrubs died from lack of attention the following year.

His biographers tell you that he was not a man of letters, that he had practically no schooling and was illiterate. Then you read his Gettysburg Address, which is one of the best literary efforts of the century. Edward Everett, America's great orator on this occasion spoke two hours. Lincoln spoke two minutes, yet Lincoln still speaks. This was the first piece of American literature generally studied in English universities—ten sentences and two hundred and sixty-eight simple words.

We know he was a great debater, but he failed as a lecturer on the Lyceum Circuit.

We know he hated slavery and freed the slaves, but at a time when John Brown, Sumner, Garrison, and Phillips were denouncing slavery and demanding its abolition, Abraham Lincoln, born in a slave state but representing the free state of Illinois in Congress, voted to extend the fugitive years before becoming President, he defeated slave law into the District of Columbia. Three years before becoming President, he defeated in court a slave owner who attempted to return his slave from Illinois to Kentuccky.

We know that Lincoln was a staunch Republican, but he wasn't one of the founders of the party. Earlier he had been a Whig. We find that before he came to Illinois he was a believer in the democracy of Andrew Jackson and Thomas Jefferson.

We know he was a failure (aside from law) in everything he ever attempted except for being a great executive in Washington.

We know that Lincoln was not a member of any church, any creed, and had no well-defined religious convictions. We also know that he never denied that he was an infidel and that on occasions he severely rebuked the clergy. Then you find that he had a steadfast belief in Divine Providence shaping the affairs of men, and that he turned to the Holy Bible and to prayer for daily guidance. In his own words, when he was having a hard time in the White House, he said, "I was often driven to my knees because I had no other place to go."

Finally, you give it up and admit that his personality cannot be analyzed. So without any attempt at analysis, let us try to find a truth for today.

It seems to me that the lesson in the life of Abraham Lincoln is that the love of a great heart, whether for an individual or a native land, is the greatest thing in the world. The motivation of Lincoln's life was his love for the Union. It was the keystone of all his acts, and his pride and ambition were cast aside for his country.

When Lincoln chose his first cabinet—his war cabinet—he was expected to select his faithful followers, men who had helped him in his political fortunes, or inferior men who would have been putty in his hands, following instances where small men are chosen who will not overshadow their chief. Lincoln chose his governmental family orators, statesmen, scholars and even his political rivals. The press felt certain that this brilliant collection of minds would far outshine this man of homespun, this country lawyer. They were his rivals; they had been his rivals before, and they had it in their hearts to be his rivals still. They regarded his nomination and election as a political blunder and did not propose to see it repeated. This Lincoln knew. Was it because he lacked ambition and pride that he chose these men?

Seward, the scholar, did not tell Lincoln he would accept the position of Secretary of State until nine o'clock the morning of the inauguration. Stanton, the War Secretary, told another cabinet member, referring to Lincoln, "We will have to get rid of that baboon in the White House."

Lincoln said, "Did Stanton say that?"

The informer replied, "Yes, and I would not endure the insult."

"Insult?" said Lincoln. "He did not insult me. That is only a matter of opinion." Then he added, "The only thing that embarrasses me is that Stanton is usually right."

A member of Lincoln's cabinet complained that the cabinet was being overbalanced. Lincoln, as a Republican, had appointed three of his own party and four Democrats who had recently become Republicans. "But Mr. President," said the cabinet member, "as the first President of a new political party you have an excellent opportunity to build an effective organization."

Listen to Mr. Lincoln's reply. Every American should know it. "We will save the country first, and then build a party out of what is left." This is as appropriate now as it was in 1861.

Lincoln was proud and ambitious. No president ever desired a second term more than did Lincoln. Why did he choose his rivals for the cabinet, and then endure their insults? It was because he knew their hostility to him could be made an asset for his country in this hour of need; because he knew that these strong men, leaders of divergent factions, could unite all factions for the saving of the Union; and because he loved the Union more than he loved Abraham Lincoln as an individual.

Abraham Lincoln was basically a politician. He was a statesman, but before that he was a politician. Let us see if this was not true. Every year for the last thirty-three years of his life (he died at the age of fifty-six), he was a holder, seeker, or intended to be a seeker of a public office.

At twenty-three years of age he was a candidate for the legislature and was defeated. In his twenty-fourth year he was candidate for the appointment of postmaster of New Salem and was successful. In his twenty-fifth year he was a candidate for appointment of deputy county surveyor and was successful. In his twenty-sixth year be was again a candidate for the legislature, and this time he was elected. At the age of twenty-eight he was for the third time a candidate for the legislature, and for a second time he was elected. In his thirtieth year he was for the fourth time a candidate for the legislature, and for the third time he was elected; in this year he was also a candidate for Speaker of the House and was defeated. In his thirty-second year he was for the fifth time a candidate for the legislature and for the fourth time elected, and again he was a candidate for Speaker of the House and for the second time was defeated.

At the age of thirty-four he was a candidate for Congress and was defeated. At thirty-five he was a candidate for the presidential elector and was defeated. At thirty-six he was for the second time a candidate for Congress and this time he was elected.

Finally, at thirty-eight years of age, he decided not to run for Congress because he thought he could not be elected since he had voted against the Mexican War. At thirty-nine he resumed his political career as a delegate to the Whig National Convention. At forty he was a candidate for appointment as Commissioner of the General Land Office and was unsuccessful. At forty-three he was again a candidate for presidential elector and was defeated. In his forty-sixth year he was for the sixth time a candidate for the legislature and for the fifth time was elected, but he resigned to become a candidate for the United States Senate and was defeated by Senator Trumbull.

At forty-seven he was a candidate for the vice-presidency on the Fremont or Whig ticket, and although he received one hundred and ten votes in the convention, he was defeated. At forty-nine he was for the second time a candidate for the United States Senate, and for the second time was defeated. The successful candidate was Stephen A. Douglas. At fifty-one, a hero in defeat, he was nominated for the Presidency, and with his election, became the leader of the people and saviour of the nation.

What is there about Abraham Lincoln's life up to this point that would make people turn to him at the time of his country's greatest agony? He did not like being a farmer, or following the occupation of his father, a carpenter. He failed as a flatboatman, losing his cargo. He was a bankrupt merchant, and it took fifteen years to pay off his debts. He was a member of the legislature which gave the state of Illinois some of its poorest and most corrupt legislation. He had been a failure in Congress, and had been defeated twice for the Senate. He had been an unsuccessful lecturer, but had, however, made a success in law. He had not been president of a village, mayor of a city, or governor of a state.

Why did the people turn to Lincoln? Some of it was luck, some of it was because of his great character of known honesty, and some of it was the term "rail splitter" which appealed to the common people. Every president had been a man of education, birth, breeding, wealth, or a military hero. Many of the people wanted a president like themselves. "Rail Splitter" fitted his time, although as a matter of fact he didn't split many rails, for he hated any form of manual labor.

Abraham Lincoln was a politician, a professional politician. He was a holder of office and a seeker of office. Lincoln did not wait for the people to find him as their leader. He was continually planning for future higher offices. Does this fact dim the luster of his fame? Find your answer in the almost national observance of a birthday when a nation unites to pay homage to the memory of a man who was a politician and a patriot, too. If we read our history correctly, we can thank God that Lincoln was a politician. Had it not been for his activity in townships, county, and state politics, and had it not been for his stump speeches before the little grocery store in New Salem, there would have been no joint debate between Stephen A. Douglas and Abraham Lincoln. At the time of his nation's agony, he might have only pondered this agony as he rode his lonely lawyer's circuit over the prairies of Illinois, instead of settling this agony in a masterful way in Washington.

And yet it is a singular fact—a fact not less sad than singular—a most remarkable fact in the history of self government, that today, only a few years after the closing of that masterful life while Lincoln's memory is still fresh in the hearts and minds of his countrymen, it has become unfashionable and unpopular in these United States to be known as a politician. The word *politician* has become almost a term of reproach. There is a certain amount of stench connected with it. Young men are counseled by those concerned for their safety and success to have none of it, and men of affairs, men of parts, men of intellect, and men of prominence in many communities, boast of belonging to no party and take no interest in politics. Well, that's changing now, and changing because of the income tax.

Abraham Lincoln was a politician. He did not consider himself either too great or too good to take an active part in the affairs of his state and community. But the young man of today says, "No such opportunity can come to me as came to Lincoln. He happened to live in the time of crisis. He was a man of destiny."

But a crisis did come in World War I, a second crisis came in World War II, the third crisis came in the Korean incident, and now we have Vietnam. Who knows if another great domestic crisis is not in the making? No man with open eyes who dares to look can fail to see the peril of today. It has grown at a frightful pace in the last few years, partly because of the great wars and partly because it has been pampered in high places. It is not new. It is the old conflict between those who have too little and those who have too much.

I believe this peril was held in check—if not lessened—shortly before World War I, and it was due to the coming into public life of one man, a man who like Lincoln was a politician, a holder of office, and a seeker of office, a man who when his opportunity arose, jumped into public life and threw a challenge to every form of oppression and wrong. I don't know what you think of Theodore Roosevelt, but I, for one, believe he did more to quell the rising tide of discontent among the poor and humble of this country, and to stop the growing peril that springs from such discontent than has been done by any other fifty so-called statesmen since the turn of the century. He did it by showing that neither wealth nor brute force, but law still is on the throne. He was an exponent of practical politics known as the "square deal." If I were forced to suggest a cure for the social, political, and industrial problems of today, I would turn to the Roosevelt prescription—a "square deal" and a "big stick" to be taken together.

Theodore Roosevelt was considered a traitor to his own wealthy and ruling caste. When his term ended in Washington and he left to hunt lions in Africa, the *Wall Street Journal* wrote, "we hope every lion will do its duty." Some sixty years ago the Englishman Kipling wrote the poem "Recessional." Kipling was worried about his country. He saw the British Empire as proud, rich, self-sufficient, ruthless, and arrogant. His poem was a warning and a prophecy. The first verse is:

God of our father, known of old,
Lord of our far-flung battle-line,
Beneath whose awful Hand we hold
Dominion over palm and pine—
Lord God of Hosts, be with us yet,
Lest we forget—lest we forget!

May we, at this time the greatest republic in the world, pay heed to this prophecy and warning which Kipling gave England. The greatest nation in the world does not have a remedy for serious problems such as political gangsters and mob control, crime and coddling of criminals, corruption in high places, racial struggle, and many others. Decay is apparent in national honesty and morals. We have nine men in Washington, D.C., who appear to want to function in place of Congress. It took us over one hundred and seventy-five years to learn that we did not know how to elect our legislators. The First and Fifth Amendments to our United States Constitution have been mangled beyond recognition.

In the light of the most complicated problems that have ever faced America, in the sharpest confusion of differences that have ever faced political life in this country, I commend to you the attitude of Abraham Lincoln. I think the welfare of his country is assured if we forget not the spirit and the lessons of this man. I am old-fashioned enough to believe that the Constitution of this country is not outworn or moss-covered. I think that we should strike at every attempt to disorganize the American institution, to abandon American ideals, and to substitute a lot of "nostrums", "isms", and socialistic slop for our fundamentals of government. And I appeal to you in the language of Mr. Lincoln when he said, "That we here again now, in the face of critical problems, renew our devotions to our government and the institutions which have grown up under it, that the government of the people, for the people and by the people, shall not perish from the earth."

As we study the many-sided life of Abraham Lincoln, his wit and his sadness, his smiles and his tears, his many endearing weaknesses and his colossal strength; as we see this humble form, with bent shoulders beneath an old gray shawl, standing in the rain at his first inauguration; as we see him as Commander-in-Chief of the Army and Navy of the proudest republic the world has ever known; as we find him in that mud-chinked cabin with one door, one window, one room, and a dirt floor; and finally as we remember him in the White House until his untimely end, there comes back to us the one lesson that life teaches so well—that the loyal love of the great heart, whether for individual or native land, is, above all, the greatest thing in the world. Under its influences a soldier becomes a hero, a priest or a missionary becomes a martyr, and so, too, a politician may become a patriot.

J. F. "POP" MCKALE IN 1942

Athletic Director Emeritus at the University of Arizona 1957—; Director of Athletics and Physical Education for Men, 1914–57; head football coach 17 years, baseball coach 34 years, basketball coach 6 years, track coach 7 years. Tucson Conquistadores Award 1955; Lefty Gomez Award 1963; Arizona Sportsmen Hall of Fame 1959; Voted Outstanding Faculty Member of the University of Arizona 1956–57; Helm's Baseball Hall of Fame 1953; President of the American Association of College Baseball Coaches 1950–51; President of the Physical Education Association 1941. Co-founder of newspaper *Collegiate Baseball* (1947—); President of the Rotary Club of Tucson 1933–34; member of Elks, Masonic Lodge, Sigma Nu fraternity, Phi Delta Kappa fraternity (educational).

THADDEUS KOSCIUSZKO

Mr. HUMPHREY. Mr. President, this month the United States pays tribute to the Great Emancipator, Abraham Lincoln. The month of February also marks the anniversary of the birth of another great man in American history. I wish to join some 12 million Americans of Polish descent in paying tribute to General Thaddeus Kosciuszko. His passion for liberty and justice brought him to these shores in the early stages of the American Revolution. His contribution to that great cause in training the Continental Army and his personal leadership of men were quickly recognized by Gen. George Washington. In 1777, after the Battle of Saratoga he was promoted to the rank of general. In the field of logistics and artillery there was no equal in the Continental Army.

But his contribution to the American Revolution was not limited to the field of battle. It was his passion for liberty and justice that set him apart even from his contemporaries. One of his contemporaries, Thomas Jefferson, himself no stranger to oppression and tyrrany, described him:

He was as pure a son of liberty as I have ever known and of that liberty which is to go to all and not the few or to the rich alone.

After the American Revolution, Gen. Thaddeus Kosciuszko returned to his native Poland, already partitioned among her more powerful neighbors. In that same spirit which led him to participate in the American Revolution, he led an uprising against czarist Russia. After a brilliant victory over the superior Russian forces at Raclawica in 1794, General Kosciuszko issued a manifesto abolishing the indiscriminate exploitation of the Polish serf.

Indeed, for all those of Polish American descent, he was and is to Poland what Abraham Lincoln is to us. We do well to honor these two great men in the same breath.

Mr. President, I also wish to invite the attention of the Senate to a letter I wrote to the Secretary of the Interior asking him to have the National Historical Sites Advisory Board reconsider the decision not to name the Thaddeus Kosciuszko home in Philadelphia as a national historical site.

I ask consent that the letter be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., February 20, 1972.

Hon. ROGERS C. B. MORTON,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: I am writing to you again in regard to the recognition of the Thaddeus Kosciuszko Home in Philadelphia as a National Historic Landmark. The Kosciuszko Home, as I pointed out in my previous letter, symbolically represents the proud heritage found in the birth and development of this nation by Polish Americans. It represents the struggle and efforts that Polish Americans have undertaken to help build this great nation of ours.

Kosciuszko came to America in 1776 to aid in our Revolutionary War. For his unselfish service to our country he received the official thanks of Congress. There is only one building in the United States where General Kosciuszko spent any time—his Pine Street Home in Philadelphia.

Your office has released—for Sunday, February 20, 1972—a list of 78 historical landmarks added to the National Historic Landmarks Register. I am greatly disappointed that the Kosciuszko home was omitted from this list. This is an unfortunate failure to honor one who has served our nation honorably.

I appeal to you again to call this omission of the Kosciuszko home to the attention of your advisory board.

Sincerely,

HUBERT H. HUMPHREY.

PRICES

Mr. DOLE. Mr. President, our news media continues to carry many stories about the high price of cattle and about the high prices the consumer has to pay for meat in the supermarket.

I have to agree that this makes good copy for them, as there are far more consumers than producers. But at the same time, few headlines have been given to the fact that these high cattle prices are merely the same price that producers were receiving 21 years ago in 1951. How many people in the United States would be willing to work today for the same wages they were receiving in 1951?

The prices the farmer has to pay for his feed ingredients, his chemicals, his tractors, and implements have more than doubled in that same period of time—all his costs of production and living have increased, but he still receives the same price for his production of 20 or 30 years ago.

The February 23 and 24 issues of the Wichita Eagle carried a two-part series by Jerry Fetterolf, that publication's agricultural editor, which goes a long way in telling what the farmer is up against in rising costs—and slipping profits.

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

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

COSTS RISE FOR FARMER, PROFITS SLIDE, UNITED STATES SAYS

(By Jerry Fetterolf)

Consumers registering complaints about food costs, are met at the other end of the scale by farmers who complain that costs of production have gone up more rapidly for them than the cost of food to the buyer.

U.S. Department of Agriculture research figures show cost of food in 1930 took 24 percent of the average working man's disposal income. By 1940 the figure had been reduced to 22 per cent, and by 1960 it was down to 20 per cent.

USDA figures indicate that in 1971, the average housewife spent only 16 per cent of the family's disposable income on food. Estimates for 1972 is that this figure will be decreased by 15.6 per cent.

These statistics have developed while rents have gone up 50 per cent since 1950, health costs 136 per cent, and wages 122 per cent. Combining the rent, health and wage figures show other costs have risen 2½ times more than food in the 20-year period.

Beef seems to be the main target of consumer anger in the eastern United States. Yet, per capita consumption of beef has grown from 60 pounds in 1950 to 114 pounds in 1971. The forecast is for continued rising consumption.

C. W. McMillan, executive vice president of the American National Cattlemen's Association (ANCA), says producing this required 21 billion pounds of beef for United States' tables has turned picturesque cowboys and ranch owners into quieter and technology-wise business managers.

"Computers and management consultants have found their places in the beef business," McMillan said. "The picturesque ranchhands you've seen on TV and in the movies now are dieticians, chemists and range conservation specialists.

"Cattlemen have absorbed the added costs of producing beef through business efficiencies. The price they receive for their cattle has only just reached the 20-year-ago levels while they have had a 125 per cent increase in production costs."

Fed-cattle prices in 1951 were in the $32 to $33 per hundredweight range. Prices have fluctuated from $20 to $30 a hundredweight since that time, but had not topped the 1951 level until recently.

Attempts to hold the line on inflation hasn't meant much to farmers either, they say. They cite a series of increases in prices allowed for farm-machinery builders since Phase 2 began.

International Harvester Corp. requested a 4.29 per cent increase, and was allowed a 3.93 per cent hike Nov. 30.

John Deere requested a 4.82 per cent increase and was allowed 4.56.

White Motor Co. farm equipment division requested 6 per cent and was granted 6.

Ford Motor Co. tractor division asked for 5.9 and got it.

Massey-Ferguson's farm, industrial and construction divisions asked 4.82 and received it.

Allis-Chalmers asked 13.3 and got that.

John Cringderff, manager of the Ingalls Feed Yard just west of Ingalls, Kan., estimates operating costs in the 32,000-head feedyard there have gone up 15–20 per cent in the past three years.

His figures show:

The cost of a mill to prepare feed for cattle has gone up 30 per cent. A feed truck that cost $11,000 four years ago now costs more than $15,000. Steel for gates, bunk rails and corner posts is up 30 per cent. Labor cost is up 20 per cent in the past three years

Veterinary supplies are up slightly. Repairs and repair labor costs are up 40 per cent. Costs of going to market have gone up, too, with truck-loaded, per-miles cost now 65 cents a mile, compared with 60 cents a mile a year ago.

William Turrentine, Garden City, Kan., a typical combination irrigation and dryland farmer on 1,820 acres estimated his costs have gone up an average of 6.43 per cent a year since 1964. He raises sugar beets, wheat and milo.

If Turrentine computes from 1960 through 1971, his cost accounting system shows an increase of 11.80 per cent per year for the 11-year period.

John Weber, a Sedgwick County farmer, said farmers are getting only 72 per cent of a fair price for their production, citing USDA reports on parity—that price which is equal to prices received by other segments of the economy.

Beef prices are at 88 per cent of parity, Weber said. Hog prices are at 76 per cent, turkeys 68, lambs 72—and eggs are only 49 per cent.

Turning to grains, Weber pointed out that USDA reports show prices for grains, compared with parity levels, are: corn 56 per cent, milk 69, soybeans 72, rye 53 and grain sorghum 59 per cent.

Wheat—which makes up about one tenth of a loaf of bread—is selling for 45 per cent of parity, according to the reports quoted by Weber.

FARMERS FEELING BOXED AS CONSUMERISM BUILDS

(By Jerry Fetterolf)

Consumerism, production costs, quality controls and politicking have formed a deadly quadrangle for the low on the totem pole—the basic agricultural producer.

However, farmers—who are the largest users of petroleum, steel, rubber, machinery, and fertilizer in the nation—believe they somehow have been left out of the consumer protection parts of the nation's advance. Their costs keep going up.

The press of what is called consumerism struck full force in Washington in early February when the various costs of production, processing, wholesaling and retailing finally reached grocery store counters.

The price of beef at the production level, on an incline during 1971 and 1972 had, at last passed 1951 levels—so it became the prime target.

Donald Rumsfeld, director of the Cost of Living Council, tipped the administration hand with a declaration that price controls on farm produce might become necessary.

The gate was open. Immediate reaction from Australia and New Zealand was a demand that all bars to imports of beef should be withdrawn.

The biggest bar, apparently, is the new "consumer protection" regulation providing for stiffer inspection of red meat imported into the United States. Import quotas in 1970 and 1971 were not reached although the United States is the second highest importer of red meat in the world.

Voluntary quotas negotiated by nations exporting meat into the United States for 1970 had been 1.6 billion pounds. The nations exported 1.153 billion pounds.

In 1971, with a voluntary quota of 1.6 billion again, the exporting nations came up with 1.112 billion pounds of red meat considered consumer safe.

Secretary of Agriculture Earl L. Butz responded quickly to the Rumsfeld opinion and the urging of meat-exporting nations to lower quality standards for U.S. meat import. To continue the rules for consumer protection, he promised USDA Consumer and Marketing Service will continue an aggressive policy of meat inspection.

But also pointed out that in 1951, one hour of labor would buy 1.7 pounds of beef, while now an hour of labor will buy 3.3 pounds of beef.

Changing import quotas would have little or no effect on prices either, since total red meat imports allowed under law is 6.7 per cent of U.S. consumption. Exporting nations have come up with 4.5 per cent to date, USDA reports show.

Declaring farm produce prices are still too low, Butz said that in the past decade wages and costs have doubled, purchasing power is up 60 per cent and disposable income is up

71 per cent while food purchase prices have gone up only 38 per cent. The percentage of consumer income spent for food in the decade since 1960 has gone down 3.5 per cent, he said.

Another point Butz made against attempts to put a ceiling on farm produce was that seasonality of crops, variables in supply and demand, and marketing patterns would make the cost of administering any such regulation more expensive to taxpayers than normal price increase patterns in foodstuffs.

Beef producers, the target of consumers wanting a ceiling on "at farm level" pricings, say there is more beef and better quality beef than ever before.

Wayne J. Madill, president of AID Inc., the largest single cattle-feeding firm in Kansas, contends quality is the finest, production is growing more rapidly than ever and the housewife is getting the best bargain in history.

Jan. 1 reports show 6 per cent more replacement beef heifers were kept for reproduction this year than last year. The Jan. 1 reports of 1970 and 1971 each showed 4 per cent gains in replacement herd cows.

Kalo Hineman, Dighton cattleman and president of Kansas Livestock Association, said in a telegram to the President and secretaries of agriculture and the Treasury, that in Kansas alone beef production has increased by 197 per cent since 1965.

He also said that livestock production is more than a billion-dollar business and "builds a 5.5 multiplier into the state's economy." Farming and agribusiness is a necessity for economic livelihood in the state as in much of the midsection of the nation, he indicated.

Kansas State Department of Agriculture calculates the farming industry is worth about $6 billion annually, according to reports at the end of 1970.

Wilton Thomas, extension economist at Kansas State University, presents the problem of rising farm costs versus a lid on farm prices another way. An average of costs in the 1963–65 triennium compared with 1968–70 appeared this way for 11 counties in southern Kansas:

Machinery inventory per farm—$11,116 in the first period, $16,018 in the second.

Machinery inventory per crop acre (depreciated value, not new cost)—$9.15 and $23.84.

Machinery expense per crop acre, including gas, oil and repairs—$11.14 and $13.28.

Repair costs per farm—$1,870 and $2,533.

Total farm expense—$21,279 and $29,679.

The best farmers in south central Kansas were making about 4 per cent annual return on investment by 1970, Thomas said. Those farmers managed an average investment of $256,000 a year on their farms.

Farther west, where farms are larger and risks greater, a medium-sized farm of 1,800 acres would have a minimum capital investment of $500,000 and get a 1 to 3 per cent return.

An economist with Federal Reserve Bank of Kansas City, C. Edward Harshbarger, says gross farm incomes may be higher in 1972 but that it is likely that net farm incomes will remain about the same because of higher operating costs.

In predicting 1972 red meat prices, Harshbarger said he believes fed cattle will level off at about 1971 levels, hogs will decline again to about the $20 level, dairy prices will be about equal to 1971 and lamb prices will be near or slightly above 1971 averages. With exception of soybeans grain crop prices are likely to be about the same too, he said.

FRANK E. SCOTT, PRESENTED FREE ENTERPRISE AWARD

Mr. CANNON. Mr. President, I invite the attention of the Senate to a singular honor which has come to one of my constituents, Frank Scott, who has been in the forefront of Nevada's business enterprise and one of those responsible for Nevada's designation as the Nation's fastest growing State.

Recently, Mr. Scott accepted the Free Enterprise Award from southern Nevada industry organizations for his contribution to the growth and progress of southern Nevada. His enterprise and creative imagination were cited in this honor as well as his commitment to the free enterprise system.

Mr. Scott is a land developer, a builder, and a dynamic force for the continued growth of the southern part of my State. My acquaintance with him spans a generation during which this region of the great Southwest has seen its growth. Few individuals have given so unselflessly their energy and creativeness to those projects which have made the community grow, prosper and meet the needs of its citizens.

Mr. President, I ask unanimous consent that the citation presented to Mr. Scott be printed in the RECORD.

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

CITATION

In recognition of his contributions to the growth and progress of Southern Nevada and in testimonial of his adherence to the principles of American capitalism in the conduct of his business as evidenced by his foresight, his initiative, his inventiveness and by his acceptance of the risks and rewards inherent in the competitive American society, this Free Enterprise Award is made to Frank E. Scott, this 28th day of January, 1972.

ADDRESS BY CLAY T. WHITEHEAD, DIRECTOR, OFFICE OF TELECOMMUNICATION POLICY

Mr. ALLOTT. Mr. President, on February 17, 1972, Mr. Clay T. Whitehead, Director of the Office of Telecommunications Policy, spoke to the Colorado Broadcaster's Association. His remarks have been quoted and interpreted quite widely during the last week because of the candor with which he addressed the proposal of the Federal Trade Commission that the Federal Communications Commission initiate "counter advertising."

So that Senators may have the benefit of reviewing Mr. Whitehead's remarks in their entirety, I ask unanimous consent that the full text of his statement be printed in the RECORD.

We all know the Federal Trade Commission is vested with procedures to deal with deceptive advertising. It has been, and to my knowledge, still continues to be the position of the Federal Communications Commission that advertising should be regulated as a business practice by the Trade Commission and that this is not the job of the FCC.

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

REMARKS OF CLAY T. WHITEHEAD, DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY, EXECUTIVE OFFICE OF THE PRESIDENT, BEFORE THE COLORADO BROADCASTERS ASSOCIATION

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 overshadowed 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 asserting 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 disruption 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 to 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 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 effects 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 Amer-

ica. 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.

SENATOR HUMPHREY'S ADDRESS BEFORE THE SENIOR CITIZENS OF ST. PETERSBURG, FLA.

Mr. HUMPHREY. Mr. President, on Tuesday, February 29, 1972, I was privileged to speak before a senior citizens rally in St. Petersburg, Fla. It was a special honor for me because I feel so strongly about the issue of dignity, adequate income, and a decency for the older Americans of this country.

I tried to stress in my speech the kinds of changes that must be made in our present social security and medicare laws if that decency, dignity, and adequate income are to be guaranteed.

I said it was time to bring 5.4 million Americans out of poverty, that it was time to increase social security benefits by 25 percent, that it was time to bring general revenue financing so the crush of payroll taxes could be raised, that it was time to reform medicare so that cost to the elderly could be cut.

And, I said it was time that young and middle-aged Americans began to realize that life does not end at 60 or 65—that this is but a beginning.

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

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

REMARKS BY SENATOR HUBERT H. HUMPHREY, SENIOR CITIZENS RALLY, ST. PETERSBURG, FLA., FEBRUARY 29, 1972

The time has come for this nation to recognize that its 20 million elderly citizens are not a special class of people.

The time has come to recognize that their needs are not privileges—but rights. Not something to be given by a generous society, but something to be provided all Americans regardless of age.

If our senior citizens are forgotten today it is because this nation has failed to back up words with a commitment of resources. It is time we had a President who is willing to stand up and say to you:

It is wrong that five million of you live in poverty.

It is wrong that millions of you don't have transportation to go to the places you want and need to go.

It is wrong that you live in fear because the police seem to have forgotten the elderly.

It is wrong that you are strapped by high property taxes, sales taxes, and all the other financial burdens that eat up a fixed income.

It is wrong that you can't get good hospital and doctor care. And when you can, it is too expensive.

It is wrong that you aren't given adequate job training and employment opportunities to continue as productive members of society.

It is wrong that you can't afford to buy a house because their prices are outrageous, and

It is wrong that young and middle age Americans too often treat you as second class citizens after you have given so much to them and your country.

Not only should a President stand up and say these things, but he must also say: "I'm going to correct these wrongs. I'm going to ask the Congress and the nation to join with me in giving a new deal to the elderly citizens of America."

These unspoken words are the main reason why too many of our elderly citizens spend their remaining years of their lives in solitude.

Today I want to outline an action program that will at last change the underfunded and fragmented programs which are supposed to help older Americans but always fall short of the mark.

I believe that the nation's first priority is to lift out of poverty 5.4 million elderly Americans.

These Americans account for 25 percent of the nation's poor—but they make up only 10 percent of our population.

And during the past three years, approximately 100,000 citizens have been added to the large numbers of elderly poor. In 1970, 51 percent of older women living along fell below the poverty level. By the end of last year, that number had jumped to 63 percent.

Statistics can't tell of the tragedies of poverty—the tragedy of ill-health, poor diets, shabby apartments, fear of being a crime victim, and just simple loneliness.

We can change this intolerable situation. I will soon offer legislation to increase the minimum monthly payment to Old Age, Blind and Disabled recipients to a federally funded level of $165 for a single individual and $215 for a couple—effective January 1, 1972.

Now there is no Federal minimum. Now each state determines the level it will pay.

My amendment would guarantee that every eligible elderly individual could avoid the degradation of poverty with a fixed minimum income.

This amendment makes it a national policy that there will be no elderly poor.

But this is not enough.

Adequate incomes for elderly Americans cannot become a reality until we reform our social security system.

Too many millions of social security beneficiaries reach old age in disappointment and despair.

The hard-earned money put aside in the hope of obtaining an adequate retirement income proves instead to be a poverty payment.

And we all know that inadequate social security benefits—more than any single factor—are the cause for the continuing hardship of millions of elderly.

A fixed social security income can't fight inflation. And you have diminishing purchasing power.

It can't fight rising property and sales taxes. And you may have to give up your home.

It can't fight excessive medical, food and housing costs and you may not go to the doctor, buy the food you need or the house you deserve.

I propose we take the following steps immediately:

One, we guarantee a $100 minimum benefit and a 25 percent immediate increase in social security benefits with a cost of living escalator to provide elderly citizens with a weapon to fight inflation.

Two, we must take one-third of the cost of social security benefits from the federal treasury. This would cut the payroll tax workers now pay by two thirds. Working people would save an average of $175 a year.

Three, we must increase from $1,680 to $3,000 the amount of money older Americans can earn before they begin to have reduced benefits. Too many senior citizens quit their jobs for fear of losing social security checks.

Four, we must not reduce benefits if older Americans marry. I have been told of phony divorces taking place so that elderly people can avoid economic disaster. Marriage should not reduce your benefits. I pledge myself to halt this inequity which forces many senior citizens to live against their moral code.

Finally, I see no reason why a widow or widower should receive anything less than 100 percent of his or her spouse's benefits. To provide only 82 percent as it now done is grossly unfair.

Social security reform is only the first step to more productive and decent lives for elderly Americans. With these five basic proposals we have solved only part of the problem.

The next step is to make major changes in medicare.

You pay on the average $800 a year in medical expenses.

Let's face it, the costs of good medical care are still a great burden for all of you—despite medicare.

Here is what we must do now to cut the financial burdens of medical care:

First, I have introduced legislation to have medicare pay the full cost of your prescription drugs, the full cost of eye glasses, hearing aids, and dental care. Why should medicare pick up only part of the costs of staying healthy? And why should anyone go to a doctor and then be unable to afford the medicine he prescribes? This is wrong

Second, we should eliminate the $50 deductible for supplementary medical insurance.

Mr. Nixon and his Republican friends want to increase this unfair charge. I say there is no reason for the poor and the elderly to pay the first $50 out of their own pockets when some can't afford to pay for transportation into town.

Third, I want to eliminate the insurance premium you have to pay for doctors insurance.

Fourth, I intend to offer legislation that will freeze your share of hospital co-payments—they are high enough now and the Nixon Administration's planned increases are unfair.

I am also going to introduce an expanded comprehensive Home Health Care Program to be paid for by medicare.

There is no reason you must go to the hospital and clinic for every illness. Care should be available where you live—in your homes or apartments, not in a remote hospital.

These are the steps we must take now.

Medicare reform is only makeshift reform. What is truly needed is a comprehensive National Health Security Program for every American. This is the only real answer.

But we must also correct this system which now says: we recognize some of your needs but we will not give you what you are due by right—decent and healthy life.

The time has come to stop penalizing Americans when they grow old and when they get sick.

We need action now on all of these fronts; increased old age assistance, increases in railroad retirement and social security benefits, and medicare reform.

But we cannot move forward with these great tasks without strong efforts from the leadership of this nation to change the attitudes of young and middle aged people toward the elderly.

Until we make this nation realize that life does not stop at 60, or 65, we will not have provided the basic dignity, indentity, and security that elderly Americans need and deserve.

As Franklin Delano Roosevelt once said: "The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little."

Enough promises have been made. The time has come for action and national commitment.

ANNOUNCEMENT OF POSITIONS ON VOTES

Mr. MILLER. Mr. President, because of a long-standing commitment in my State, it was necessary for me to be absent from the Senate during part of Tuesday, February 22. Several record votes were taken at that time on matters pertaining to the equal employment opportunities bill. If present, I would have voted as follows:

Legislative No. 53—amendment No. 907, making the prohibition upon preferential treatment applicable to other executive agencies engaged in enforcing equal employment opportunities laws—"nay."

Legislative No. 54—amendment No. 844, removing from coverage of the bill employment practices of all educational institutions—"nay."

Legislative No. 55—amendment No. 908, giving litigants the right to demand trial by jury of actions brought under the act or title VII of the Civil Rights Act—"nay."

Legislative No. 56—final passage of S. 2515, Equal Employment Opportunities Enforcement Act of 1971—"yea."

Legislative No. 57—final passage of H.R. 1746, the House companion bill—"yea."

I ask unanimous consent that the permanent RECORD reflect my positions.

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

RAILROAD REORGANIZATION

Mr. TAFT. Mr. President, none of us want to subsidize America's railroads. The taxpayers of this country have enough burdens without having to undertake the financial rescue of these large corporations which could be profitmaking ventures if they had the ability to streamline their operations.

Since March 3 of last year I have been calling for fundamental reform of the laws which affect our Nation's railroads. In particular, I have called attention to the need to abandon unprofitable branch lines which have no possibility of ever generating a profit. The continued operation of these unproductive facilities places a severe drain on the remainder of the systems and forces America's shippers and consumers to subsidize unprofitable operations. In addition, I have been calling for a thorough overhaul of the freight rate structure which is archaic, confusing, and in many instances, discriminatory.

America's shippers are confronted with a maze of approximately 43 trillion rail freight rates on file at the ICC. Professor Moore, in his study for the Brookings Institution, has estimated that America's consumers pay up to $7 billion per year in excess freight rates, largely because of overregulation.

The railroads, however, are not getting rich by virtue of this rate structure. On the contrary, these high rates are necessary to justify practices which have been too long tolerated by rail management and regulatory authorities.

On February 15, 1972, the trustees of the Penn Central Transportation Co. filed a report with the U.S. District Court for the Eastern District of Pennsylvania. That report concludes that the Penn Central can be successfully reorganized, but only if the Penn Central is allowed to abandon its unproductive branch lines, eliminate unnecessary labor costs, and be fully compensated for continuing passenger losses.

With respect to unproductive branch lines, the trustees noted that while the Penn Central operates 20,000 route miles, approximately 80 percent of its freight business comes from only 11,000 of those route miles. Because of these unproductive branches, the Penn Central has the lowest freight revenue per mile of line of any major railroad in the East. This report estimates that had Penn Central operated only those 11,000 route miles in 1970, it would have produced net railway operating income of approximately $94 million, in contrast with an actual net railway operating loss of $104 million.

The report also indicates that the Penn Central is forced to employ approximately 9,800 employees who are not needed for operations. These employees are retained solely because of labor agreements and "full-crew" laws. The excess labor costs, at 1972 levels, approximates $150 million per year.

Consequently, the Penn Central is saddled with excess costs of approximately $348 million per year as a result of these two items alone.

I do not believe that American taxpayers want to subsidize such inefficient operations.

I do not believe America's consumers want to subsidize these practices through higher freight rates.

Five major railroads have gone into bankruptcy since 1967. The time has come for railroad management, railway labor, the ICC, and Congress to recognize how critically important these reforms are.

Unless railroads, such as the Penn Central, can be successfully reorganized, we will continue to jeopardize the tax base upon which many of our school systems have been dependent for many years. We will also jeopardize the jobs of many of America's railroad employees.

I ask unanimous consent that there be printed in the RECORD the report of the trustees to which I have referred, together with exhibit A, "A Report on 1971," by William H. Moore, president, Penn Central Transportation Co.

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

[In the U.S. District Court for the Eastern District of Pennsylvania, No. 70-347]

REPORT OF TRUSTEES ON REORGANIZATION PLANNING, FEBRUARY 15, 1972

(In the Matter of Penn Central Transportation Company, Debtor, in Proceedings for the Reorganization of a Railroad)

The Court on November 3, 1971, extended the time within which to file a plan of reorganization to April 1, 1972, and instructed the Trustees to file by February 15, 1972, a report on the prospects for reorganization of the Debtor (Order No. 475). This is that report.

SUMMARY

The basic question put to the Trustees by the Court is whether, in their judgment, a successful reorganization of Penn Central[1] is probably feasible.

The short but carefully considered answer to this question is that in the Trustees' judgment Penn Central *can be* successfully reorganized.

The rest of the answer is that this conclusion is based on and depends on two elements which must be made unequivocally clear. One is the attainment of the projections which have now been made regarding the volume of traffic and freight revenues which can be reasonably forecast for Penn Central during the next five years—taking account of (i) prospective general business conditions, and (ii) Penn Central's ability to advance in the highly competitive transportation market. The other is the accomplishment of three basic changes in the Penn Central situation which will require action beyond the sole competence of the management, the Trustees, or this Court: rationalization of the Penn Central plant, removal of unnecessary labor costs, and full compensation for continuing passenger service losses.

Since the prospects of a successful reorganization depend on making these three clearly basic changes, a serious time factor is involved here. The changes require the concurrence in one form or another of various interests, government and private. The benefits of some of the changes will by nature of the circumstances be postponed, in part, even after the arrangements are completed and authorized. And additional obligations (for currently deferred taxes, interest charges and other claims) are being incurred by the Debtor at the rate of approximately $100 million each year. This means an accumulation of prior charges against the estate before values available for pre-bankruptcy interests.

The Trustees' conclusion regarding the prospects for reorganization gives full account to these time factors. We believe that there is reasonable prospect that the three changes can be accomplished in substantial part during 1972 and 1973, and that virtually full benefits from the changes can be realized by the end of 1975. Accomplishment this year or next would enable the Trustees promptly to begin at least partial payment of obligations now deferred (*e.g., current* state and local taxes).

On these assumptions, the Trustees now conclude that Penn Central may be expected (i) to begin generating substantial income available for fixed charges[2] in 1974, and (ii) to show, by 1976, income available for fixed charges between $220 million and $290 million. This provides, in the Trustees' judgment, a basis for reorganizing the Debtor and for preparing their plan of reorganization.

If these three changes were not to be made—or if there were undue delay in making them—there would not be, in the judgment of the Trustees, the basis for reorganizing the Penn Central as a private enterprise. This conclusion is based on studies and analyses which show that maximally effective self-help measures alone—taken with the most reliable available estimates of traffic increases in the future—would result in continued losses during the next four years and would show only marginal earnings by 1976. That would be too little and too late—for there would have been unconscionable and possibly unconstitutional erosion of the Debtor's estate in the meantime. This judgment could only be invalidated by an unlikely confluence of favorable developments including a spec-

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[1] As used in this Report, the term "Penn Central" refers to the Debtor in reorganization: Penn Central Transportation Company.

[2] As used in this Report, "income available for fixed charges" is calculated after deduction of equipment lease rentals.

tacular and sustained increase in revenues far beyond what is here forecast.

The prospect of reorganization therefore hinges on achieving, in significant degree, the three changes which have been identified as requiring the participation and cooperation of interests other than the Penn Central management, the Trustees, or the Court, as well as, of course, the utmost efforts on the part of the management and the Trustees.

1. The proposed rationalization of the Penn Central plant involves (i) taking advantage of the potential for increased efficiency made possible in theory by the 1968 merger but never realized in fact, (ii) abandonment of those freight lines which have neither business nor public service justification, and (iii) making appropriate arrangements for continuing those freight lines found to be essential to the public service but inoperable on a sound business basis.

The Penn Central system presently covers approximately 20,000 route miles.

Approximately 80% of Penn Central's freight business comes from 11,000 of those route miles. This is graphic reflection of the fact that the Penn Central system has the lowest freight revenue per mile of line of any major railroad in the East.

Thus, 11,000 miles have been taken, for purposes of this reorganization feasibility determination only, as a "core" system—with full recognition that this alone would not constitute a full-service system, taking all interests into account. Similar analyses are being made of larger "core" systems.

With respect to the remaining 9,000 route miles, virtually all shippers have abandoned well over a third of them. This should be recognized by appropriate abandonment certificates from the Interstate Commerce Commission, and its newly revised procedures should expedite this result.

The remaining route miles which still serve a useful purpose can continue to be operated—some of them, hopefully, by a revitalized Penn Central itself, some with help from those interests, either public or private, which are prepared to underwrite the losses. A particular branch line may be of sufficient importance to the shippers or communities it serves that contracts assuring continued service at a price that makes Penn Central whole can be negotiated. Under these circumstances, the Trustees would not be compelled to seek abandonment of any mileage which serves a substantially useful purpose.

No simple or single quantification of the benefits of the rationalization we propose is possible—there are too many variables.

2. The proposal with respect to personnel reductions is that only those train and engine service employees determined to be necessary to safe and efficient freight operation be employed.

Collective bargaining on this issue is now in progress. If it fails, as it has in the past, the Trustees will accept—as has already been indicated to the National Mediation Board—an independent third-party determination of the issue.

The issue here is whether approximately 9,800 employees presently required to be employed by prior labor agreements (and by "full-crew" laws) are necessary for safe and efficient operation.

The cost involved here, at 1972 levels, approximates $150 million per year.

The Trustees propose that the reductions in question will be gradual and that protection will be afforded present employees.

3. The proposed change in compensation for providing passenger service is that Penn Central be fully reimbursed for the costs of providing that service. The reorganzation of Penn Central can and should provide whatever passenger service is necessary in the public interest. At the same time, the burden which that service imposes on the system should be eliminated as present arrangements are renegotiated or new ones entered into. Present arrangements with Amtrak fall far short of enabling Penn Central to recover its current costs, even aside from any return on its investment. It should be recognized, for example, that passenger service as a whole in the Washington-New York-Boston corridor is not provided as a by-product of freight service but is, rather, the principal service and should be paid for accordingly. Even greater losses are being sustained in commuter service.

The reimbursement factor involved here amounts to $87.2 million on a 1972 basis (exclusive of return on investment).

The Trustees fully appreciate the significance of these three proposed changes. They are commended by the dictates of that fairness and equity which must characterize any plan of reorganization. Major progress in these areas, along with increased business volume, means the difference between viability and non-viability, between feasibility and non-feasibility of a successful reorganization.

So far as the more immediate cash flow prospects are concerned, the Trustees believe that Penn Central will remain from here on—barring unforeseeable adverse developments—in a position to continue operations, but only on a bankruptcy basis. The timing of its ability to do better, and to meet presently deferred obligations such as taxes, will depend on the promptness with which the three essential changes described above are made.

The remainder of this Report details what is summarized here and considers additional matters identified in Order No. 475, including the alternatives to reorganization.

The question of alternatives warrants particular notice, and it has played a significant role in the Trustees' consideration of this matter. The Trustees oppose the alternative of nationalization. The bill for it would be billions of dollars. It would embalm present inefficiencies and inadequacies which the Trustees' proposals would correct. We have developed an alternative to nationalization which requires simply tough, spartan, private self-discipline, and the cooperation of those public and private agencies and groups whose interests are involved here. Nationalization would be a sorry, needless price to pay for lack of the exercise of common, ordinary good sense and responsibility.

I. PROGRESS IN ELIMINATING OBSTACLES TO THE VIABILITY OF THE DEBTOR

Penn Central's problems lie in two areas. Some obstacles to a successful enterprise are within management's competence to overcome. But there are certain conditions with regard to which self-help—in the present context, by management, the Trustees, and the Court—can be effective to only a limited degree because of constraints imposed by law, regulation, or other external factors.

A. Management accomplishments

Where obstacles to viability can be overcome by better management, progress has been substantial.

Stricter internal controls have enabled the Trustees to curtail the rate of cash attrition which they encountered at the beginning of their stewardship. The Court, acting under the Bankruptcy Act, has permitted the deferral of both post- and pre-bankruptcy expenses which could not have been met out of operating revenues.

Tighter controls have brought the railroad's operating ratio (percentage of operating revenues consumed by operating expenses) for the first 11 months of 1971 down to 88.32%, compared with 92.11% for the same period in 1970.

Employment, which was 90,319 in January 1971, was reduced to 83,322 by January 1972, or by 7.7%.

Equipment utilization has been substantially improved. The railroad is making more use of its own cars and correspondingly less use of foreign line equipment, and is handling more net ton miles per average car day on line. Faster turnaround for repair work has sharply increased locomotive availability.

All this, plus equipment acquisition and improvement of roadway and facilities, now gives the railroad the capacity to solicit and handle an increased volume of traffic. Further details are set out in "A Report on 1971," issued on December 22, 1971 by Mr. William Moore, president of Penn Central, a copy of which is attached hereto as Exhibit A.

This is not to suggest that we have any feeling of complacency, or that the possibilities for progress have been exhausted.

Railroads, and Penn Central in particular, have lost much ground which can and should be recovered. Of the total ton miles of freight in the United States, the share carried by railroads declined from 62.0% immediately prior to World War II to approximately 40% in 1970. The eastern railroads' share of the total United States rail revenue ton miles declined from 38.6% in 1958 to 33.3% in 1970. Penn Central (that is, the three systems which preceded it) had 34.9% of the ton miles carried by eastern railroads in 1958, but only 33.0% in 1970. Between 1966 and 1970, originating tonnage on the Penn Central fell by 14.8%, while on other eastern railroads it decreased by only 0.6%; on southern and western lines it rose by 12.0% and 4.6% respectively.

While Penn Central's tonnage decreased from 282 million in 1970 to approximately 261 million in 1971, freight operating revenues increased from $1,392 million to approximately $1,535 million.

The competitive picture is starting to change. Penn Central handled 34.8% of the net ton miles of rail traffic in the eastern district during the first nine months of 1971, compared with 32.9% during the same period in 1970.

Penn Central is now making important exceptions to across-the-board freight rate increases. Moreover, it is reducing rates selectively whenever the evidence indicates that this will result in greater contribution to earnings by attracting more volume. At the same time, it has not hesitated to file increases in those instances in which rates are below costs.

Penn Central is becoming a more effective competitor. Divergence of views regarding piggyback service on the part of the former New York Central, Pennsylvania, and New Haven, and unfulfilled commitments after the merger—along with increases in piggyback rates almost twice as great as increases in truck rates—resulted in a post-merger drop in Penn Central piggyback business from 520,000 trailers in 1968 to 420,000 trailers in 1971. In the last half of 1971, when Penn Central's new services and reduced rates began to take effect, that trend was reversed. It could be reversed faster if transportation costs could be cut by 10 to 15 percent by using three-man train and engine crews.

The Trustees have moved vigorously to achieve the objective of divesting the estate of non-rail assets without sacrificing maximum realization of values. Principal efforts are reflected in proposals, to be brought before the Court, for the sale of certain Park Avenue properties and the transfer of the Trustees' stock in Pennsylvania Company. Other major real estate sales have been made, although, because of encumbrances, there has not been material progress thus far in making the proceeds of sales available for capital expenditures.

B. External Constraints

Given the volume of traffic which can reasonably be projected for Penn Central over

the next five years, as explained below, the principal obstacles to viability involve elements beyond the exclusive control of management and the Trustees. While self-help is required in these areas as well, outside cooperation and assistance is necessary to achieve (1) changes regarding the physical plant, (2) the complete elimination of redundant labor, and (3) full reimbursement for the costs of furnishing passenger service.

There has been some, although relatively little, progress regarding these obstacles. A good deal has been done about each of them, but the results as of now fall far short of the goals. Most progress has been procedural.

1. *Plant Rationalization.* So far as restructuring Penn Central's plant is concerned, applications have been filed, since January 1, 1971, to abandon 995.7 route miles, and approvals covering 350.9 miles have been received. Filing of applications to abandon an additional 829.2 miles has been approved by the Trustees.

This piece-meal approach obviously is not the answer. Even the new and welcome streamlined Interstate Commerce Commission procedures are not enough to fully achieve the plant rationalization which is a necessary part of a Penn Central reorganization.

2. *Surplus Personnel.* So far as concerns Penn Central's redundant manpower situation, the Trustees' report of August 31, 1971 covers most of what has taken place—and has not taken place.

Negotiations at the national level regarding the fireman manning issue have not been active. The procedures of the Railway Labor Act have been exhausted, and either party is free to resort to self-help measures.

The critical train crew consist negotiations are proceeding under the rules of the Railway Labor Act and have been carried forward diligently. The National Mediation Board has now, as the last step in the mediation process, urged both parties to submit the dispute to binding arbitration. Penn Central has agreed to do so. The United Transportation Union has not yet responded. We mark time—at an estimated unnecessary cost of almost a half million dollars a day.

Agreement has been reached with the United Transportation Union and the Brotherhood of Locomotive Engineers to change several outdated work rules regarding interdivisional assignments, the elimination of radio arbitraries as such, and a liberalization of road-yard, switching limits and interchange rules. The contract with the Union has been signed (on January 27, 1972), and the Trustees have been authorized by the Court to implement these work rule changes. The ultimate annual savings that will result from these changes will be approximately $15 million. Full realization of the benefits will be achieved in progressive stages.

Under the several 1971–1972 labor contracts, most of the other work rules in dispute are referred to various labor-management Standing Committees. In general, there has been little progress through the Standing Committees procedure.

The New York "full-crew" law has been repealed. The Ohio legislature is considering repeal, but there can be no further action now until it reconvenes on March 8, 1972. In Indiana, the legislature amended the full-crew law on February 9, 1972, in a manner which would materially improve the situation in that State.

3. *Passenger Losses.* There has been *partial* progress regarding the passenger service drain on Penn Central's resources.

The Amtrak contract of April 1971 provides for reimbursement of expenses which are "solely for the benefit of Intercity Rail Passenger Service . . . plus all other costs reasonably and necessarily incurred in connection therewith . . . which are shown . . . to be avoidable costs" (Sec. 5.1). The Trustees accepted this formula as an interim measure pending establishment of a long-run basis for continuing inter-city service. Under this contract, Penn Central is currently receiving, in addition to reimbursable expenses which are "solely for the benefit" of intercity passenger operations, $7.9 million annually as supplemental payments. The Trustees cannot accept these supplemental payments as an equitable measure even of "avoidable costs"—that is, costs which could be eliminated if the service were terminated. Preliminary studies of avoidable maintenance-of-way costs in the Boston-Washington corridor are now being reviewed by Amtrak. The contract provides for arbitration if agreement cannot be reached. But, in any event, it should be noted here that, as discussed below, "avoidable costs" are not an appropriate basis for compensation in the case of Penn Central.

Penn Central also continues to sustain heavy losses in commuter service. Even where some reimbursement is being received, it does not in most areas cover the full costs of operating the service, much less a return on investment. The Trustees are aggressively attempting to cure this situation.

4. *Other external constraints.* Penn Central's competitive position could be further improved if it had more freedom to control its own rates. Managerial initiative and judgment, within reasonable limits, no longer need to be frustrated by a regulatory scheme adopted in an era of monopoly, which has now been replaced by vigorous intermodal competition. Canada, Great Britain, and most of Europe now permit contract rates in varying forms, in return for shipper commitments to use rail services. United States railroads should be free to enter into similar arrangements.

Divisions of rate for traffic moving between the East and points in the South and certain areas of the West are disproportionate to the service rendered by the Eastern lines, at a cost to Penn Central of tens of millions of dollars annually. The Trustees have proposed an amendment to Section 15(6) of the Interstate Commerce Act—not to change the present standards for fixing divisions, but rather to provide a faster procedure for resolving divisions disputes on their merits.

With respect to taxes, the Trustees note that railroads generally bear an unreasonable burden of property taxes, impairing their ability to compete for freight traffic now moving on the highways. The practice in most States of taxing railroad property as though it could be sold for other use costs Penn Central many millions each year. Moreover, railroad rights of way are generally taxed while those of the trucks and barges are not.

In short, there has been progress—real progress—in areas within management's control. Penn Central "made do" in cash flow terms to such an extent in 1971 that not going back to the Congress for more money—as had been expected—was one of the significant, unnoticed "non-events" of the year.

There are critical areas which require the cooperation and assistance of others.

Nevertheless, the progress management has made is the basis for combining our response to the Court's question about the future viability of the Debtor with our advice regarding the probable feasibility of reorganization to which we now turn. We understand the term viability, and use it in this Report, as referring to an economically successful railroad enterprise which generates enough earnings to provide for a reasonable level of fixed charges, to permit reinvestment as necessary in rolling stock and fixed plant, to provide a reasonable rate of return for an equity interest, and by virtue of all that to attract new capital as necessary.

We find no obstacles to viability in those terms, or to a feasible plan of reorganization, which appear to us insurmountable.

II. THE PROBABLE FEASIBILITY OF SUCCESSFUL REORGANIZATION

The probable feasibility of successful reorganization—or the creation of a viable railroad enterprise—necessarily involves two questions. The first is whether a plan can be devised which will, when consummated, result in a viable railroad company; the second is whether, assuming such a plan, it can be consummated within a reasonable period of time—that is, soon enough so that continued operations before consummation do not so erode the Debtor's estate as to be either practically or constitutionally impermissible. It is not enough simply to see light at the end of the tunnel; the length of the tunnel is also critically important.

A. Can a successful reorganization plan be devised?

The Trustee's answer is Yes.

Two possible sets of assumptions must be dealt with here.

1. It would be one matter whether, assuming maximum self-help efforts alone, and without the cooperation of others in removing or reducing external constraints, the railroad would become viable in a reasonable time. The Trustees' considered conclusion is that on this assumption there would be no reasonable prospect of a successful reorganization of the Debtor. The present Penn Central plant, burdened with uneconomic lines, manned by redundant labor, and absorbing continued passenger service deficits, could not be put back in shape within the time available, or perhaps ever.

This conclusion is based essentially on a study forecasting Penn Central's revenues and expenses up to 1976 on the assumption that there would be no important progress in dealing with the three principal external constraints previously referred to.

The study has taken into account (i) predictions as to future traffic on a detailed commodity by commodity basis, checked against inquiries as to the expectations of major shippers; (ii) various available economic models providing overall predictions as to the economy, with particular reference to the northeastern United States; (iii) the vulnerability of rail traffic generally to competition; and (iv) the probable effects of wage and price inflation on the Debtor and on competitive modes of transportation. The study hypothesizes significant increases in traffic—which are believed reasonable.

The key element in such projections is, of course, the volume of traffic to be expected in future years. The Trustees have retained the firm of Temple, Barker & Sloane to project traffic and business trends over the next decade. For purposes of this Report, it was necessary to make the best informed judgment possible on the short-term prospects of volume. After exhaustive discussions and analyses with the management, staff and independent consultants, it appears reasonable to the Trustees to predict that freight volume will reach between 307 million and 322 million tons annually by 1976. A continued growth is anticipated beyond that time, but at a slower pace.

While the study predicts some net railway operating income for the first time in 1975 and 1976, the amount is not large enough, soon enough, or certain enough to permit serious consideration of reorganization on the existing system basis. Major unpaid post-bankruptcy claims would continue to accumulate until 1975.

The study does not project sufficient income available for fixed charges in 1976, in the judgment of the Trustees, to support new securities sufficient, after post-bankruptcy claims and equipment debt were satisfied, to assure anything of substance for pre-bankruptcy interests.

2. The key question thus becomes whether Penn Central can be successfully reorganized,

if reasonable and reasonably attainable success is achieved in dealing with the three principal external constraints previously referred to—a task which will require continuing maximum efforts of management and Trustees and critically necessary cooperation of others.

The Trustees advise the Court that the Penn Central can be successfully reorganized if the requisite changes are made, and furthermore that there is reasonable prospect of their being made. As to that prospect, however, it is the Trustees' understanding that the Court contemplates—by the procedure prescribed for the distribution of this Report—that a fuller basis for evaluating that prospect will be obtained from the reactions to the Report.

Successful reorganization depends, then, on achieving, in significant degree, three changes.

(a). *Plant Rationalization.* The Penn Central track system must be restructured (i) to realize the increased efficiency made possible by the 1968 merger, (ii) to eliminate those freight lines the operation of which cannot be justified in terms of either sound business practice or the necessities of public service, and (iii) to make appropriate arrangements for the operation or underwriting of those freight lines which the public interest warrants maintaining but which cannot be operated by Penn Central for its own account.

Penn Central's plant has a much lower traffic density and a much lower freight revenue per mile of line than any other major eastern railroad. When compared with the C&O/B&O and N&W, for instance, Penn Central is lower by 16% to 44%. Penn Central's business volume is too low, and its plant too large. Approximately 80% of the Debtor's 1970 freight operating revenues can be identified with movements between origins and destinations on the railroad (including interchange points with other railroads) linked by approximately 11,000 of the railroad's approximately 20,000 route miles. Had such a "core" been in existence in 1970, it would have had high traffic density and a revenue level per mile of line in keeping with the line leading eastern railroads.

Further analysis of this theoretical higher-density "core" in relation to operating practicalities appears to indicate (the studies are still in progress) that a great preponderance of the Debtor's freight traffic could continue to be realized from this "core" system. There is basis for the expectation that further development of this approach, including more refined marketing and operating analysis, will result in some enlargement of the present hypothetical "core" system.

Calculation of the cost of operating such a freight "core" is an extremely complex matter, and the continuing studies will produce more sophisticated estimates on that question.

Those studies will also permit a more precise identification of potential revenues and costs of additional lines. Up to now, because of time pressure, the allocations of costs among the various lines has had to be on a generalized basis, involving system averages in many instances, which may distort the results so far as particular lines are concerned. The Trustees are preparing analyses of larger "core" systems.

The analysis made thus far indicates that had a "core" freight railroad system of approximately 11,000 route miles been in operation in 1970, and had it retained some 80% of the freight revenues of that year, it would have produced net railway operating income in the neighborhood of $94 million, which, after addition of an approximate $37 million (non-operating income less miscellaneous deductions), would have resulted in some $131 million of income available for fixed charges. The $94 million income figure contrasts with an actual net railway operating loss for that year from freight operations on the existing system of approximately $104 million.

These calculations have been made on the basis of income from freight operations alone, and thus do not reflect the existing losses from passenger service. They also assume various operating efficiencies and economies which were not in effect in 1970, but which have since been put into effect.

The "core" concept does not assume termination of all facilities on the remainder of the Debtor's present system. Other lines in the system may, on the basis of the studies presently under way, properly form part of, or be operated by, a reorganized Penn Central. They may, in the alternative, remain in operation through acquisition or underwriting either by other interests including shippers, or by local governmental bodies. In the latter case, the rail service could be operated either independently or by Penn Central under contract, or through other arrangements which would be fully compensatory. In addition, piggyback arrangements can be expanded to provide freight service to many localities and industries presently served by uneconomic branch lines.

The plan of reorganization itself, when approved, as it must be, by the interstate Commerce Commission, can provide the necessary authority and procedure for much of this restructuring. The Commission can approve a plan of reorganization which authorizes the abandonment of lines if no compensatory basis can be obtained for their continuance. The plan can provide, in order to protect the public interest, that any line so designated for abandonment be operated for a reasonable time to enable interested parties to submit proposals for compensating Penn Central for continued operations. It can provide, to the extent necessary, renegotiated arrangements with leased lines to permit operations on them to continue. And it can provide for sale to or operation of segments by other interests whenever specific terms have been arrived at prior to approval of the final plan.

The Trustees recognize that the feasibility of contract services with public bodies depends on requisite appropriations being made at the local, state, regional or perhaps Federal level.

(b). *Work Force.* A second condition which must be met to achieve a successful reorganization of the Debtor is a major reduction in its work force.

Management has recognized this, and in respect of employment within its control, has achieved significant reductions, as indicated above, and contemplates further reductions.

Excess manpower remains in areas where Penn Central confronts restraints imposed both by labor agreements and by state "full-crew" laws. These agreements and laws involve outdated requirements for the use of firemen on locomotives in freight and yard service, and constraints against reducing the number of trainmen or yardmen assigned to road and yard crews.

The Penn Central position is that normal freight road and yard operations require a train and engine crew of *no more than three* men. On this basis, Penn Central employs approximately 9,800 crewmen in excess of those needed for safe and efficient operation.

Almost half of these 9,800 train and engine service crewmen are in Ohio and Indiana.

The Trustees' evaluation of this situation is reinforced by the results of the national manning dispute which culminated in the 1963 award of Arbitration Board No. 282 created by Act of Congress. That award found that firemen were not required in yard and freight service except on a relatively few engine assignments. It also found substantial overmanning of trains and established a procedure, which expired in 1966, for independent third-party determination of the consist of yard and branch line freight train crews. Arbitrations under this procedure, including many on lines of the Penn Central, found two trainmen appropriate in most instances. Operations pursuant to these awards were entirely satisfactory from the standpoint of safety and efficiency.

In the case of excess firemen, the history and current status of this long-standing dispute was described in the Trustees' Report of August 31, 1971 to the Court. It will suffice to note here that Presidential Emergency Board No. 177 concluded that:

"It was unanimously found by the public neutral members of all previous boards that there is no need for firemen on freight and yard diesel locomotives except under rare operating conditions.

"The new evidence presented to this Board is not sufficiently compelling to warrant a contrary conclusion. . . . Neither the new evidence relating to safety or work burden supports the asserted need for restoration of firemen."

At projected 1972 wage and employment levels, excess labor adds about $150 million to the Penn Central's annual costs.

(c). *Passenger Service.* The third change required for a successful reorganization is the elimination of the large continuing drain from passenger service, both intercity and commutation. The Trustees do not seek to discontinue such service. Their position is simply that the passenger service which is to be continued cannot be permitted to remain a financial burden.

It is widely assumed that Amtrak has relieved the railroad of unprofitable intercity passenger service. However, Penn Central is in fact subject to a continuing major drain on its resources in supplying this service.

While the Trustees will continue their efforts to secure proper reimbursement under the present Amtrak contract, they believe that its terms do not reflect accurately the special characteristics of the Boston-Washington corridor. The present contract, for example, does not provide for any sharing between Amtrak and other services of common maintenance-of-way-costs—despite the fact that passenger service accounts for more than two-thirds of the train miles operated in the corridor. With only minor exceptions, all main trackage is used jointly by intercity, commuter and freight services. Even on that part of the corridor where freight traffic is the heaviest, two main tracks would suffice for that traffic; but the demands of the passenger service are such that up to six tracks are required.

Nor does the present contract permit any charge to Amtrak for common costs incurred in providing passenger service. The "avoidable cost" concept now incorporated in the Amtrak contract means that in situations in which Penn Central's tracks are used for freight, intercity passenger, and commuter service, Penn Central has to pay 100% of the costs which ought to be allocated among all three services. Finally, the present Amtrak contract gives no recognition whatever to investment in property used in the pasenger service.

The basis for compensation in the present contract is subject to change July 1, 1973, for which purpose negotiations may begin in May 1972. The Trustees will seek appropriate changes in the Penn Central contract. They recognize that Amtrak has not been adequately funded to meet the additional reimbursement which is warranted. Some form of relief from the burdens of intercity passenger service *must* nevertheless be provided. Until it is, the contract payments fall short, on the basis of fully allocated costs, by approximately $32.5 million per year at 1972 levels of service, wages and prices, exclusive of return on investment.

There is increasing recognition that commuter services are indispensable to many major metropolitan areas. In spite of this, the Trustees estimate that at 1972 levels of service, wages, and revenues from all sources, Penn Central's commuter service was rendered at a loss of $54.7 million relative to fully allocated costs, exclusive of return on investment. (Fare increases pending or in preparation, if effectuated promptly, would reduce this figure by an estimated $10 million.)

The combined effects of intercity and commutation passenger service are thus imposing a burden of $87.2 million, not including return on investment.

This analysis of what is required to put Penn Central on a viable basis is regrettably involved. But there are no short-cuts to the right answers—except across quicksand.

What this all comes down to is that on the "core" basis described above, with passenger costs fully compensated (exclusive of return on investment) and unnecessary labor costs eliminated, Penn Central would have produced, on 1970 traffic levels, net railway operating income of approximately $181 million—instead of the $237 million net railway operating loss actually incurred in that year.

This analysis has been prepared entirely on the basis of 1970 freight rates, revenues and costs. It remains to project its results to 1976. On an extremely rough basis it can be estimated that, with the plant rationalized and all passenger costs compensated and unnecessary labor costs eliminated, income available for fixed charges by 1976, including non-operating income, will be—depending on the traffic volume assumed—between $220 million (at 1970 traffic levels) and $290 million (at management's 1976 projected traffic levels).

These figures assume that the changes are made promptly enough to make their effects fully available by the beginning of 1976. Because of the time required to realize those effects, implementation of the Trustees' proposals will have to begin promptly in order to produce the indicated results by 1976.

Elimination of the further constraints on viability which are referred to in Section I would contribute further to a successful reorganization.

The figures projected in this section as income available for fixed charges exclude income from assets owned by Pennsylvania Company but include income from the Debtor's other non-rail assets. The continued availability of such income for railroad operations cannot be ensured if the railroad cannot ultimately be made viable.

The Trustees have proceeded aggressively toward the liquidation of non-rail assets, on the basis that the implementation of the proposals in this Report will create a situation in which the proceeds from the sale of such assets may be used for purposes relevant to the restoration of the viability of the Penn Central.

B. Can such a plan be consummated soon enough to be practicable, fair and equitable, and constitutional?

The second aspect of feasibility—whether a plan can be consummated within an acceptable period of time—raises additional questions. The Trustees believe, however, that it can be, if the necessary changes are made promptly.

The problem arises from the continuing accumulation of unpaid administration claims which has been taking place since bankruptcy. Although the rate of operating losses has decreased, service of equipment debt has been maintained and the cash position has stabilized, the estate available for pre-bankruptcy creditor and equity interests has been diminished through the end of 1971 by approximately $100 million in accumulated post-bankruptcy real estate and corporate taxes, $75 million thus far in the Trustees' Federally guaranteed borrowing, and up to $50 million in leased line rentals under leases which may eventually be affirmed. Thus, the estate available for such pre-bankruptcy interests has already been diminished by up to $225 million from these factors.

On the present basis, unpaid administration claims are continuing to accumulate at the rate of about $100 million per year. This diminution of value affects most adversely the junior pre-bankruptcy interests which are not protected by liens.

It should be recognized that asset values have been enhanced by capital improvements and reductions in the principal indebtedness on equipment obligations. Yet continued accumulation of high priority administration debts cannot continue indefinitely. On the other hand, if there is, as the Trustees believe, a reasonable probability that a plan of reorganization can be formulated which will both provide for the post-bankruptcy obligations, including equipment debt, and produce adequate values for pre-bankruptcy interests, deferral of administration claims can continue for a reasonable time so as to permit attainment of that prospect.

In a plan of reorganization, the values for pre-bankruptcy interests should be at least in a fair equivalence to the liquidation value of the estate. Those who invested in or lent money to a regulated utility may be forced to make some sacrifice, but it is not acceptable that the entirety of pre-bankruptcy interests be wiped out if substantial values could have been preserved for them by liquidation.

The Trustees have given careful but not as yet fully conclusive consideration to the remarkable, indeed startling, variety of valuation estimates which result from invoking one theory of valuation or another.

Although cessation of rail operations over the entire Penn Central system is an unreal prospect, the Trustees have for purposes of analysis commissioned studies of the scrap value of physical assets and the present discounted value for non-rail purposes of other assets in order to provide the Court and interested parties with the basis for a judgment as to the minimum values which are approached as a limit as one assumes less and less of the Penn Central system continued in rail service. As is summarized in Exhibit B, the present discounted value of the Penn Central Transportation Company for scrap and other non-rail purposes, plus the net value of its interests in other companies, is in the range of $1.427 billion to $1.858 billion.

Yet it is possible, on a reproduction-cost-less-net-depreciation theory approach, to reach a figure as high as $14 billion for the entire Penn Central system, including leased lines and operating subsidiaries. That figure has no presently practical meaning.

The liquidation value of the property owned by the Debtor, including the net value of its interests in other companies, depends in large part on what assumptions are made as to how much of the existing Penn Central system would be taken and continued in operation for railroad purposes by governmental agencies, other private-enterprise railroads, or both.

Portions of the Penn Central system may have substantial enterprise values, particularly if there is taken into account, in assessing such values for purposes of a governmental taking, those elements of value which have been reduced or eliminated as a result of governmentally imposed constraints. It might be assumed, if only for purposes of analysis, that rail service would be continued on portions of the system on a basis involving reasonable compensation. It is also possible that substantial prices might be paid for individual segments by other railroads.

On the other hand, liquidation values for portions of the system where rail service would not be continued would be held down by a number of factors. Most of the bridges and tunnels and some of the buildings in the Penn Central system have no value for purposes other than railroad purposes, and a substantial portion of the real property interests is held under easements or other titles providing for reversions if and when rail operations cease. Furthermore, the very substantial real property assembled in the Penn Central system could not be disposed of for non-rail purposes except over a substantial period of time and with substantial expenses for holding and disposition. As a result, the discounted present value of real property interests for disposition for non-rail purposes would be far less than the aggregate present value of the parcels to be disposed of.

Assuming the actions identified in this Report as necessary are taken within a reasonable time, the accumulation of prior charges against the estate available for pre-bankruptcy interests could be stopped. The benefits of passenger service relief would reduce losses from the moment such benefits were obtained, even though the benefits from concentration of plants and changes in work rules would take some time to be fully realized after the right to make the changes had been established.

Once the benefits from the action proposed by the Trustees have been substantially realized, there will be significant income available for fixed charges. All projections are subject to infirmities. However, the order of magnitude of projected income available for fixed charges—from $220 million to $290 million—would support a new capital structure for a reorganized Penn Central adequate to cover post-bankruptcy claims and equipment debt and still provide pre-bankruptcy interests protection greater than they would receive from any assured liquidation value of the estate.

The values to be achieved for pre-bankruptcy interests in the proposed reorganization cannot be attained, however, unless the three obstacles to viability are substantially and promptly overcome. It should be possible for Federal, state and local governments and all interested parties to analyze the situation as presented in this Report and to come to conclusions as to whether they are prepared to cooperate in achieving the changes necessary to allow the Penn Central to continue as a private enterprise. If an adequate response should not be forthcoming, the Trustees will be prepared to advise the Court that this reorganization proceeding is producing a result for which Section 77 was not intended and could not constitutionally have been intended. We do not expect that default.

III. VARIOUS ALTERNATIVES IN THE EVENT A TYPICAL, INCOME-BASED REORGANIZATION APPEARS UNLIKELY

The Trustees have stated their firm belief that an income-based plan of reorganization is feasible. It clearly is, unless there is a failure of response and cooperation.

Nationalization of the Penn Central would be error compounded. Nationalization of this railroad in its present condition would as a practical matter perpetuate the inefficiencies and inadequacies which the Trustees' proposals would eliminate. The cost to the American taxpayers would be, furthermore, literally billions of dollars. Even if the Government moved in such a way as to hold the cost of acquisition to the lowest possible level, the value of Penn Central's assets for further railroad use would be enormous.

There are "intermediate" possibilities of one kind or another which would arguably not involve, in themselves, "nationalization." But if they were taken it would be, as the Trustees view this situation, only the consequence of failure to face up to the hard but plain imperatives that the right things be done. They would be in essentially the same pattern of improvisation—resorting to in-

terim patches and palliatives in order to postpone the day of ultimate reckoning—which carried the Penn Central into bankruptcy. The reorganization approach proposed by the Trustees is simply to make Penn Central a system which makes sense and to operate it with the employees it needs.

It would be the worst mistake, with the Penn Central in its present extremity, not to use that extremity to do all that needs to be done. Resorting instead to measures which would only buy a little more time would be wrong.

Although the Trustees have necessarily and properly focused their consideration on the interests directly involved in these proceedings, they have recognized this case as presenting—in the public's mind and indeed in fact—the issue of whether free enterprise, incorporated and unionized, is going to work.

A country which may have momentarily lost some of its essential self-confidence would take what could well prove infectious pride and satisfaction from seeing this crippled corporate giant put back on its own feet and made to stand upright. That just makes sense.

Respectfully submitted.

GEORGE P. BAKER,
RICHARD C. BOND,
JERVIS LANGDON, Jr.
WILLARD WIRTZ.

EXHIBIT A. A REPORT ON 1971

(By William H. Moore, President, Penn Central Transportation Co.)

FINANCIAL PICTURE

The year 1971 was marked by a careful husbanding of Penn Central's cash resources. While the railroad is still suffering a cash drain, a spartan management program has resulted in noteworthy progress since the railroad's reorganization began. As a result, the Trustees were able, on December 9, 1971, to advise United States Senator Vance Hartke, Chairman of the Senate Subcommittee on Surface Transportation as follows:

"So far this year Penn Central has drawn down $75 million of the $100 million guaranteed loan made possible by the Emergency Rail Transportation Act of 1970, and our planning had contemplated that the remaining $25 million would be needed in the month of December, 1971. The present prospect is, however, that we can forego the $25 million credit in 1971 and have $35 million in cash at the end of the year.

"It is still contemplated that Penn Central will have a sizeable cash drain in the first quarter of 1972. With the availability of the $25 million credit just referred to, Penn Central, given reasonably good luck should be able to survive this first quarter without further borrowing, although, in order to be safe, we may be compelled to seek the Court's permission to apply for a so-called Amtrak loan under the Rail Passenger Service Act of 1970.

"Once past the first quarter, Penn Central should be able to make the rest of the year but only on a bankruptcy basis with the continued deferral of State and local taxes, leased line rentals, and other obligations. When such additional payments can no longer be deferred, Penn Central faces another cash problem which we are planning to deal with in the reorganization plan to be filed April 1, 1972."

There has also been improvement in reducing deficits. For the entire year 1971 the deficit, on a fully accrued basis and before extraordinary items, is estimated at $275,000,000 as compared with a deficit of $325,739,148 for 1970.

Because of freight rate increases granted during the year and a more favorable traffic mix, revenues for the first 10 months of 1971 (latest figures available) were $1,290 millions compared to $1,176 millions for the same 1970 period. This, however, was greatly offset by a sharp decline in traffic volume and staggering increases in wage rates and cost of materials.

In the generally slack national economy, freight traffic volume for the first 10 months of 1971 decreased 6.5 per cent in net ton miles, or from 72 to 67 billions. For the full year the decrease, including the devastating effect of the coal and dock strikes, may be even greater.

Penn Central was faced with the following cost increases:

Increased costs, 1971 over 1970

	Millions
Wage increases	$86.9
Material price increases	9.3
Payroll tax	7.1
Health and welfare	7.0
Total	110.3

It is significant that Penn Central has shown any improvement in the face of these two adverse factors (decline in volume and cost increases).

A significant reason for the improvement is a close control of expenses which for the first ten months of 1971 produced a reduction in the operating ratio (percentage of operating revenues consumed by operating expenses) from 91.76 to 88.06 per cent. Most of this improvement occurred in the freight transportation ratio, down from 48.2 to 44.6 per cent.

Reflected in these improved ratios are reductions in personnel. The average employment in 1970 was 93,788 and our target for 1971 has been an average of 87,900. But so far Penn Central is ahead of target. We should end the year with an employment of about 84,300, or 1,000 less than our year-end goal of 85,300.

The financial drain from passenger service was partially curtailed during the year. In addition to an estimated $16 million in net cash payments during the year from Amtrak, the National Railroad Passenger Corporation, the railroad also realized net benefits of approximately $8.5 million on an avoidable cost basis from discontinuance of unprofitable intercity passenger trains not selected for the Amtrak network.

We are definitely making progress—solid progress. But it cannot be concluded that the Penn Central crisis has passed. Our progress must not obscure the fact that the railroad is deferring many priority claims, principally taxes, for which provision on a current basis cannot be indefinitely postponed.

As noted earlier, we expect a temporary financial crunch to occur sometime in March or April of 1972. However, if the 2.5% emergency freight rate increase and further selective increases are granted without undue delay and if business picks up as predicted by many economists, the railroad should be able to operate through 1972 without infusion of cash from outside sources.

EQUIPMENT ACQUISITION AND REPAIR

Two key steps in restoring good service to the railroad are:

1. Equipment acquisition and repair to meet customer requirements.

2. Increased property maintenance for greater transportation speed and efficiency.

The added financial stringencies imposed, as the year progressed, by a discouraging national economic picture and strikes in key industries, forced us to curtail some programs of equipment and roadway maintenance. Nevertheless, Penn Central will begin 1972 with sufficient transportation capacity to handle substantially more traffic—which we are determined to get. A continuing program of equipment acquisition and maintenance of right-of-way has been laid out for 1972, within our financial limitations.

During the past year, Penn Central acquired some 7,500 new freight cars and 187 locomotives through long-term lease arrangements.

By the end of 1971 we will have rebuilt and made heavy repairs on some 11,400 freight cars, and upgraded an additional 11,470 freight cars, a total of 22,870 cars. The $39.6 million spent for these programs was paid out of operating revenue, whereas in 1970 much of this work was financed with borrowed funds.

In 1972, we plan to acquire, through long-term leasing, 6,700 new freight cars, including general service box cars, equipped cars (for high value merchandise), covered hoppers (for grain), and some 1,500 open top hoppers (mainly for coal and ore), valued at $130 million.

The railroad plans to rebuild 1,000 freight cars, make heavy repairs on 6,940 and upgrade 6,900 more, for a total of 14,840 in 1972.

These amounts are calculated to meet volume forecasts, taking into account that during the year Penn Central will also scrap 8,200 freight cars which are beyond repair.

The railroad also plans long-term lease of 200 new locomotives in 1972 valued at $47.8 million.

IMPROVEMENT OF ROADWAY AND FACILITIES

The railroad has continued to make essential improvements in plant despite severe restrictions imposed by bankruptcy law on the normal use of proceeds from sales of real estate and other assets for such purposes.

This year we laid 53,0000 tons of new rail (or 218 miles) vs. 49,000 tons (200 miles) in 1970. We plan to match our 1971 program in 1972.

In 1972 we are budgeting $15.5 million for yard improvements, including continued work at our key Midwest gateway classification yard at Elkhart, Ind., our Selkirk, N.Y., classification yard, and our Buckeye Yard at Columbus, Ohio.

TRANSPORTATION SERVICE

The vast improvements in our service made during 1971 have restored the respect and confidence of shippers. We are delivering their cars without delays, and have greatly reduced costly derailments. Post-bankruptcy claims are now being settled on a current basis.

We initiated a quality control system using computer analysis to monitor our daily performance and are now checking tens of thousands of cars each week, moving from 232 terminals which originate volume shipments. This enables us to pinpoint trouble spots immediately and take quick corrective action.

We are running more and shorter trains which speed delivery to terminals and interchange connections. This gives us faster turnaround of equipment, and in turn, greater car utilization. It also reduces yard congestion and overtime expenses. Even with substantially more train service and increased wage and material costs, total transportation expenses in 1971 were about the same as in 1970.

In the first 11 months of 1971 the railroad ran 20,000 more trains than for the same period in 1970, or an increase of 5 per cent. Our average train speed has increased by about 12 per cent. Our car days on line per loaded cars handled decreased by 7.5 per cent.

Our on-time performance in making interline connections has improved sharply. In the first nine months of 1971, for example, Penn Central trains made connections at Chicago 82 per cent of the time, vs. 55 per cent in 1970, and at Cincinnati, 88 per cent of the time in 1971 vs. 72 per cent in 1970.

Greater availability of locomotives helped to make this possible. Working on a much faster turnaround time for equipment repair, our shops reduced locomotives undergoing and awaiting repairs by some 36 per cent (October 31, 1971, vs. October 31, 1970). The percentage of locomotives out of service of the total fleet was 6.5 per cent vs. 10.1 per cent for the same time in 1970.

The same program of speeded-up repair and better utilization of equipment made the equivalent of many hundreds of extra operable freight cars available to customers.

The increasing effectiveness of Penn Central's maintenance and inspection program helped the railroad cut its major accidents for the first nine months of the year by almost 50 per cent, as compared to the same period in 1970.

One of the most gratifying results in 1971 railroad operations is our growing file of complimentary letters from shippers. During the year, our service complaints have declined from an average of 50 a week to four or five a week at year-end, with steady improvement throughout the year.

SALES AND MARKETING PROGRAMS

With first-rate service to sell, the company launched an innovative sales and marketing campaign—including selective rate reductions, new services and more trains, and new opportunities in industrial development for our customers. Our objective is to meet and outperform competitors.

Selective Rate Reductions

On June 19, 1971, we made across-the-board cuts in our TrailVan (piggyback) Plan II½ and III ramp-to-ramp rates, averaging about 6 per cent. Since that time a 6.1 per cent cumulative decrease in this type traffic (compared to the same period in 1970) has turned into a slight cumulative increase (as of the end of October), despite the dock strike and depressed economy. We expect to strengthen this upswing in 1972.

More recently, Eastern railroads (including Penn Central) jointly approved a new scale of iron and steel hauling rates, with an average rollback of 8 per cent. Penn Central hauls $100 million of this traffic annually, and with the new rates tailored to be competitive with truck industry rates in quantities of 40,000 pounds or more, we stand to gain a great deal more of this traffic. We will implement the new rate structure on January 8, 1972.

Grain hauling has benefited from the virtual doubling of our fleet and from substantial rate changes to accommodate our shippers. This is sparking a strong comeback in recovery of grain tonnage, which is best indicated by the fact that in the last quarter of 1971 our grain business will have doubled, vs. the same period of 1970.

More Trains and New Services

In 1971 Penn Central was able to schedule 42 new trains—all aimed at either substantially improving present service or at offering new service where volume potential exists or new services to specific customers.

We are rebuilding our TrailVan (piggyback) service which dropped in volume during 1970 and early 1971. As noted, we cut rates in several areas and we also improved our overall on-time performance by 30 per cent. We increased our all-TrailVan trains by more than 15 per cent, adding six new schedules in the past year. Examples are new services between New York and Boston, between New York and Rochester-Buffalo, and between Chicago and Cincinnati.

In preparation for an expected substantial upturn in TrailVan traffic, we are doubling our capacity to handle traffic at the Kearny TrailVan terminal near New York. We have expanded our Kearny gatehouse from four to seven lanes, and have provided space for 40 more working car spots to be serviced with four "piggypacker" loading cranes. We are completing an additional 50-car track at North Kearny for loading and unloading, with storage space for 400 additional trailers.

In another area, Penn Central increased its Flexi-Flo tonnage more than 30 per cent in 1971, and has even greater expectations for 1972. Flexi-Flo is a coordinated rail-highway service for high-value bulk commodities such as chemicals, foods and cement, and is operating to and from 12 key geographical distribution points.

In 1972, we will substantially expand the Flexi-Flo program, by establishing terminals in several more cities (including Philadelphia), and enlarging our existing terminals.

Penn Central has started and will expand in 1972 an entirely new service to its shippers called FACTerminal.

Freight agents serving specified territories will be able to move about freely to render "on-the-ground" services to shippers. Backup computer and communications equipment to support these agents will be installed in key cities across the railroad system in "Freight Agency Coordinated Terminals" (FACT) to centralize all paperwork. We will better serve our shippers through more efficient use of our employees and improved supervision of transportation functions. We estimate that the FACTerminal program can save the railroad several million dollars annually.

Industrial Development

In the first 10 months of 1971 Penn Central helped locate on its lines 411 new, temporary or expanded industrial facilities, with investment totaling $668 million. These plants create jobs in local communities, as well as build our traffic volume.

For 1972, some 295 industries have already expressed bona fide interest in locating along our lines. We expect continuing heavy activity as the year goes on.

We are making a special effort to encourage new industrial parks along our lines. We now serve 302 industrial parks, which have some 70,000 acres available for plant locations. Also, our Penn Central "land bank" offers 188 separate parcels in 14 different states totaling about 20,000 acres for new industries.

EXCESS CREW LAWS

In collaboration with other railroads, we are continuing our vigorous efforts to obtain repeal of antiquated state laws requiring unnecessary personnel on freight train operating crews. In Penn Central territory, these laws are now in force in only two states, Ohio and Indiana. A New York law requiring a freight train crew of five men was repealed during 1971.

Ohio requires a five-man crew. Indiana requires a six-man crew on freight trains of 70 cars or more. These two laws cost Penn Central approximately $25 million in 1971.

A Bill to repeal the Ohio law has passed the House and has been carried over for action in January, 1972, by the State Senate. A repeal Bill has been filed with the Indiana General Assembly and will be before the 1972 Session when it convenes in January.

Savings inherent in repeal of these laws will not be realized until settlement on a national basis of the locomotive firemen issue and displacement through attrition of employees involved.

PROGRAM TO RATIONALIZE THE PLANT

Studies are underway to determine the viable sections of the Penn Central. In this regard more than 90 per cent of our gross ton miles is handled on about 60 per cent of our route mileage. However these studies may come out, it is vitally important that we discontinue non-productive lines which cannot be justified.

To date, we have determined there are 163 such lines covering 1,732 miles of railroad. Applications for abandonment of 117 of these lines have already been submitted to the Interstate Commerce Commission. We have orders approving 45 of them. Approximately 3,000 additional miles of line are being studied to determine whether abandonment should be proposed.

In continuing studies, we will consider several thousand miles of feeder and tributary segments of our railroad. We need to weed out functionally duplicative lines and mileage not required in terms of future traffic patterns.

AMTRAK CONTRACT SERVICE

Since May 1, payments from Amtrak for intercity passenger service have aided our cash flow. By the end of the year we will have received an estimated $16 million in net cash payments, after provision for our monthly payments on purchase of Amtrak stock in order to join the corporation.

We feel there is inadequate compensation for us in the present contract especially in the Northeast Corridor for passenger expenses we incur which are common with freight service such as maintenance of way, signaling, communications, etc.

We hope during 1972 to being renegotiating our present contract with Amtrak to provide more adequate compensation for our costs of these operations.

COMMUTER SERVICE

During 1971 Penn Central continued to move in all of its commuter areas toward the assumption by public authorities of total financial responsibility for providing these essential passenger services. Until this objective is accomplished, our commuter service deficits are being minimized through a variety of contractual agreements with State or regional transportation authorities in Boston, New York, Philadelphia, and northern New Jersey.

We are trying in Boston and northern New Jersey to have reinstated fare increases granted but suspended because of the national economic program. A 3 per cent increase on the New Haven Division will become effective on January 1 and a fare increase in the Philadelphia area is pending.

On January 1, 1971, we entered into agreement with the States of New York and Connecticut for these States to assume the former New Haven commuter service between New York City and New Haven, Connecticut.

A similar agreement with New York State for commuter services on our Hudson and Harlem branches was recently disapproved by the U.S. District Court in charge of our reorganization. We are now working to resolve this problem.

In the Philadelphia area, the Southeastern Pennsylvania Transportation Authority has recognized in our 1970–71 contract many more of our avoidable expenses. Our current contract includes an understanding that SEPTA will assume full financial responsibility for operating this service after July 1, 1972.

In northern New Jersey, where 83 passenger cars have been purchased with State funds, we are negotiating for additional State aid and have begun work on a plan for takeover by the State of the North Jersey Coast service.

In Boston, we are negotiating with the Massachusetts Bay Transportation Authority for continuation of that city's rail commuter network on a permanent basis. At the same time, we are working out arrangements for keeping this service operating until a takeover is accomplished.

BUSINESS AND LABOR CLIMATE—1972

In 1971 Penn Central received $170 million less in revenues than originally projected, mainly because of strikes in key industries and the generally sluggish national economy.

The 1972 outlook in this regard is much brighter. All major industries served by the Penn Central (such as autos, steel, coal) have contracts with labor unions which run at least through the whole year. Moreover, many economic experts in the nation look for a business upturn in 1972, and this should add to the railroad's gross revenues.

A 5 per cent increase in gross revenues would bring in approximately $90 million more. Each percentage point increase above that could add $18 million.

Penn Central would be a major beneficiary if 1972 brings good business and peaceful labor relations.

SALES PROSPECTS FOR 1972

Penn Central is geared in 1972 to handle a much greater volume of business while sustaining the same high standards of service the railroad achieved in 1971.

In the year ahead, we will seek greater, profitable traffic volume, for we now have the capacity to handle substantial increases with a minimum increase in transportation expense. We intend to be fully competitive vis a vis other modes of transportation by selective freight rate increases and decreases (where warranted), in combination with special services tailored to individual shipper and commodity requirements.

In summary, during 1971 Penn Central became notably more competitive in all aspects of its operations. Our sales program in 1972 will reflect our renewed capabilities.

THE PRESIDENT'S VISIT TO CHINA

Mr. MATHIAS. Mr. President, myths and legends have surrounded our concept of the Orient since the most ancient times. In spite of all the miracle of modern communication, contemporary China has been as misty and remote as far-off Cathay of olden days. A measure of the popular curiosity and the lack of general knowledge is the fact that Marco Polo is still a folk hero of the Western World 700 years after his trip to China.

In a week, much of that is changed. The walls of the Forbidden City were pierced by the beams of television lights sending an instantaneous and vivid picture of the successors to the Ming and Manchu emperors meeting the leader of a great Western power on an equal footing and with candor on both sides. Nothing like it has ever happened in 4,000 years of Chinese history, nor in the considerably shorter chronicles of Western civilization.

And it is in the long view of history that President Nixon's trip to China must be judged. It is to the President's great credit that he has employed the great scale of history to govern his action, and has spurned the short-term gains that could result in long-term loss. Unlike some of the critics of the Shanghai communique, the President has acted in terms of decades, not in terms of days.

By setting his actions in a large historical context, President Nixon has, of course, nominated history as the final judge of his policy. We may have to wait a long time for that ultimate verdict. Meanwhile, we must each make our own decision as to whether we support the President in the position he has taken. After much study and thought on this subject, I am confident that the President is right in this matter and I offer him my wholehearted support.

Th new China policy will naturally create much discussion in the days ahead, and this is both natural and desirable. As a contribution to this debate, I ask unanimous consent that an editorial from today's Washington Post be printed in the RECORD.

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

"SELLOUT" OF TAIWAN?

Already it appears that President Nixon, of all people, will have to defend himself against the charge that in Peking he somehow sold out Taiwan. The basis of the charge seems to be that in the joint communique released in Shanghai, he did not reiterate the American treaty commitment to Taiwan, even while he pledged to withdraw all American forces and military installations from Chiang Kai-shek's island redoubt. Regular readers of this page know that we have had our reservations about the Peking summit. The charge that the communique presages the abandoning of Taiwan to a Communist onslaught, however, strikes us as insupportable. There may be other questions to raise—of these, more in time—but hardly this one.

Would Premier Chou En-lai have signed a document in which the United States asserted a commitment to defend against Peking's "armed attack" a government which Peking regards as an interloper on territory of its own? Of course not. In a news conference in Shanghai, however, Henry Kissinger, the President's chief adviser, said: "We stated our basic position with respect to this issue in the President's world report in which we say that this treaty will be maintained. Nothing has changed on that position."

In that report, Mr. Nixon said: "With the Republic of China, we shall maintain our friendship, our diplomatic ties, and our defense commitment." If it is contradictory for him to seek improved ties with Peking and at the same time to maintain a treaty commitment to Taiwan, then it is a contradiction which Peking is ready to accept in the interim for other reasons—mostly anti-Soviet reasons—of its own.

Look closely at the allegation that, by finally acknowledging publicly and unequivocally that "there is but one China," Mr. Nixon has undermined Chiang Kai-shek. On the contrary, this has been Chiang's (as well as Mao's) contention all along. Logic may some day demand that the United States grant one or the other's claim to represent that "one China." Politics tolerates, at least for now, the compromise—suspended judgment—which Mr. Nixon has just struck.

Look closely, too, at President Nixon's pledge in the Shanghai communique to withdraw American forces from Taiwan. He described withdrawal as an "ultimate objective"—no timetable, no tie to any other event—and said it was being pledged with the prospect of a peaceful settlement of the Taiwan question by the Chinese themselves in mind. "In the meantime," forces will be reduced, he went on, "as the tension in the area diminishes." The context and Mr. Kissinger's later comment made plain that Washington alone will be the judge of whether "tension in the area" diminishes; moreover, that "area" involves "the general state of relationships in Asia and in the world."

Then, the United States has never promised to keep troops and run bases in Taiwan, only to help to defend it ("in accordance with its constitutional processes") against "armed attack." Article VII of the U.S.-Taiwan mutual defense treaty, written in 1954, gave Washington "the right to dispose such United States land, air and sea forces in and about Taiwan and the Pescadores as may be required for their defense." But, Secretary of State Dulles told the President and Senate, Article VII "does not make such disposition automatic or mandatory." Reporting out the treaty, the Senate's Foreign Relations Committee added: "We are free to station forces or not, as circumstances may indicate."

As it is, until the Vietnam war there were never more than a few hundred American personnel on Taiwan, the low number reflecting an American consensus that no Communist attack was likely. Some 9,000 or so extra Americans were sent there to support operations in Vietnam; their ranks had already begun to be thinned as requirements in Vietnam diminished. Having previously celebrated that thinout as proof of the success of Vietnamization and as evidence of the Nixon Doctrine at work, the Nixon administration is now giving it a third outing, this time as a gesture of accommodations to Peking.

In all, we see no substantial grounds for any charge that Mr. Nixon is abandoning Taiwan. The striking fact is that China was willing to receive him *without* securing a firm American pledge on withdrawal; this lapse we attribute chiefly to Peking's wish to warm relations with Washington in order to stand off far harsher pressures from Moscow. If anyone is to suffer politically for the communique's statements on Taiwan we suspect it will be Chou En-lai.

ADDRESS BY SENATOR HUMPHREY BEFORE NATIONAL FARMERS UNION CALLS FOR ADVANCE FEED GRAIN PAYMENTS

Mr. MONDALE. Mr. President, yesterday in Houston, Tex., my distinguished colleague from Minnesota (Mr. HUMPHREY) addressed the National Farmers Union convention. He called upon the administration to begin making advance payments to producers who have signed up for participation in this feed grain program. He asked that at least one-half of the payment each producer is entitled to receive under the program be paid to him immediately. In that payments under this year's program are estimated to total $2 billion, such a move would add $1 billion to the pocketbooks of farmers, and subsequently to the cash registers of thousands of main-street businesses.

Mr. President, Senator HUMPHREY's request points out the need for this type of resolution. With planting time approaching, farmers will be faced with heavy expenses. They will need all the cash that can be made available to them. I am introducing a Senate joint resolution on this matter so that the entire Congress can join us in calling upon the administration to implement advance payments to feed grain program participants.

Mr. President, I ask unanimous consent that Senator HUMPHREY's speech be printed in the RECORD.

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

REMARKS BY SENATOR HUBERT H. HUMPHREY, FARMERS UNION NATIONAL CONVENTION, HOUSTON, TEX., FEBRUARY 28, 1972

It is always a great pleasure for me to be among my Farmers Union friends, especially at one of their National Conventions.

My only regret on this occasion is that your Vice President, and my close and dearest friend, Ed Christianson is still ill and can't be with us.

Already Dr. Butz is out on the campaign trail trying to tell farmers how good they have it and claiming that 1972 will be a banner income year for farmers.

Well, the Administration isn't going to get away with it.

The Nixon record on the needs of farmers and the needs of rural America is one of failure and neglect—no ifs, ands, or Butz.

It's time for Mr. Butz to start levelling with the American farmer.

It's time for him to level about his personal efforts to kill the House Grain Reserve bill and the 25 percent increase in loan rates for 1971 and 1972 feed grain crops.

It's time for him to start levelling about

the fact that he has opposed nearly every bill in Congress to improve farm income.

It's time for him to start levelling about the fact that the Nixon Administration continues to sit on nearly half a billion dollars in funds appropriated by Congress that could truly help farmers and rural America: $75 million in farm operating loan funds; $58 million in water and waste facility grant funds; $107 million in REA loan funds; $240 million in Forest Service funds.

It's time for him to admit the total failure of the Administration's so-called "set-aside" program for wheat and feed grains last year, and the fact that dependence on the program again this year is going to result in economic destruction for many grain producers.

It's time for Mr. Butz to start levelling about the fact that Administration negotiators in international trade discussions are relying on low-priced farm commodities to subsidize U.S. trade balances.

In short, it's time the Administration realized that the American farmer is in deep economic trouble. He needs help now.

The Agriculture Department already has estimated that feed grain producers will agree to set aside sufficient cropland to qualify for payments of approximately $2 billion.

I call on the Administration to release at least half of this money now to provide cash for farmers at planting time when their expenses are greatest.

The practice of providing an early partial payment of the subsidy is standard practice under the old 1965 farm act.

The Department is going to pay this money out in July anyway. If we make it available to our farm families now when they are spending heavily to prepare for planting, it will have a significant effect on the rural economy at a time when it desperately needs help.

The early payment release is just one of a series of measures the Administration should adopt now if it is really serious about helping the American farmer.

Instead, the Administration is trying to peddle a phony election year line that these are good times on the farm. You and I know better. The Nixon Administration farm record is riddled with Butz.

In addition to the early subsidy payments I call for:

Passage of my new grain reserve bill with its mandatory provisions to increase by 25 percent the loan rates for wheat, feed grains and cotton.

Increasing this year's dairy price support level to not less than 90 percent, a proposal I have introduced in the Senate.

Immediate release of funds appropriated by Congress for farm and rural development purposes.

Passage of the Humphrey-Talmadge Consolidated Rural Development Credit Act, to provide funds for a wide range of urgent rural development projects from education to medical care to recreation and conservation.

Seventy million Americans or 35 percent of the nation's population live in Rural America. They live and work on our farms, work in our forests and in our smaller communities.

The needs of these people are not much different from those of other Americans. They need decent housing, good jobs, adequate health care, a good education and the opportunity to live a happy and secure life in a free society.

Yet many of the people living in Rural America today do not experience the fulfillment of those basic wants.

Half the nation's poor live in Rural America despite the fact that only 35 percent of the nation's total population reside there.

Rural America accounts for 66 percent of all substandard housing units in the country, but receives only 16 percent of all federal housing assistance.

Federal per capita outlays for health services are four times greater in metropolitan areas than in rural areas.

Per capita federal outlays for training and development are three times greater in metropolitan areas than in rural communities.

Close to 30,000 small communities in this nation are in need of new or improved water and waste disposal systems.

And the list goes on and on . . . all pointing up one basic fact—people living on our nation's farms and in our nation's rural areas and smaller communities have been left behind and abandoned and forgotten by federal and state governments.

We must all work to change that now.

But this Administration isn't going to act. And President Nixon is the only man I know who consistently comes up with revolutionary programs to maintain the status quo.

The man who is elected President this year will be setting the policies that will make or break the American farmer not only in the next four years, but throughout the 1970's.

The next President must be a man who understands the American farmer and his problems, a man who cares about the continuation of the family farm system and its importance not only to rural America, but to the entire nation and countries around the globe.

Throughout my public life, I have fought the battle for decent farm income and for equality of rural opportunity. I don't intend to abandon that fight now.

DELAYS IN LITIGATION

Mr. GURNEY. Mr. President, like so many lawyers today, I am deeply troubled by the shocking delay which presently occurs regularly in our courts. The civil litigant faces near interminable delay in pressing a simple personal injury action. The criminal defendant may spend half of what eventually becomes his sentence merely waiting for his trial to take place.

Our judges—particularly on the appellate level—spend considerable time at their jobs. Much time, however, is lost because of multiple sittings at simple hearings, poor scheduling, and an insufficient number of jurists.

Judge George Edwards, presently of the U.S. Court of Appeals for the Sixth Circuit and a former member of the Supreme Court of Michigan, has written a most cogent article on appellate court delay. It appears in the February 1972 issue of the American Bar Association Journal.

While I do not agree with all the proposals discussed by Judge Edwards, I recommend the article to Senators and 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:

EXORCISING THE DEVIL OF APPELLATE COURT DELAY

(By George Edwards)

The United States Court of Appeals for the Sixth Circuit has taken steps to make better use of judicial time. Legal research, legal scholarship and time for judicial contemplation are essentials for sound appellate decision making, but a court must manage its own docket, and a judge must manage his own time. The Sixth Circuit employs appellate argument as an intimate part of the decisional process of the court.

Life being what it is in these United States in 1972, judicial time is one of the most critical items in our society. A recent leading article concerning the federal appellate courts has termed their crowded dockets a threat to the national law.[1]

In a lifetime I have seen efficiency studies of almost every aspect of American life, from how to mop a floor to how to teach mathematics or how to manage a giant corporation. But discussion of efficiency and economy in the employment of court time and time for judicial decision making are topics that until recently have seemed largely taboo. The reason, of course, that no judge wishes to run the risk of being accused of advocating production-line justice.

I yield to no one in my desire to see the appellate courts of our country pursue justice with care and devotion. I deeply believe in individualized justice and consider legal research, legal scholarship and time for judicial contemplation to be essentials for sound appellate decision making. But I also believe in court management of the court's own docket and in a judge's management of his own time.

WHY EFFICIENT COURT MANAGEMENT IS IMPORTANT

A concern for efficient court management to achieve current dockets and to prevent duplication of judicial effort is as important in judicial affairs as it is in any other aspect of modern life. There are measures that lead toward more effective employment of judicial time without in any way decreasing the quality of appellate justice. They require the skilled use of all of the tools of the judicial trade. Judicial efficiency should not be regarded as reflecting adversely on the quality of a judge's decision making any more than the use of modern tools is a reflection on the craftsmanship of a carpenter.

My concern for efficient judicial procedures comes from sheer necessity. It is based on experience that many appellate judges will find typical. My first appellate work was in the Supreme Court of Michigan. There, as a member of a state court of final jurisdiction consisting of eight members, I sat in 300 to 350 cases a year, plus 600 to 800 motions. Most years I wrote between fifty and sixty formal opinions. That workload, I might add, seemed to me intolerably high and destructive of the possibility of effective and concerned review of every case by every member of the court. Along with other members of the court, I spent a good deal of time advocating the creation of an intermediate court of appeals, which has now come into being.

For the past eight years I have been a member of the United States Court of Appeals for the Sixth Circuit. We now have nine judges, but, according to federal law, we divide our membership into panels so that the working courts consist of three judges, unless the full court itself determines to sit en banc. Nonetheless, with the vastly increasing caseload of the federal courts, our judges are now sitting in 200 formally argued appeals a year, and I again find myself writing fifty to sixty opinions a year, not including dispositions by orders. Like many judges, I have had to get used to an appellate production schedule of better than one opinion a week. As a consequence, I would travel (and have traveled) miles to listen to anyone who might tell me how to save five minutes a day. Indeed, in regard to what follows, I have borrowed ideas from every source available.

APPELLATE COURT DOCKET MANAGEMENT

From 1960 through 1970 the appeals filed with our court tripled—from 306 to 921. The number of our active judges increased by only two—one third. By 1967 our backlog had tripled. In 1966, aware of the trend, our then chief judge, Paul C. Weick, appointed a committee to look into possible docket manage-

Footnotes at end of article.

ment techniques that might aid the court in performing its work more expeditiously.

My assignment was to see what other courts were doing. I read the rules of the United States Supreme Court and the local rules of all the other circuits, and we proceeded to borrow every idea that appeared to have any possible merit.

By this process we added to our local rules: (1) Rule 7(e) providing for a summary calendar for cases deemed to need only fifteen minutes' argument on a side; (2) Rule 8 providing for dismissal of frivolous appeals whenever by motion or otherwise such an appeal came before a panel of the court; and (3) Rule 9 providing for motions to dismiss appeals for want of jurisdiction or to affirm a judgment on the ground that it is manifest that the questions sought to be reviewed are so insubstantial as not to need further argument. All of these rules are borrowed. But my recollection is that no circuit then employed them all.

We then added a rule (Rule 3(e)) that we devised. It provides:

"(e) *Docket Control.* In the interest of docket control, the chief judge may from time to time, in his discretion, appoint a panel or panels to review pending cases for appropriate assignment or disposition under Rules 7(e), 8 or 9 or any other rule of this court."

Under Rule 3(e), routinely at each hearing session two panels of judges screen all cases (half of the cases to each panel) scheduled for hearing at the next hearing session. They are aided by a staff law clerk memorandum. At these sessions we note and dismiss under Rule 8 appeals in habeas corpus cases in which the district judge denied relief for appellant's obvious failure to exhaust state remedies, or where a *pro se* appellant has filed a diversity suit without meeting the jurisdictional requirements, or where some party is appealing in the face of recent and patently controlling Supreme Court decision. At these sessions we also catch and remand to the district court before appellant hearing some postconviction motions in which the court has denied a hearing but the pleadings and record appear clearly to demand one. Frequently, also, we decide procedural motions that might take appellate hearing time or occasion an appeal to be scheduled for hearing and then be postponed.

Over and above this, in relation to all the cases that appear ready for hearing, we decide which should go on the regular docket for an hour's argument and which should be assigned to the summary calendar for a half hour (fifteen minutes on each side). Our present chief judge, Harry Phillips, who along with Judge Wade H. McCree was a member of the court committee that recommended these rules, has been able to increase the total number of cases scheduled for argument by 30 per cent in the past three years. All our active judges have cooperated fully in this docket management effort.

The results of all this (plus, of course, the addition of two judges and co-operative work on the part of our three senior judges) are dramatically portrayed below:

Fiscal year	Filed	Terminated	Pending
1961	340	324	215
1962	394	329	280
1963	374	341	313
1964	513	404	422
1965	638	497	563
1966	603	510	656
1967	717	687	686
1968	793	818	661
1969	868	947	582
1970	921	1,004	499

Our backlog of appeals pending peaked in 1967 at 686 cases. In 1968, 1969 and 1970, in spite of continued substantial increases in filings, the court cut substantially into the backlog by dint of even greater increases in dispositions. On July 1, 1970, the backlog of pending appeals was down to 499. In the 1970 June term our court heard every appeal that was ready for argument for the first time in thirty-five years. Since then we have managed to maintain that record, and we hope to be able to continue to do so indefinitely.

The fiscal year of 1971 (ending June 30) has not changed the picture appreciably. We have continued to hear all or practically all of the appeals ready for argument at each term of court. For the second year in our history, court dispositions totaled over 1,000 cases. The increase in cases filed, however, pushed filings to another all-time high and added fourteen cases to the backlog.

INCREASING THE JUDICIARY IS ONE BASIC ANSWER

It has become popular in judicial circles to say that increases in the number of judgeships are not the solution to the problem of crowded dockets. While I do not think that the sole answer to handling court workloads is increasing the judiciary, it certainly is one basic answer of continuing importance. There has been a tendency to suggest or agree that the number of judgeships should be expected to increase in ratio to the increases in population. On the contrary, it is much more logical for judicial manpower to be increased in relation to increases in litigation—the workload of the courts—and increases in litigation seem much more likely to follow real increases in gross national product than to parallel population statistics. In any event, our court would not have achieved the current status of its docket had we not recommended and had Congress not approved the addition of three judges, one of whom was inducted in 1966, another in 1967 and the last in 1971.

The fact that our court is current with its docket makes possible some time saving that otherwise could not take place. First, appeals that are designed only for delay hardly are worth the effort. Second, we now frequently avoid repetitive handling of complex appeals. If injunctive relief is sought pending hearing on the merits of a case, by stipulation or order we simply may preserve the *status quo* and advance the case for final hearing on the merits. The decision to advance the *Upjohn* case (*Upjohn* v. *Finch*, 422 F. 2d 944 (6th Cir. 1970)) and hear it on the merits is typical of many instances in which, much to their surprise, some litigants have found that they not only could obtain quick hearing before our court but a quicker hearing than they may have wanted.

While the innovations I have described have made genuine contributions, some long-standing traditions of the Sixth Circuit have helped.[2] Our court has jurisdiction over appeals from four states—Michigan, Ohio, Kentucky and Tennessee. Cincinnati is the most central large city in our circuit, and we meet there five times a year, three weeks at a stretch, for appellate hearings. Most judges stay all three weeks. We lunch together at one big table every working day. During hearing sessions we are in constant contact and are always available to each other, not only at the formal sessions, but in our offices, at lunch and frequently in the evenings. It makes for far simpler and more efficient conduct of business if one can walk into a fellow judge's office and work out a problem, than if one has to put the problem down on paper and depend on an exchange of letters to settle it.

This system of court operation has been in existence in the Sixth Circuit for many years. It may well account for the fact that social amenities in our court always have been given high priority. Courtesy and friendliness do not diminish devotion to principle by any member of our court. But it is true that we don't snarl at each other in competing opinions, and no judge goes out of his way to impede, complicate or delay another judge's work. There is a tendency freely to share ideas and suggestions with the judge who is writing the opinion and a general willingness on that judge's part to accept another's ideas in an effort to avoid multiple opinions.

TIME SAVING FOR THE INDIVIDUAL APPELLATE JUDGE

Every appellate judge has his own system of work. I do not suggest that mine is superior to that of any other judge or that it would necessarily work for him. But I would like to know his system on the chance I could use some portion of it. In any event, here are my observations on management of judicial time drawn from experiences on our court.

Preparation for hearing. We have five hearing terms a year. At each term each judge sits in forty appeals. We receive the briefs and records in our assigned cases at least three weeks in advance. It is our tradition that each judge be prepared in advance for oral argument. This means, of course, that we shall have read the briefs, the trial judge's opinion or order and the appendices to the extent that seems necessary and possible. (We have antitrust and patent cases in which the appendices come in boxes!) Frequently, particularly in criminal cases, one or more judges on the panel will have read the entire record—sometimes to the embarrassment of lawyers who have not.

By the time of oral argument I try to be ready for actual decision making. I have read the briefs, appendices and authorities to the extent possible. My law clerks have done the same thing (each as to half of the cases on which I sit), and I have a written memo prepared by a clerk on each case. In a couple of pages the clerk seeks to state the facts, outline the important issues and list what he believes to be the authorities relied upon by the competing parties. I will have read his memo and employed it to determine in part what else to read. Prior to hearing I rarely write anything.

Appellate hearing. I seek to employ the appellate hearing as part of the decisional process. Most of my colleagues do, too. Few lawyers are allowed the luxury of a jury argument before our court. If they are able to follow the organized presentation they may have contemplated, it is because they have planned to meet rather than to avoid the difficult questions in their case. If the difficult questions are ignored in an appellate argument, they almost certainly will be asked by some member of the court.

I know that in a more relaxed day the tradition was different, and an interruption of flow of an appellate argument was felt to call for an apology. But, just to give one example, I know no reason why three judges—all of whom have read the briefs, presumably the party's best organized and most comprehensive statement of his case—should sit through half an hour of argument on the merits of a dispute when they have grave doubts that the lower court had jurisdiction of the case in the first place. The questions I ask are the ones that are going to bother me in deciding the case. When I get a chance, I tell the lawyers of the Sixth Circuit they ought to look on appellate argument as a chance to participate for an hour in the decisional conference of the court, with voice but without vote.

At this point our court procedures part company with those of our brothers in the Fifth Circuit. Following our adoption of the court rules referred to above, the Fifth Circuit adopted similar ones. In both case and article references judges of that circuit have pointed to resulting docket gains.[3] But it is clear that their summary calendar classification has been employed to dispense with oral argument in a substantial number of cases—at least some of them being cases that could not be described as "frivolous".[4]

Footnotes at end of article.

ORAL ARGUMENT IS ALWAYS OF GREAT IMPORTANCE

Our court values oral argument and, like the Second Circuit, relates its worth directly to the court's decisional conference. In a book entitled *Appeals to the Second Circuit*, prepared by a committee of The Association of the Bar of the City of New York, we find these comments:

"The oral argument is always of great importance. For the appellant to forego oral argument is usually considered by the judges as a confession of the weakness of the appeal. The Second Circuit does not encourage submissions without argument: the Court will listen to one side even if the other submits. Only 2% of the cases are submitted, a smaller percentage of submissions than in any court except the Supreme Court.

"The importance of oral argument is emphasized by the fact that in about 75% of the arguments the case is finally decided in accordance with the impression which the judges have as they leave the bench. Probably 20% is a fair estimate of the proportion of cases in which the judges have no firm impression one way or the other at the conclusion of the argument. In the remaining 5% of the cases the decision finally arrived at is contrary to the impression after oral argument. While it is quite true that the impression after oral argument derives from the reading of the briefs as well as from the argument, it is also true that the impression from reading the briefs is frequently changed or modified by the oral argument.[5]"

This comes close to applying to the Sixth Circuit also. The only cases we do not schedule for oral argument are those that we feel appropriately could be termed "frivolous", although we may employ the more polite language of Rule 8. The only cases that are submitted on briefs in any number are prisoner appeals in postconviction remedy cases in which the court has already decided a direct appeal or at least one petition for postconviction review, and the subsequent postconviction petition has not been deemed of sufficient substance to warrant appointment of counsel.

I believe that oral argument is of great assistance to the court. It is particularly valuable in arriving at a "court" decision rather than a one-judge decision or separate decisions by three judges arrived at individually.

Court conference and assignment. Our conference on argued cases occurs imdiately after the day's hearings close. We approach it with the intention of arriving at tentative decisions in as many as possible of the four or five cases we have just heard.[6] There is a tradition of frank and open expression of individual judges' views, and while many cases look essentially the same to all members of the panel, as to others there is lively discussion and debate. Decisions are recorded in well over a majority of the cases at this conference. There are many instances when subsequent study and further conferences serve to reverse the original tentative decision, but the percentage of these changes is small.

An effort is also made at this conference to agree on assignment for opinion writing of all cases as to which there is tentative decision.

Immediately after the conference, one of the panel (we rotate the job) writes a report on each case to the chief judge. This panel report is served on each active member of the court (including senior judges) and encompasses a brief statement of the facts, the issues, the tentative decision and the recommended assignment if any has been reached. After the three weeks of hearings, the chief judge sends out the assignments for the past term. Each judge receives an average of thirteen cases, usually divided about evenly between opinions and *per curiams* or orders. And he knows that five or six weeks later he will begin another term when he will sit in another forty cases. Can the need for efficiency be debated?

Posthearing memorandum. The most useful single tool in the handling of appellate work is the posthearing memorandum. I prepare this memorandum the afternoon of the hearing. I record the essential facts, attempting to state the decisive issues, record what I believe to be the possibly controlling authorities and note any issues on which additional research seems needed. And I put down my own thoughts on the merits of the case—tentative or definite as they may be—as well as the views of my brethren on the panel.

In any later contact with the case, whether assigned to me or to another judge, this posthearing memorandum is the working paper with which I start. In a case assigned to me for disposition, in which the panel has reached what it felt to be a clear-cut decision following established precedent, sentences from the memorandum may be adapted to represent an order of the court disposing of the case. I also fashion some *per curiams* by a careful reworking of this posthearing memorandum. Most *per curiams* and all opinions, however, I write entirely by hand. But even with these, the posthearing memorandum is useful in unfreezing the pen, in stating the posture of the appeal and in getting started on the statement of facts.

One of the greatest advantages of the posthearing memorandum may be realized in dealing with opinions written by brother judges. In particularly difficult cases there tends to be some delay in writing and circulation. If an opinion arrives several months after argument, memory of the case may have become dim. The words of my brother, however valid or eloquent, may do little for my own recollection. But all I have to do is pick up my own posthearing memorandum, and memory of the facts and the issues as I saw them on the day of hearing and the conference comes flooding back.

Recently I had occasion vividly to renew these impressions. One of my fellow judges served a lengthy opinion in a somewhat difficult patent case involving a lengthy record and a great deal of money. I read it with dim recollection of the case. On reading my own two and a half page posthearing memorandum, however, I remembered the case and its problems.

The law of evidence and the science of psychology both testify to the great value in stimulation of memory of a memorandum written contemporaneously to past events. Knowledge which the mind has grasped is retained in great detail for a day or two, but useful memory of specific facts and impressions diminishes rapidly thereafter.[7] The law of evidence, in making contemporaneously written memoranda available to refresh the memory of a witness,[8] testifies to the value of these writings in stimulating memory.

Judge's agenda. No one has the authority to tell an appellate judge when he must make a decision. As a consequence, we sometimes have a staggering problem of self-discipline. I could not deal effectively with that problem without daily and weekly agenda.

On receipt of our opinion assignments, I determine by what I know of the cases assigned to me (the posthearing memorandum helps on this) what I think I can accomplish prior to the next hearing term. To each assigned opinion I seek to allocate a full week, with a day to several days to each *per curiam* opinion. I try to write orders immediately on assignment.

On Monday of every week the agenda tell me what opinion I must seek to write. Invariably I make a serious effort in that direction but sometimes fail. There are cases of such moment as to take months of work. There are, however, many more cases of less magnitude which nonetheless do not lend themselves to resolution without study and thought and delay for contemplation. But even as to this last category, I rarely reach the following Monday without a rough draft opinion that contains at least the facts and the issues, even if I have not yet been able to resolve them to my satisfaction. This type of case I lay aside for rumination. Frequently on coming back to it two or three weeks later I find that what seemed so difficult has now become much easier and that a solution is within grasp.

Most mornings I prepare the agenda for that day and try to cross off the items before I leave at night. But the opinion scheduled for that week heads all daily agenda.

Law clerks. Law clerks are the most obvious aid to the time-pressed appellate judges. I use the two the Federal Government now allows me to save time in every way consistent with judicial duty. But no law clerk has ever written an opinion for me—or ever will. And I reject the incorporation in an opinion of language from a law clerk's memorandum. If I write a sentence, I know what it means. If I copy a sentence, I am by no means so certain.

My clerks live with the cases assigned to me in much the same way I do. They write a prehearing memorandum on each case, and it almost invariably proves to be a valuable part of my preparation for the hearing of the case. I never encourage their writing for disposition of a case before oral hearing and the court's conference. After assignment of the cases, I may assign specific legal issues for in-depth research by the law clerks. From this point forward, I encourage them to think toward disposition and freely to argue for whatever point of view they may reach. I find our oral discussion of issues to be stimulating and helpful. Usually I read rough drafts of my opinions to my clerks and invite, receive and frequently use comments, suggestions and criticism.

Aside from reasoning with them, I use my law clerks ruthlessly to save my time. As the first item, the clerk who is working with me on a case accumulates and leafs every case that may be in point for decisional purposes. When I reach a particular issue, I sit down at the library table with anywhere from several to twenty-five cases at hand and read them through—usually at one sitting—and frequently while dictating notes or page citations.

LAW CLERKS HELD RESPONSIBLE FOR ONLY THREE THINGS

I value and cherish my clerks, but I hold them absolutely responsible for only three things: (1) running the citator on every case I cite, (2) meeting me on time whenever I ask them to and (3) getting along with my invaluable secretary.

Office machinery. These time-savers are even more obvious ones. How did we used to run law offices without copying machines, electric typewriters and dictating equipment? I carry a portable dictating machine with me most of the time and use it constantly—at home, in hotels and in planes. The item that needs to be finished tomorrow is put on the agenda and is finished. The decisional phrase that I think of at 6 a.m. is saved for a subsequent opinion draft.

We now type only an original copy of an opinion. All corrections are made on that copy, and the final version is run through the copier. I cannot estimate how much time the portable dictating machine and the modern copier have saved for me and my staff.

The clerk of the Supreme Court of Michigan when I joined that court in 1956 had for a lifetime employed the most efficient correspondence method possible. He handled all correspondence from lawyers by dint of writing the answer on the bottom of the lawyer's letter and simply mailing the letter

back to him. When I discovered that our court had no correspondence files and no record of the clerk's actions, I took some steps to get the court to change this practice. But I never lost a sneaking admiration for its efficiency. We in the Sixth Circuit now use this system extensively in intra-court communications, but the copier allows us quickly and inexpensively to maintain our records, too.

WE CANNOT AFFORD TO IGNORE BRITISH EXAMPLE

Lest this discussion of speed, production techniques and efficiency may have caused some mental anguish, I close with this memory of a legal system well known throughout the world for a concern for due process and individualized justice.

In 1963 I served as a member of the American team in the British-American criminal trials teams exchange. For three weeks our British counterparts—judges, prosecutors, defense lawyers and police personnel from Scotland Yard—showed us the operation of British criminal justice. It was an impressive and, comparatively speaking, a highly civilized display. Not the least impressive day we spent on benches in the High Court of Criminal Appeals hearing oral argument in four important felony cases. This was Britain's general equivalent of our Supreme Court as far as these litigants were concerned.

In each of the four cases the three justices listened extensively and attentively to the barristers who argued the cases and questioned them with interest and vigor. At the end of the argument of each case, the three justices conferred together on the bench, occasionally consulting legal volumes. And then in each case the distinguished Lord Chief Justice of England, then Lord Parker of Waddington, delivered the opinion and the final judgment of his court orally from the bench. In no one of the cases had more than four months elapsed from the time of the bringing of the original charge to the final decision of the highest court.[9]

I know many reasons why we cannot and probably should not compete with that record. We should not, of course, forget that our country was born in revolt against the British government as it then existed. Some of the most cherished aspects of American democracy (for which Britain has no counterparts) are a written Constitution, separation of powers of government and the Bill of Rights. Our forefathers designed these as checks on governmental authority. They may require somewhat slower court procedures than the British courts employ.

But when British courts take months for final disposition of a case, there are some court systems in our country in which disposition of the same case would take an equal number of years. While this can be said, we cannot afford to ignore the British example or to disregard any appropriate means of eliminating needless appellate delay.

FOOTNOTES

[1] Carrington, *Crowded Dockets and the Courts of Appeals: The Threat to the Function of Review and the National Law*, 82 HARV. L. REV. 542 (1969); see also Shafroth, *Survey of the United States Courts of Appeals*, 42 F.R.D. 242 (1968).

[2] See Phillips, *A Survey of the United States Court of Appeals for the Sixth Circuit*, 1970 U. TOL. L. REV. 63.

[3] *Groendyke Transport, Inc.* v. *Davis*. 406 F. 2d 1158 (5th Cir.), *cert. denied*, 398 U.S. 1012 (1969); Bell, *Toward a More Efficient Federal Appeals System*, 54 JUDICATURE 237 (1971); Bell, *Expedite the Disposition of Litigation*, 10 TRIAL JUDGES' J. 1 (1971).

[4] See *Murphy* v. *Houma Well Service*, 409 F. 2d 804 (5th Cir. 1969); *Huth* v. *Southern Pacific Company*, 417 F. 2d 526 (5th Cir. 1969).

[5] COMMITTEE ON FEDERAL COURTS, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, APPEALS TO THE SECOND CIRCUIT 33 (1970).

[6] See Molinari, *The Decisionmaking Conference of the California Court of Appeal*, 57 CAL. L. REV. 606 (1969).

[7] Hutchins and Slesinger, *Some Observations on the Law of Evidence Memory*, 41 HARV. L. REV. 860 (1928).

[8] 3 WIGMORE, EVIDENCE § 758 (Chadbourn rev. 1970); 4 JONES, EVIDENCE § 964 (5th ed. 1958).

[9] See KARLEN, ANGLO-AMERICAN CRIMINAL JUSTICE, 177, 228 (1967).

RULES OF THE COMMITTEE ON PUBLIC WORKS

Mr. RANDOLPH. Mr. President, section 133B of the Legislative Reorganization Act of 1946, as amended by section 130(a) of the Legislative Reorganization Act of 1970, requires the rules of each committee to be published in the CONGRESSIONAL RECORD not later than March 1 of each year. Accordingly, I ask unanimous consent that rules of the Committee on Public Works be printed in the RECORD.

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

U.S. SENATE, COMMITTEE ON PUBLIC WORKS

I. RULES OF PROCEDURE

Rule 1. *Regular Meeting Days.*—The regular meeting day of the Committee shall be the first and third Thursday of each month at 10:00 a.m. except that if there be no business before the Committee, the regular meeting shall be omitted.

Rule 2. *Committee Meetings.*—Subject to section 133(a) of the Legislative Reorganization Act of 1946, as amended, Committee meetings for the conduct of business, for the purpose of holding hearings, or for any other purpose, shall be called by the Chairman. Subcommittee meetings shall be called by the chairman of the respective subcommittee. Notice of a meeting and the agenda of business to be discussed by the Committee will be provided to all Members not less than twenty-four hours in advance of such meeting. Additions to the agenda after that time may be made with the concurrence of the ranking minority Member. Such 24-hour notice may be waived in an emergency by the Chairman with the concurrence of the ranking Minority Member.

Rule 3. *Open Committee Meetings and Executive Sessions.*—Meetings of the Committee, including hearings shall be open to the public except during executive sessions for marking up bills or for voting, or when the Committee, by majority vote, orders an executive session, or as required by section 133A(b) of the Legislative Reorganization Act of 1946, as amended.

Rule 4. *Presiding Officer.*—(a) The Chairman shall preside at all meetings and hearings of the Committee except that in his absence the ranking majority Member who is present at the meeting shall preside.

(b) Subcommittee chairmen shall preside at all meetings and hearings of their respective subcommittees, except that in the absence of the subcommittee chairman, the Vice Chairman or ranking majority member of the subcommittee who is present at the meeting shall preside.

(c) Notwithstanding the rule prescribed by subsections (a) and (b), any Member of the Committee may preside over the conduct of a hearing.

Rule 5. *Quorums.*—(a) Except as provided in subsections (b) and (d), nine Members, one of whom shall be a Member of the minority party, shall constitute a quorum for the conduct of business.

(b) Quorums for the conduct of business by the subcommittees shall be a simple majority of the membership of the subcommittee with at least one minority member present.

(c) Once a quorum as prescribed in subsections (a) and (b) has been established for the conduct of business in executive session, the Committee may continue to conduct business.

(d) Notwithstanding the rule prescribed in (a), one Member shall constitute a quorum for the purpose of conducting a hearing.

Rule 6. *Proxy Voting; Polling.*—(a) Proxy voting shall be allowed on all measures, amendments, resolutions, or any other issue before the Committee or any subcommittees. Any Member who is unable to attend the meeting may submit his vote on any such issue, in writing or through personal instructions; however, proxies shall not be voted for the purpose of reporting any measure or matter except when the absent Committee Member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. A proxy given in writing shall be valid until revoked, while a proxy given orally or by personal instructions is valid only on the day given.

(b) At the discretion of the Chairman, after consultation with the ranking minority Member, Members who are unable to be present and whose vote has not been cast by proxy may later have their position recorded on any vote.

Rule 7. *Public Announcement of Vote.*—Whenever the Committee by rollcall vote reports any measure or matter or acts upon any measure or amendment thereto, the report of the Committee on such measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each Member of the Committee.

Rule 8. *Announcement of Hearing.*—The Committee, or any subcommittee thereof, shall make public announcement and provide notice to Members of the date, place, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearing, unless the Committee Chairman or subcommittee chairman, with the concurrence of the ranking minority Member, determines that there is good cause to begin such hearing at an earlier date, in which event not less than twenty-four hours shall be given.

Rule 9. *Statements of Witnesses at Hearings.*—(a) Each witness who is scheduled to testify at any hearing of the Committee or any subcommittee thereof shall file a written statement of his proposed testimony not later than noon of the last business day preceding the day on which he is scheduled to appear. At the time of his appearance, he shall supply for the use of the Committee or Subcommittee 25 copies of his prepared testimony or such greater number as may be requested in the letter of invitation. Except for witnesses from the Federal Government, this rule may be waived with regard to field hearings.

(b) The presiding officer at a hearing may have a witness not read his written testimony and to confine his oral presentation to a summary of his statement.

Rule 10. *Regularly Established Subcommittees.*—The Committee shall have five regularly established subcommittees as follows:

Subcommittee on Flood Control—Rivers and Harbors.

Subcommittee on Air and Water Pollution.

Subcommittee on Economic Development.

Subcommittee on Roads.

Subcommittee on Buildings and Grounds.

Rule 11. *Special Subcommittees.*—With the concurrence of the ranking minority

Member the Chairman shall, from time to time, establish such special subcommittees as he deems necessary to expedite Committee business.

Rule 12. *Subcommittee Membership.*—Following consultation with the majority Members and the ranking Minority Member of the Committee, the Chairman, shall announce selections for membership of the Subcommittees referred to in Rules 10 and 11.

Rule 13. *Environmental Impact Statements.*—No project shall be approved or other action taken unless the Committee has received an environmental impact statement relative to it, in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1970, and the written comments of the Administrator of the Environmental Protection Agency, in accordance with Section 309 of the Clean Air Act.

Rule 14. *Naming of Public Facilities.*—No building, structure or facility, authorized by the Committee shall be named for any living person, except former Presidents of the United States or former Members of Congress over 70 years of age.

Rule 15. *Committee Resolutions.*—(a) The Chairman is authorized to certify and pass on Committee resolutions for review of flood control and river and harbor reports and resolutions for studies of public building projects, and forward the resolutions to the appropriate Federal agency.

(b) Proponents of Committee resolutions shall submit appropriate evidence showing need for review of reports on river and harbor and flood control projects.

Rule 16. *Amendment of Rules.*—The rules may be added to, modified, amended or suspended by a majority of the Committee Membership.

ATTORNEY GENERAL JOHN MITCHELL

Mr. FANNIN. Mr. President, shortly we are scheduled to vote on the nomination of a new Attorney General.

Today I wish to pay tribute to the marvelous work done by a great American, Attorney General John Mitchell, during the past 3 years. Under his leadership, the Department of Justice pursued a program which has put quality performance above rhetoric. He has been instrumental in carrying forward President Nixon's pledge to place the administration of justice at the top of our national priorities.

The Justice Department, under Attorney General Mitchell, made progress on all fronts—against street crime, against organized crime, against narcotics, against discrimination, against environmental pollution, and against possible monopolies.

Obviously, the Attorney General has sought to insure more than simple law and order. He has sought to bring us law and order and justice.

Responsibilities of the Department of Justice increased tremendously in recent years, and Attorney General Mitchell was more than equal to the challenge. Under his leadership the size of the Department has increased by more than one-third. Size alone, however, is no indicator of the effectiveness of a Government agency. It is my belief that the vigor and the effectiveness of the Justice Department has grown at a greater rate than the number of employees or the appropriations.

Under Attorney General Mitchell, we have a new spirit, or perhaps the revival of an old spirit, that laws are to be respected and obeyed, and that there are no groups of people—either very poor or very rich—who have an inherent right to break the law with impunity.

One of the great problems facing our Nation when Attorney General Mitchell was sworn in on January 22, 1969, was the growing international traffic in narcotics. During the past 3 years we have seen a vigorous attack on this problem. It was apparent to him that we would have to cut off the narcotics at the point of origin in foreign countries if we were to be successful in the long run. Early efforts were aimed at the United States-Mexico border area. Soon the officials of Mexico began cooperating in programs to help stamp out the illegal narcotics sources in thier country.

Likewise, we have seen great progress in winning the cooperation of authorities in Turkey and France to cripple the supply lines for illicit heroin.

Within the United States the Department of Justice has stepped up its program to apprehend and prosecute smugglers and pushers.

As Chairman of the President's National Council on Organized Crime, Attorney General Mitchell led the attack on organized crime. Strike forces were increased from seven to 18. In 30 months the number of attorneys fighting organized crime increased from 75 to 123. And this brought results—266 organized crime figures were indicted in the first 6 months of last year.

During the same period, more than 1,100 individuals were arrested as a result of grand jury actions. In 18 months, the Justice Department indicted or obtained convictions against nearly half of the estimated 25 heads of organized crime "families" in the United States.

The Law Enforcement Assistance Administration was reorganized to make it more effective in aiding State and local governments in the battle against street crime and lawlessness.

To fight pollution, the Justice Department implemented new environmental laws and dusted off some old statutes to make them effective in protecting our land, air, and water. The Refuse Act of 1899 became an especially potent instrument in this crusade.

The Department of Justice carried out vigorous programs in the fields of antitrust and civil rights. These both are delicate areas where, I believe, it is necessary to have effective but reasonable enforcement, Attorney General Mitchell made it clear that he meant business in enforcing the law in these areas.

The Justice Department also has provided the legislative initiative that has aided Congress in coping with the complexities of the 1970's. We are indebted to the Department for help in formulating such bills as the Organized Crime Control Act of 1970, the District of Columbia Reform and Criminal Procedures Act, and the Comprehensive Drug Abuse, Prevention, and Control Act.

Attorney General Mitchell has served well as an advocate of reform legislation as well as an administrator.

John Mitchell served as the 67th Attorney General of the United States. He added considerably to the stature of this office. He not only served the President well, but he did a splendid job for the entire Nation. We should all be grateful.

RULES OF COMMITTEE ON FOREIGN RELATIONS

Mr. FULBRIGHT. Mr. President, in accordance with the provisions of section 133B of the Legislative Reorganization Act of 1946, as amended, I ask unanimous consent to have printed in the RECORD the rules of the Committee on Foreign Relations. These rules were adopted by the committee on March 1, 1971, and no amendments or changes have been proposed during the past year.

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

RULES OF THE COMMITTEE ON FOREIGN RELATIONS, ADOPTED MARCH 1, 1971

COMMITTEE AND SUBCOMMITTEE MEETINGS

1. The regular meeting day of the Committee on Foreign Relations for the transaction of Committee business shall be on Tuesday of each week, unless otherwise directed by the Chairman.

2. Six Members shall constitute a quorum for the purpose of transacting Committee business.

3. Proxy voting will be permitted on all matters, except that no measure or recommendation shall be reported unless a majority of the Committee were actually present.

4. The Chairman of the Committee on Foreign Relations, or the Chairman of any Subcommittee thereof, is authorized to fix the number of Members who shall constitute a quorum for the purpose of taking testimony.

5. Except when funds have been specifically made available to the Senate for a Subcommittee purpose, no Subcommittee of the Committee on Foreign Relations shall hold hearings involving reporting expenses without prior approval of the Chairman of the full Committee or by decision of the full Committee.

6. Unless otherwise authorized by law or Senate resolution, Subcommittees shall be appointed each Congress by the Chairman. They shall be of three general types: consultative, "study" or "oversight," and ad hoc.

Consultative subcommittees are created primarily for purposes of consultation and not for the consideration of legislation.

Study or Oversight subcommittees are created to deal with specific problem areas which may or may not require legislative action originating with the Committee.

Ad hoc subcommittees are created to act on behalf of the full Committee on specific legislation or treaties.

COMMITTEE TRAVEL

No Member of the Committee on Foreign Relations or staff shall travel abroad on Committee business unless specifically authorized by the Chairman, who is required by law to approve vouchers and report expenditures of foreign currencies, and the ranking minority Member. Requests for authorization of such travel shall state the purpose and when completed, a full report shall be filed with the Committee.

NOMINATIONS

1. Unless otherwise directed by the Chairman, the Committee on Foreign Relations shall not consider any nomination until six days after it has been formally submitted to the Senate.

2. Nominees for any post who are invited to appear before the Committee shall be heard in public session, unless a majority of the Committee decrees otherwise.

3. No nomination shall be reported to the Senate unless the nominee has been accorded security clearance on the basis of a full field investigation by the Federal Bureau of Investigation, and, in appropriate cases, has filed a confidential financial statement with the Committee.

TRANSCRIPTS

1. The Committee on Foreign Relations will consider requests to testify on any matter or measure pending before the Committee.

2. If the Chairman so determines, the oral presentation of witnesses shall be limited to ten minutes. However, written statements of reasonable length may be submitted by witnesses and other interested persons who are unable to testify in person.

TRANSCRIPT REGULATIONS

1. Maintenance and security of classified transcripts.

a. The Chief Clerk of the Committee shall have responsibility for the maintenance and security of the classified transcripts.

b. A record shall be maintained of each use of the classified transcripts.

c. Classified transcripts shall be kept in locked combination safes in the Committee offices except when in active use by authorized persons. They must never be left unattended and must be returned to the Chief Clerk promptly when no longer needed.

d. Classified transcripts shall be permitted to leave the Committee offices only in the possession of authorized persons. Delivery and return shall be made only by authorized persons. They shall not be permitted to leave the city or the country, unless adequate assurances are made to the Chairman for their security.

e. Transcripts classified secret or higher shall not be permitted to leave the Committee offices.

f. Extreme care should be exercised to avoid taking notes or quotes from classified transcripts. Their contents must not be divulged to any unauthorized persons.

2. Persons authorized to use classified transcripts.

a. Members and staff of the Committee, in the Committee rooms, or, by permission of the Chairman, in their offices.

b. Senators not members of the Committee, in the Committee's Capitol offices, by permission of the Chairman.

c. Members of the executive departments in the departments, or, in the Committee's Capitol office, by permission of the Chairman.

3. Declassification of executive transcripts and other executive records.

Executive transcripts and other executive records of the Committee shall be released to the National Archives and Records Service for unclassified use in accordance with the policies of that Agency whenever all members of the Committee at the time such transcripts or records were made shall no longer be living or shall no longer be members of the Congress, and shall have given their permission for such use.

REGULATIONS FOR THE USE OF CLASSIFIED MATERIAL—OTHER THAN TRANSCRIPTS

Receipt and distribution of classified material.

1. All classified material received or originated by the Committee shall be keyed in at the Committees' offices in the New Senate Office Building, and except for material classified as "Top Secret" shall be filed in the NSOB offices for Committee use and safekeeping.

2. Each such piece of classified material received or originated shall be card indexed and serially numbered, and where requiring onward distribution shall be distributed by means of an attached, indexed form approved by the Chairman. If such material is to be distributed outside the Committee offices, it shall, in addition to the attached form, be accompanied also by an approved signature sheet to show onward receipt.

3. Distribution of classified material among offices shall be by Committee Members or staff only. All classified material sent to Members' offices, and that distributed within the working offices of the Committee, shall be returned to Room 4229 NSOB. No classified material is to be removed from the offices of the Members or of the Committee without permission of the Chairman. Such classified material will be afforded safe handling and safe storage at all times.

4. Material classified "Top Secret," after being indexed and numbered, shall be sent to the Committee's Capitol offices for use by the Members and staff in those offices only.

5. The Chief of Staff is authorized to make such staff regulations as may be necessary to carry out the provisions of these regulations.

STAFF REGULATIONS

The Committee recommends that the following concepts serve to guide the staff in its activities:

1. The staff works for the Committee as a whole, under the general supervision of the Chairman of the Committee, and the immediate direction of the Chief of Staff.

2. Any Member of the Committee should feel free to call upon the staff at any time for assistance in connection with Committee business. Members of the Senate not members of the Committee who call upon the staff for assistance from time to time should be given assistance subject to the overriding responsibility of the staff to the Committee.

3. The staff's—as, indeed, the Committee's—primary responsibility is with respect to bills, resolutions, treaties, and nominations.

4. The staff and the Committee also have a responsibility under Section 136 of the Legislative Reorganization Act which provides that ". . . each standing committee . . . shall review and study, on a continuing basis, the application, administration, and the execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee." In the case of foreign relations, there is an additional responsibility deriving from the advice and consent clause of the Constitution. By the same token, there are limitations deriving from the President's special constitutional position in regard to foreign relations.

5. In addition to carrying out assignments from the Committee and its individual Members, the staff should feel free to originate suggestions for Committee or Subcommittee consideration, making it clear in every case that the decision lies with the Committee or Subcommittee concerned. The staff should also be free to make suggestions to individual Members regarding matters of special interest to such Members.

It is part of the staff's duty to keep itself as well informed as possible in regard to developments affecting foreign relations and in regard to the administration of foreign programs of the United States. Significant trends or developments which might otherwise escape notice should be called to the attention of the Committee, or of individual Senators with particular interests.

6. In carrying out the responsibilities in paragraph 5, the staff should bear in mind the workload of Senators and attempt not to deal in trivia but to limit itself to broad questions of basic policy, or specific matters which point up a question of basic policy.

7. The staff should pay due regard to the constitutional separation of powers between the Senate and the executive branch. It should, therefore, try to help the Committee bring to bear an independent, objective judgment on proposals to the executive branch and when appropriate to originate sound proposals of its own. At the same time, the staff must avoid impinging upon the constitutional prerogatives of the executive branch in the day-to-day conduct of foreign affairs.

8. In those instances when Committee action requires the expression of minority views, the staff shall assist the minority as fully as the majority to the end that all points of view may be fully considered by Members of the Committee and of the Senate. The staff must bear in mind that under our constitutional system it is the responsibility of the elected members of the Senate to determine legislative issues in the light of as full and fair a presentation of the facts as the staff may be able to obtain.

9. The staff should regard its relationship to the Committee as a privileged one, in the nature of the relationship of a lawyer to a client. In order to protect this relationship and the mutual confidence which must prevail if the Committee staff relationship is to be a satisfactory and fruitful one, the following criteria are suggested:

a. The staff must be completely nonpartisan and responsible only to the Committee. Staff members should be hired and fired by the Committee solely on the basis of merit and without regard to political considerations.

b. Members of the staff must not be identified with any special interest group in the field of foreign relations or allow their names to be used by any such group.

c. Members of the staff must not accept public speaking engagements or write for publication in the field of foreign relations without specific advance permission from the Chief of Staff, or in his case, from the Chairman and the ranking minority Member. In any event, such public statements should avoid the expression of personal views and should not contain predictions of future, or interpretations of past, Committee action.

d. The staff must in no circumstances discuss with anyone the proceedings of the Committee in executive session or conversations with individual Senators without specific, advance permission from the Committee or the Senator concerned.

PROVISIONS OF LEGISLATIVE REORGANIZATION ACT

In addition to the foregoing, the Committee on Foreign Relations is governed by the standing rules of the Senate and the rules and procedures set forth in the Legislative Reorganization Act of 1946, as amended.

SENATOR CARL HAYDEN

Mr. HUGHES. Mr. President, one of my great regrets in public life is that I did not have the opportunity to serve in the Senate with the late Carl Hayden before his retirement. Yet so monumental and far-ranging were his achievements in the Congress that one feels his close presence even though he has departed.

In addition to his lasting contributions to his country and his State, he lived a life that was an American epic in itself—a colorful life characterized by courage, zest, and constructive purpose. He was truly one of the great ones. Only a great man could have thanked the people of his State so honestly and simply when he announced his retirement. He said:

> You have given me the opportunity to serve with ten Presidents; take a front row seat at the most important events in mankind's greatest century; and to vote on and help fashion the legislation that helped build a State and a Nation.

UNION LEADERS IGNORE RIGHTS OF RANK AND FILE

Mr. FANNIN. Mr. President, union officials who are angered over the administration's refusal to bow to their every

whim have launched a vindictive campaign to defeat President Nixon this year.

Some of these union leaders have acted like the virtual dictators they are, ignoring the rights of the rank and file. These leaders have tried to make it sound as though the full membership of their union is opposed to the President when in fact the percentage may be relatively small.

Even if there were a membership majority of 51 percent against the administration, it still would be wrong for union officials to try to throw the full weight of their organization into such a campaign.

Union dues are paid by persons of both political parties and by union members who are strong supporters of the President. It is wrong that their money should be used in an effort to thwart their political wishes.

It is especially ironic when a union that purports to represent Government workers should take an irrational stand with the election still many months away and there being no firm idea as to the candidates. This is a glaring example of irresponsible union leadership.

Mr. President, the Wall Street Journal yesterday published a thoughtful editorial on this matter. I ask unanimous consent that it be printed in the RECORD.

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

JUST IMAGINE

Chutzpah is a Yiddish word meaning unmitigated gall. A classic illustration is provided by the mythical story of the son who murders his parents and then throws himself on the mercy of the courts because he is an orphan.

Most real life examples of chutzpah don't go quite so far, of course. But a recent good one involves the National Association of Government Employes, some of whose locals are imprinting the motto "Defeat Dick Nixon in 1972" on envelopes containing union business mail.

Imagine the hullabaloo that would greet any disclosure that a civil service union was campaigning for Richard Nixon's reelection. There would be a public outcry faster than you could holler "spoils system." Yet there has been no similar outcry that workers on the public payroll are using the public mails in hopes of defeating a duly elected President.

All but forgotten is that civil service employes enjoy job security far beyond anything enjoyed in the private sector, a benefit bestowed in part because federal employes are prohibited by the Hatch Act from participating in partisan political activities. To argue now, as some NAGE officials do, that the Hatch Act prohibits individual but not collective politicking by federal employes, certainly is to abuse the spirit of the 33-year-old law.

In the minds of some NAGE officials, it seems civil service gives government employes rights (or is it powers?) that would be the envy of their counterparts in the private sector. Just imagine how many private employes would love to start a campaign to fire the boss.

TAIWAN

Mr. SCOTT. Mr. President, some commentators have raised alarms over several clauses in the joint communique referring to Taiwan. It is important that the statements contained in the communique be judged in the context of today's situation of lessening hostility and Taiwan's greatly increased capability for self defense and not judged instead in the context of the atmosphere of the early 1950's.

In the rush to pronounce judgment on the results of the President's trip there has been much erroneous commentary. There has been a tendency to concentrate on the minutiae of immediate pluses and minuses and to judge the trip on that basis. Events of epic dimension such as this trip should be judged not by the rhetoric and the immediate pronouncements accompanying the event, but rather by the new opportunities for peace created and their impact on the course of history.

It should be pointed out that the Chinese have been moved to a fundamental shift in their position on Taiwan. Until very recently their position has been unshakeable that there could be no relations with the United States on any level while the United States continued to support the Taiwan regime. The historic communique of yesterday reveals the Chinese willingness to undertake new relations with the United States while the United States retains its firm treaty commitment to Taiwan.

One of the greatest developments of the President's initiatives has gone overlooked. Until very recently the clear and proclaimed policy of China toward Taiwan was to retake Taiwan by force. The communique of yesterday suggests that China has abandoned plans to reunite Taiwan with the mainland by any but peaceful means. It also makes clear that the U.S. presence on Taiwan is conditional upon the level of tension in the area. What more assurances could be provided to our allies?

Some commentators have completely misinterpreted the communique's reference to Taiwan as a part of China. The U.S. position does not endorse Taiwan as a province of China but rather leaves the status open to future negotiation by stating that the United States does not challenge the contention of both the mainland and the Taiwan Chinese that Taiwan is, in fact, a part of China.

The brilliance of the communique lies in its clarifying without yielding the points of difference between China and the United States while pointing to future areas of possible agreement and reconciliation of opposing views. The establishment of such a relationship and such a process greatly enhances U.S. flexibility in dealing with China and other world powers.

The communique establishes a more stable context for our continuing firm defense treaty commitment to Taiwan. By bringing up to date our relations with mainland China we enhance our ability to defend an adequate security assistance program for Taiwan, prevent domestic pressures against our treaty commitments, and greatly increase the credibility, and hence the value of our defense commitment to Taiwan.

The statement of U.S. policy toward Taiwan contained in the communique is an excellent illustration of the Nixon doctrine in practice. Taiwan has made great strides in shouldering the burden of its own defense. The United States, while diminishing the role of U.S. forces will not weaken its defense commitment to Taiwan, and will continue to provide the necessary security assistance and support. The fiscal year 1972 budget provided more than $100 million in security assistance to Taiwan. This level will not be reduced in the fiscal year 1973 request.

A PERSONAL TRAGEDY AND THE VICTIMS OF CRIME ACT OF 1972

Mr. McCLELLAN. Mr. President, on December 11, 1971, on behalf of myself and 16 colleagues, I introduced S. 2994, the Victims of Crime Act of 1972. Title I of S. 2994 would provide compensation to needful innocent victims of certain violent crimes. It recognizes the moral responsibility of society to assist the innocent victims whose financial security is impaired as a result of crime.

Mr. President, I would like to bring to the attention of the Senate a letter I recently received from the widow of a retired Federal employee who was ruthlessly and senselessly murdered in cold blood within a few blocks of this very Chamber. It is distressing to hear the actual stories of the hardships imposed on innocent citizens by crimes. But it is something that needs to be called to our attention. It is a dimension of crime not always developed in the newspaper articles we read that tell only of the murder and subsequent police action.

At approximately 8 p.m. last October 15, on a well lighted street seven or eight blocks north of the Capitol, John P. Lee, who was on his way home from the supermarket, was attacked and beaten with an iron pipe by two youths. Mr. Lee, 67, was an assistant in the information office of the Spanish Embassy and previously worked for the Federal Government. On October 27 he died; according to the doctors, had Mr. Lee lived he would have had brain damage and been partly paralyzed.

Mr. and Mrs. Lee had tried to plan reasonably for their financial security. Mrs. Lee says that she and her husband had raised six children so had had little chance to save. They also lived abroad, due to Mr. Lee's Government service, so that they had not been able to buy a home until they returned to the States permanently 6 years ago. After returning to the United States, they saved the salary Mr. Lee made for 2 years and bought a small house on Capitol Hill. The Lees decided that their best investment would be real estate. Consequently, they began purchasing another house in which they lived with the expectation that Mr. Lee could work long enough to pay for that house and then the rent from the first house could be used to supplement his pension and social security. But Mr. Lee was murdered practically at his doorstep.

It would be highly presumptuous of me to attempt to portray the physical and mental sufferings of victims and their loved ones when such brutal and senseless crimes take lives, cause permanent disabilities or disfigurements. But we can get some notion of the fi-

nancial harm done: Doctor bills, hospital bills, medicine bills, loss of wages or employment. Mrs. Lee had to face all these expenses—yet upon her husband's death his pension was cut to $63 a month; as of the first of the year she had not received any payments from social security. Because Mrs. Lee could not meet the payments on the house in which she and her husband were living, she had to sell that house. She is now temporarily living with a daughter in Florida and forsees returning to Washington to live in the basement efficiency apartment of the first house the Lees purchased and, apparently, to live on the rent from the remainder of the house, and whatever pension and social security payments that she is entitled to.

It is distressing to consider the difference between the life Mrs. Lee now faces and the life which she and her husband had planned and had conscientously worked toward. But those dreams were destroyed by the indescribable brutality of two young delinquents. It is a mark of her concern, too, that Mrs. Lee wrote to tell her story knowing that a bill passed in the future would not benefit her. She only wanted to tell how helpful such legislation would be to others in the same appalling circumstances.

Mr. President, we must give that help to those others. Imagine the state of those who do not own a house, who are not eligible for social security. The experience of New York State in the development of its successful compensation program indicates that the damage to a victim or his family does often force honest, hardworking people onto the welfare rolls. What a bitter blow that to one's pride, self-respect, and independence.

Mr. President, we must alleviate the suffering of these people who have done no wrong but are so severely injured by the vicious criminal. We must all contemplate the fate of the innocent who suffer at the hands of the criminal, and we should act to help those innocent victims by seeing that S. 2994 receives prompt and serious consideration.

Mr. President, I conclude by noting that there are now 39 cosponsors on S. 2994 and that we welcome other Senators to our ranks.

I ask unanimous consent that the text of Mrs. Lee's letter and the newspaper account of her husband's murder be printed in the RECORD.

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

JANUARY 5, 1972.

Hon. JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SIR: A former neighbor has sent me a clipping describing the bill you propose to aid innocent victims of violence and their families. I thought that you might be interested in hearing what happened to my husband and what it has meant to me and what a life-saver such help would have been.

As you will see from the enclosed clipping, my husband worked for the Spanish Embassy and was attacked by two teen age boys on his way home from the Safeway, almost at his own front gate. This was on October 15, at about eight at night on a street having the new intensive lighting, a policeman at Hines School, and many people around. The doctors say he was struck by an iron pipe. On October 27 after every possible measure to save him had been taken, he died suddenly of a blood clot. Had he lived, they tell me he would have been partly paralyzed and his brain damaged. He was a man in perfect health and ought to have lived for many more years.

Because he was so healthy and I was the one who was not we planned our future on the basis that he would outlast me. His job was such that he could continue it as long as he wished (he edited the Spanish News Letter). We had raised six children which meant that there had been little chance to save, and lived abroad a good deal so that we had never been able to buy a home here until six years ago when we returned permanently. We saved for two years all that I earned by working in an editorial capacity for the American Association of Retired Persons, and at that time bought a small house on Tenth Street, S.E. With some more saving and a small bequest a year ago we bought a second, much larger and pleasanter house at 704 N. Carolina Ave., S.E. where we were living at the time of the attack.

The only way we could see for two people our age to make their future somewhat secure was to invest in these two houses since property on the Hill can be counted to rise steadily in value. We gambled on having five years to pay off the improvements we had borrowed money to make at the new house, and worked hard fixing it up, my husband doing much of the less skilled work himself, as he had in the first house. With a small pension he had from the State Department, $126 a month, and the rent on the other house and an efficiency in the basement, we would have had that security, if it had not been for his murder. Instead, we had only a year and a half. Because he worked for an Embassy my husband had to pay his own insurance—$4,000. They gave me one extra pay check beyond what he had earned by all of his department doing his work for one month. If it had not been for that kind act, the paycheck he received for October, would have been the last.

My husband's pension was cut in half upon his death. I have yet to receive a single check from Social Security. The balance of the doctors' bills not covered by Medicare and Blue Shield keep coming in along with the obligations we assumed, on the assumption my husband's fine health assured him many more years of earning power. To say nothing of funeral expenses. Even the Bureau of Internal Revenue pursued me, though they turned out to be unexpectedly kind and human and things were straightened out quite easily.

Because I could not begin to meet the payments on the North Carolina house out of what I would have, I had to sell it. This included all the furnishings as well.

At present I am living with a daughter in Florida, but expect to return to D.C. in April. My roots are there. All my friends. My church—Christ Church on G Street, S.E. Where I am going to live I do not know. Probably in the basement efficiency of the Tenth Street house although it is not among most of my friends who are located in the North Carolina and Seventh Street area.

The point is, if there had been any kind of cash settlement and help for me in those early days, maybe I could have saved my real home, still been among dear friends who would have helped me to adjust. Instead I am among strangers, except for an unmarried daughter.

My husband and I were married for forty-six years. We both worked hard, lived through the depression, raised six children, and did our best to be worthy citizens of a country we both loved. It is not fair that my husband has been so brutally murdered, and even less so that the small security we had every right to look forward to and had sacrificed to try to obtain should have been shattered by that blow. The two murderers are still at large although a lot of people were willing to be involved. There seems to have been considerable lack of efficiency in the police department. After all, my husband was not particularly important, except to me. But to me he was my whole world. I never expect to go to the moon, nor did he, but it would have seemed reasonable to have expected to go in safety to and from that Safeway.

Good luck with your bill.

JESSICA LEE.

[From the Evening Star, Oct. 28, 1971]

AIDE AT EMBASSY DIES 13 DAYS AFTER BEATING

(By Timothy Hutchens)

John P. Lee, 67, an assistant in the information office of the Spanish Embassy, died in Sibley Hospital yesterday, 13 days after two youths beat him during an attempted robbery near his Capitol Hill home.

After doing some shopping in the Safeway opposite the Eastern Market on 7th Street SE., he was walking around the corner to his home at 704 N. Carolina Ave., when two youths attacked him beneath one of the area's high intensity lights at about 8:30 p.m.

"He didn't have any money with him because he paid by check," his wife, Jessica, said.

The attack took place about 100 feet from the Lee's door. A taxi driver saw one of the youths swing a bat or a stick at Lee, who fell to the ground and later said that he never saw his assailants.

The cabbie drove onto the sidewalk to scare the boys away. They ran, and some policeman near Pennsylvania Avenue gave chase. Mrs. Lee remembered that a boy was caught in the chase, but she said that the police had to turn him loose because all that the cabbie could say was that one of the attackers was wearing a white shirt.

Lee picked himself up and despite severe head injuries, made it home. But at 10:15 p.m. his wife took him to the hospital. An autopsy was scheduled for today. Presumably, he will be listed as the District's 231st murder victim of the year once the autopsy is completed.

"We feel very safe because there are lights," Mrs. Lee said. They had lived in the house for a year and a half and previously lived farther south and east on Capitol Hill at 519 10th St. SE.

A week before the assault, Mrs. Lee said, "we were in Europe on vacation where we walked the streets of Vienna and Frankfurt in safety at all times."

Lee had worked for the Spanish Embassy for eight years. Previously, he was with the U.S. Information Service in Brazil and Ebasco International (Electric Bond and Share Company).

He was brought up in South America and Central America, and spoke Spanish and Portuguese. Along the way, he picked up magic as a hobby and was vice president of the Society of American Magicians.

He was born in Manila. His father was supervisor of schools in the Philippines and worked for the State Department, retiring as consul general in Brazil.

Lee had six children. Funeral services will be at 11 a.m. Saturday at Christ Church, 620 G St. SE.

"I don't feel any bitterness," Mrs. Lee said. "But I hope the police catch those boys before they kill somebody else."

THE AMERICAN LEGION

Mr. HOLLINGS. Mr. President, at a time when some scoff at patriotism, the American Legion retains its pride of country—a pride that has accounted for much of the success of this very worthy

organization. At a time when some go off to form their own select little cliques and refuse to even talk with those who disagree, the Legion works on the basis that the more varied the group, the better the chances of real achievement.

I know of no group that can boast such unique membership. The American Legion includes members from every racial, religious, and socioeconomic background in the country. Its members are blue-collar workers. They are white-collar workers. They are conservative. They are liberal. The are sometimes rich. They are sometimes poor. Its rolls list people from every walkway of life. And as I look around this Chamber today, I am proud to see many of my colleagues who are members of the Legion. So are many Members of the House of Representatives. So, too, is the President of the United States.

The Legion traces its history back to the years just after the First World War. Its organizers met in Paris over half a century ago to found a society that would preserve the spirit of comradeship that soldiers had discovered in the fires of that war. A few months later—in St. Louis—the Legion adopted a constitution and elected its first officers. It adopted the motto, "For God and Country." These are the words which have inspired over half a century of good and patriotic works. And these are the words which will continue to inspire the legionnaires of the present and the future.

From its first-year membership of 648,000, the Legion has grown to over 2,316,000. From that first organizational meeting, it has grown to over 16,200 posts throughout the major cities of the world. I have been on many of those posts, and I know firsthand of the many good works they are involved in.

The Legion's budget has grown to over $8 million a year. That budget is an investment in the future. This money is spent on a wide range of activities—humanitarian, legislative, and social. We are all familiar with the work performed on behalf of the disabled or wounded in helping these men toward a sound and productive life wherever possible. The rehabilitation program gives treatment to all veterans and their dependents.

The Veterans' Administration is also doing excellent work in aiding the sick and the handicapped generally. It has inaugurated programs for the protection and well-being of the Nation's children. And it has launched advanced education and training for veterans under the GI bill. That bill, Mr. President, is one of the most forward-looking pieces of legislation ever passed by Congress.

The American Legion is vitally interested in putting returning veterans into productive lives at home. Its concern is that our fighting men should return to a healthy and prosperous economy—an economy capable of providing jobs and the dignity that goes with productive work. To this end, the Legion has established a top priority program called jobs for veterans. It is an effort to bring returning veterans and prospective employers together. Good results have occurred, even given the sluggish state of the American economy. Jobs for veterans pilot projects were begun in 17 States. They have now expanded to include practically every State in the Union.

The American Legion has been in the forefront in the serious questions of national security. It knows full well that vigilance and an unmatched military power are the price we must pay for the continuation of our freedoms. Today the Legion is leading the way in insisting that we build our military might to a more effective level. The evidence is all around us that the United States has been losing significant ground militarily in the past several years, and unless we commit ourselves now to regaining the advantage, we might never be able to catch up again.

One of the greatest achievements of the legionnaires is their community work with community programs for the youth of this country. The lives of thousands upon thousands of boys and girls have been made happier by the programs that the Legion sponsors. There are over half a million boys that have been affiliated with the junior baseball program, and over 5,000 boys are in American Legion sponsored Boy Scout troops.

One aspect that I am very familiar with is the Boys and Girls State and Boys and Girls Nation. This activity organizes and operates a mythical state and national government to teach high school leaders about the obligations and responsibilities of citizenship. It shows the functions of self-government in this mythical setting. I have spoken to many of these groups and have talked with its participants. These are the kinds of activities that we need more of to teach the roles of good citizens in maintaining good government.

We are here today to pay tribute to the members of the American Legion, and thank them for their past accomplishments. The Legion is a leader in the field of community services. The members have involved themselves in far-reaching programs of assistance to help with the problems of our society. The American Legion has made its presence felt in the past and I only hope that it will continue to proceed with the same success in the future.

AMERICAN LEGION DAY ON CAPITOL HILL

Mr. FANNIN. Mr. President, I wish to join Senators who are welcoming veterans on this American Legion Day on the Hill.

The American Legion is a great organization which has done a wonderful job of promoting patriotism over the years.

Recently in the so-called intellectual press it has become fashionable to attack the American Legion as an organization that is old-fashion and out-of-step with today's America.

Mr. President, I do not think that patriotism is old-fashioned.

And as for being out of step, I believe that the critics of the American Legion are like the young recruit who observed that everyone else in his unit was out-of-step, except for him.

I am proud of our veterans—the older ones who fought in World War I, the middle-aged who fought in World War II, and the young fellows who were in Korea and more recently in Vietnam.

All of these men were carrying out a commitment to freedom. They were called to serve for a high purpose. And they served well.

I salute them.

PROPOSALS BY SENATOR HUMPHREY TO LIFT ALL OLDER AMERICANS OUT OF POVERTY

Mr. HUMPHREY. Mr. President, on February 24, 1972, I wrote a letter to the chairman of the Committee on Finance (Mr. LONG), asking the committee to take immediate action on my proposal to increase the minimum assistance payment for old age, blind, and disabled recipients to $2,000 a year for a single individual and $2,600 for a couple.

I ask unanimous consent that the release and my letter be printed in the RECORD.

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

HUMPHREY PROPOSES MAJOR INCREASES IN OLD AGE ASSISTANCE BENEFITS

WASHINGTON, February 24.—Senator Hubert H. Humphrey today proposed major increases in the Old Age Assistance program to lift some 5.4 million elderly Americans and more than 1.5 million blind and disabled out of poverty.

Senator Humphrey's proposals were contained in a letter to Senator Russell Long, chairman of the Senate Finance Commitee. Humphrey said he would elaborate on his recommendations early next week.

Humphrey said he would offer an amendment in the Senate that would increase benefits to an elderly individual to a minimum of $2,000 a year, and benefits for an elderly couple to at least $2,600 a year. This would mean immediate benefit increases in more than 30 states and fiscal relief to taxpayers in a number of other states.

Following is the text of Senator Humphrey's letter:

* * * * *

DEAR MR. CHAIRMAN: It is one of the sad tragedies of our time that millions of our elderly citizens lack sufficient income to live a decent life—a life free from the frightening fear that they will not have enough money to purchase basic living necessities. These same elderly Americans have contributed much to our country. Now, in their later years, it is only fair that our society show them the respect they deserve.

For this reason, I ask the Senate Finance Committee to take rapid and positive action on an amendment I soon intend to offer that would immediately lift these 5.4 million elderly, and over 1.5 million blind and disabled out of poverty, as defined by the Office of Economic Opportunity.

My amendment would increase the minimum monthly payment for Old Age, Blind, and Disabled recipients to a federally funded $165 per single individual and to $215 per eligible couple, effective retroactively to January 1, 1972. Presently a federal minimum monthly payment does not exist; each state determines the level of assistance it wants to pay and this assistance varies among the states from a low of $60 to a high of some $200 a month.

My amendment would mean that an eligible elderly individual would have at least an income of $2000 a year and an elderly couple would receive a minimum of $2,600 a year. This amendment would mean immediate increases in income benefits for elderly recipients in more than 30 states, such

as Florida, Arkansas, Delaware, Georgia, Indiana, Maryland, Maine, Wisconsin, Oregon, and West Virginia. For other states such as Ohio, Pennsylvania, New York, California, New Jersey, my amendment would mean state fiscal relief to the taxpayer of more than $2 billion dollars.

This amendment plus the extensive changes I have suggested before in social security financing, the increase in percentage benefits, the automatic cost of living escalator, and the increase in the earnings limitations ceiling should go a long way towards achieving a decent living standard for our elderly without overburdening our current workers.

In my travels around our country, I have been alarmed by the plight of the elderly living in poverty and near poverty. In our quest to reform the public assistance programs and to make the American living standard available to all, we can and should begin now by passing my amendment.

I do sincerely hope that the Finance Committee will act on it shortly.

AMERICAN LEGION DAY ON CAPITOL HILL

Mr. McCLELLAN. Mr. President, I am both proud and honored to have this opportunity to pay tribute to the American Legion and to all veterans who have served our country so well in time of threat or danger. Our people are weary of war but our esteem and reverance for those who have borne our heaviest burdens in military conflict will never be dimmed.

Since the Minutemen shouldered their muskets in answer to Paul Revere's urgent call to arms almost two centuries ago, Americans have been forced to repeatedly march into battle to protect their homes and freedoms. The brave still make sacrifices in this cause. In Vietnam since 1961, over 45,000 young Americans have been killed and more than 302,000 wounded.

For those of us who served in World War I or World War II, or in Korea, it is difficult to realize that the American Legion will soon be 53 years old—that it has given over a half century of service to our veterans and to the Nation.

War-tired and homesick, members of the American Expeditionary Force met in Paris from March 15, to March 17, 1919, to form the nucleus of the organization that was to provide the structural framework and the ideals that have sustained the Legion down through the decades until now. The preamble to the Constitution adopted a short time later, clearly set the organization on its course of service to God and country:

To uphold and defend the Constitution of the United States of America;

To maintain law and order;

To foster and perpetuate a one hundred per cent Americanism;

To inculcate a sense of individual obligation to the community, state and nation;

To make Right the master of Might;

To promote peace and goodwill on earth.

These same concerns occupy the American Legion today—and I am indeed proud to include myself among its members, having joined in 1919 and held continuous membership therein ever since.

The Legion today is as vital as it was when it was founded. It is the world's largest veterans organization, with 2.7 million members enrolled in more than 16,000 posts throughout the United States and overseas. Vietnam veterans are joining just as did World War II and Korean war veterans—and are achieving positions of leadership.

Much more important than statistics, however, is the Legion's outstanding record of service. The Legion has accomplished much on behalf of veterans—working for the establishment of the Veterans' Administration in 1930 and congressional approval of the GI bill of rights after World War II. Much has also been done to alleviate the burdens of the widows and orphans of those who have made the supreme sacrifice.

Mr. President, the work we do on behalf of our veterans is the work of pride. No accomplishments that I have made in my 29 years as a Member of the U.S. Senate gives me greater pride than my work on behalf of my fellow veterans. Certainly I was proud—to have President Johnson, at my urging, approve special tax relief for servicemen in Vietnam in 1965;

To have cosponsored the law to provide additional pensions, job training, and educational assistance for our Vietnam veterans;

To cosponsor legislation in the current session to exclude from gross income the entire amount of pay received by members of the Armed Forces who are being held prisoner or are listed as missing;

To have introduced an amendment to this legislation granting special bonuses to men in these categories.

President Coolidge once said that—

The nation which forgets its defenders will itself be forgotten.

We have no intention of forgetting the men who have defended our country. I am proud to join Senators in tribute to these gallant men by saluting with deep affection and admiration, their splendid organization—the American Legion.

AMERICAN LEGION DAY ON THE HILL

Mr. HUGHES. Mr. President, everybody knows about the American Legion in terms of its service to veterans and its concern with national defense. But I have found that comparatively few people know about its extra dimensions of service in building a better American society. I think particularly of its imaginative programs for children and youth and its service in years past to the migratory poor. Such efforts contribute significantly to the well-being of our society and in no small measure to our national security.

EQUAL RIGHTS AMENDMENT

Mr. DOLE. Mr. President, I was gratified to learn that the Committee on the Judiciary has today—by a vote of 14 to 1—favorably reported the Equal Rights Amendment. This overwhelming support for the measure assuring full and unquestioned equality for women in America is both significant and welcome. The significance of this action lies in the fact that one of the last hurdles to congressional approval has been cleared. And this action is all the more welcome because such a strong endorsement gives the amendment a congressional momentum it has not had since introduction by Senator CHARLES CURTIS of Kansas nearly 50 years ago.

I have previously expressed my support for the Equal Rights Amendment and take this opportunity to reaffirm my endorsement. I am hopeful the Senate can take up consideration of the amendment at an early date and join the House in approving it without inhibiting or crippling amendments. Following such congressional approval, I am sure the State legislatures will be quick to provide ratification and thereby put an end to any question of the legal and constitutional status of American women.

THE AMERICAN LEGION'S LEGISLATIVE PROGRAM

Mr. TALMADGE. Mr. President, this afternoon Mr. John H. Geiger, the National Commander of the American Legion, the largest of the Nation's veterans organizations, very ably presented the Legion's 1972 legislative program to the Senate Committee on Veterans Affairs.

I commend Commander Geiger's remarks to the Senate and ask unanimous consent that the text of his statement be printed in the RECORD.

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

STATEMENT OF JOHN H. GEIGER, NATIONAL COMMANDER, THE AMERICAN LEGION, BEFORE THE COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE, TUESDAY, FEBRUARY 29, 1972

Mr. Chairman and Members of the Committee: I appreciate the opportunity of appearing today before this distinguished Committee of the Congress to represent The American Legion, the largest of the nation's veterans organizations, composed of over 2,700,000 veterans in more than 16,000 Posts located throughout the country. Included among its members, who have served in four wars, are nearly 500,000 veterans of the Vietnam Era. The organization in 1971 recorded its seventh consecutive year of membership growth.

My appearance here today is a milestone in the history of The American Legion. It is the first appearance of an American Legion National Commander before the new Senate Committee on Veterans Affairs to outline our legislative program.

The establishment of a Senate Committee on Veterans Affairs was an objective of The American Legion for many years. The Senate, like the House of Representatives, has always demonstrated an interest in and a sensitivity to the needs of the nation's veterans and their dependents. The present veterans benefits program attests to that fact. However, it has long been the position of The American Legion that the sheer number of American veterans, and the importance of legislation affecting their welfare and well-being, has indicated the need for a particular committee in both Houses that could devote itself to veterans legislation. In its wisdom, the Senate has now agreed with this thinking and the Committee on Veterans Affairs has been established. It will be our pleasure in this and subsequent years to present here on veterans affairs legislative program as developed by Legionnaires from throughout the country through National Conventions and the National Executive Committee.

As a result of the work of both Senate and House, the program of veterans benefits

that has been enacted into law through the years is nothing short of monumental. At no time in the history of the world has a nation taken such keen interest in the readjustment of the citizen soldiers who fight it wars, and made such extensive provisions to facilitate that readjustment.

American veterans are fortunate in many ways in consequence of having performed the highest duty of citizenship—that of bearing arms in defense of the republic. But they are most fortunate because they are part of a people represented by a Congress that has never ignored them once their service was completed.

And may I say that this particular Committee has most certainly met its responsibilities in the best tradition of its distinguished predecessors. We of The American Legion are grateful to you, Mr. Chairman, and to all of you who serve on the Veterans Affairs Committee. We appreciate your efforts—we look to you for leadership—and we pledge to you our full resources in the preparation and consideration of constructive legislation, and also in the task of bringing to the attention of the American people the extent and nature of the nation's responsibilities to its veterans.

I cannot compliment this Committee without at the same time expressing the thanks and appreciation of The American Legion to the Committee's very able Staff Director and the entire Committee staff. Their expertise in the field of veterans affairs, and their complete cooperation with The American Legion and its staff, are invaluable in enabling us to meet our responsibilities to the nation's veterans.

SPECIAL COMMITTEE ON VETERANS MEDICAL CARE

The first matter of importance that I have to discuss this morning is the future of the Veterans Administration medical care program. It is the considered opinion of The American Legion that the medical care program is in jeopardy. And if we are correct in that estimation, we wish to make one further point in that regard. That is, that the VA medical care program, as it is now constituted, will be defended by The American Legion with all of the energies and resources this organization will be able to muster.

The present unparalleled medical care program administered by the Veterans Administration has been developed through a period of fifty years until it has reached its present position of proficiency and effectiveness. It is at present a great national resource, and The American Legion does not intend to see it disappear, either as a result of being dismantled or by being absorbed into some other comprehensive medical care plan that the Congress may see fit to adopt.

The American Legion has seen this potential threat to the VA medical care program developing on the horizon for some time. At our 1971 National Convention the delegates decided that it was time to openly and formally recognize the existence of this threat as we face the growing debate on the subject of National Health Insurance.

The National Convention adopted Resolution No. 113, a copy of which is appended to this statement. Resolution 113 directed the National Commander to establish a Special Committee that would report to the 54th National Convention in Chicago next summer.

A Special Committee, composed of distinguished Legionnaires, all knowledgeable in the field of veterans' affairs and rehabilitation, has been appointed. The Committee has held many meetings, including one informative session with members and staff of this Committee.

My travels throughout the country, conferring with Legionnaires and with other Americans from all walks of life, have convinced me that the results of the work of the Special Committee cannot wait to be reported at our National Convention in August 1972. I therefore reqeusted our Committee to step up the pace of its labors, and it will issue an interim report this week. We will keep you informed of our position.

The American Legion will do all in its power to thwart the danger to the VA medical care program, and we will look to this Committee for support and assistance. I have every confidence that the Veterans Affairs Committee will respond, because I know that the dedication of each of you to the health and welfare of the nation's veterans is as great as is our own. And I am satisfied that, working together, we can defeat any threat to the existing VA medical care program.

EDUCATIONAL ASSISTANCE PROGRAM FOR VIETNAM VETERANS OF OUR ARMED FORCES

Approval on March 3, 1966 of the "Veterans Readjustment Assistance Act of 1966" established an educational assistance program for the Post-Korean Conflict and Vietnam Era veteran. Since then, educational assistance payments have been increased by seventy-five percent. Despite these increased payments, cost of living increases and rising costs of education continue to bar many veterans from using their eligibility for educational assistance. Many of those veterans who use their eligibility do so at considerable financial cost to themselves or to their families.

Your Committee has under consideration several measures with a variety of approaches to the problem—to increase the present educational assistance allowances; to provide direct payments to education and training schools or institutions to cover cost of tuition, fees, books, and other charges; to provide a combination of subsistence and direct payment to education and training institutions, or a combination of both; or to make other improvements in the current educational assistance program.

Although there may be some divergence of philosophy between other groups and organizations, The American Legion continues to adhere to the original concept associated with the World War II G.I. Bill, that the educational assistance provided was never intended to cover all costs but that veteran students were expected to supplement these costs from their personal funds or from other sources. We believe, though, that educational assistance—a combination of subsistence and direct institutional payments—should bear a reasonable relationship to the total costs, be they incurred in public or private education or training institutions.

Based on this belief, The American Legion at its 1971 National Convention approved Resolution 342. This manadate seeks four basic changes in the current GI education program administered by the VA—

(1) Direct payment to the educational institution of three-fourths of the costs for tuition, books, and other fees, but not more than $1,000 in any one ordinary school year

(2) VA-guaranteed educational assistance loans

(3) Direct VA loans to veterans who cannot obtain guaranteed commercial loans under conditions and terms acceptable to the VA

(4) Continuance of the present educational assistance allowances as monthly subsistence payments.

It is recognized that some abuses of the institutional direct payment provision of the original GI Bill occurred. These, we believe, were a direct result of laxity in the law, poor administration and confusion in regulation, inadequate supervision by State Approval Agencies and VA officers, and general inexperience on the part of the Federal Government in its initial venture into a unique and tremendous program of education and readjustment assistance.

In our opinion, a recurrence of these abuses is preventable by restrictions of subsequent and current law, VA experience in administration of education and training programs, and expertise in State Approval Agencies.

We do not propose that the program be so liberal as to stimulate veterans to enter the program merely for the purpose of subsistence allowances, but that it be sufficient to motivate veterans to enter and pursue to completion programs of education or training.

In urging these changes in the current GI education provisions, The American Legion was motivated by the concept that the Veterans Administration should be a one-stop agency to service those veterans who desire to enter programs of education or training by providing them with—

Subsistence;

Direct payment to institutions of education or training to cover costs of tuition, fees, books and other charges on enrollment;

Guaranteed and direct educational loans.

We urge, Mr. Chairman, that you give us an early opportunity to appear before your Committee to present more detailed support of our views.

INCREASED RATES OF COMPENSATION FOR SERVICE-DISABLED VETERANS

At present, Chapter 11 of title 38, United States Code, authorizes payment of compensation of $450 monthly to those veterans whose wartime service-connected disabilities are evaluated at 100 percent.

Under the authority of this Chapter the Administrator of Veterans Affairs adopts and applies a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries, including disease residuals. These ratings are based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations.

Disability compensation payments were last increased by Public Law 91–376, effective July 1, 1970. At that time the increased payments for 100 percent disability compared favorably with spendable average annual earnings of production or nonsupervisory personnel in private nonagricultural payrolls.

To maintain the veteran's purchasing power, these payments must respond to cost-of-living increases. As published by the Bureau of Labor Statistics, Department of Labor, the July 1, 1970 index was 116.7, and by December 1971 it had advanced to 123.1, an increase of about 5.5 percent. Current estimates are that the consumer price index will advance at an annual rate of 3 percent. In view of the fact that disability compensation rates do not automatically respond to changes in the cost of living, legislation proposed should anticipate increases that will occur in the interval between enabling legislation granting offsetting increases.

Mr. Chairman, we urge this Committee's consideration of increasing the monthly rates for 100 percent to $500. This amount would materially assist these severely disabled veterans in meeting today's cost of living at a standard which is not demeaning to their status as veterans. A similar percentage increase in monthly compensation payments should be authorized those with disability evaluations of less than total.

DEVELOPMENT AND MAINTENANCE OF AN ADEQUATE SYSTEM OF NATIONAL CEMETERIES

At present there are four separate cemetery systems administered by federal agencies: the national cemetery system operated by the Department of the Army; a number of cemeteries adjacent to its facilities controlled by the Veterans Administration; the National Park Service of the Department of Interior; and overseas cemeteries under the American Battle Monuments Commission.

We believe that this division of jurisdiction is responsible for the absence of a clear policy on the present and future development of a system of national cemeteries.

Our statement of February 22, 1972 before your Committee in connection with national cemetery legislation urged the following course of action—

(1) Congress transfer all active cemeteries to the jurisdiction and supervision of the Administrator of Veterans Affairs

(2) The Administrator undertake and complete a study of national cemetery needs based upon a demographic study of the veteran population, and submit his findings and recommendations to the Congress within a reasonable period of time

(3) The Administrator be empowered to acquire, by gift, purchase, or condemnation, necessary lands for use as national cemeteries.

Legislative accomplishment of these objectives would, in our judgment, assure that every veteran and serviceman who wants the honor should have the right to burial in a national cemetery reasonably close to his family home.

In addition, we suggest that the enabling statute or its legislative history specifically bar the Administrator of Veterans Affairs from issuing orders limiting burial of eligible veterans, such as is now the case in Arlington National Cemetery, so long as burial sites are available.

Mr. Chairman, we urge your Committee's favorable consideration of our views, and that action be taken to assure early consideration by the Senate.

INCREASE THE AMOUNT PAYABLE BY VA TOWARD THE COST OF BURIAL AND FUNERAL EXPENSES

Chapter 23 of title 38, United States Code, provides that the Administrator of Veterans Affairs may pay not to exceed $250 to cover the burial and funeral expenses of a deceased veteran, and the expense of preparing the body and transporting it to the place of burial.

The amount of this burial benefit was last increased on August 18, 1958, from $150 to the present $250.

According to the latest information published by the National Funeral Directors Association of the United States, Inc., the average prices for adult funerals rose from $661 in 1958 to $926 in 1969. Bureau of Labor Statistics reports show that between December 1969 and December 1971, adult funeral prices increased by 7.7 percent. These averages do not include vault, cemetery or crematory expenses, monument or grave marker, or miscellaneous items such as flowers, burial clothing, additional transportation charges, honorarium for the clergyman, or newspaper notices.

We believe that the increased costs of funeral and burial services established that there is a compelling need to increase the Veterans Administration burial benefit to $500.

Mr. Chairman, times does not allow a more detailed presentation to you of the Legion's legislative objectives in veterans affairs. Readjustment and rehabilitation of the young veterans is a continuing problem. As you know, we are actively supporting both legislative and administrative programs to meet their housing needs, assure them job opportunities and placement, and preference in federal employment.

Mr. Chairman, time is running out. If we are to have a meaningful GI Bill this year then action must be taken without further delay. This is an election year, with primaries and political conventions. The Congress is pointing for an early adjournment. Unless it moves forthrightly, we may end up with no improvement in the education and vocational training benefits for the Vietnam veteran in 1972. The American Legion is depending on this Committee to assist these young men in their efforts to further their readjustment to civilian life.

In conclusion, may I again express appreciation to this Committee, to the Congress, and to the President of the United States for the understanding of the problems of our veterans and of their dependents and survivors. This understanding was reflected again in the recent enactment and approval of laws to improve the income maintenance of pensioners and of the parents, widows and children receiving dependency and indemnity compensation.

I would like to remind each of you that it will be the pleasure of The American Legion tomorrow evening to host all of the Members of Congress at our annual dinner in the Grand Ballroom of the Sheraton Park Hotel. Many of you have attended these dinners in past years. I hope you will agree they are pleasant affairs, and that you will be our guest again on this occasion. More than 1600 members of The American Legion, and the American Legion Auxiliary, are in attendance at our Annual Washington Conference. The dinner tomorrow evening will provide them with an opportunity to greet the Members of Congress from their home states.

Once more, I extend my warmest invitation to each of you to join us tomorrow evening—to have dinner, and to meet the Legionnaires from your particular areas.

Mr. Chairman and Members of the Committee, thank you again for this opportunity, and for the time you have given us.

Our beloved nation is living through difficult days. This is an election year, and there will be great debates on the issues. That is good in a democracy. However, for The American Legion, in all that is said and done, certain verities remain. Devotion to flag and country—devotion to the ancient principles of our heritage from our forefathers—dedication "to care for him who shall have borne the battle, and for his widow and his orphan"—these things are—for us—above the debate. And we shall be true to them as long as there is an American Legion.

[From the 53d annual national convention, the American Legion, Houston, Tex., Aug. 31–Sept. 1, 2, 1971]

RESOLUTION No. 113

Authorizes and directs the national commander to appoint a special committee to be known as the Special Committee on Veterans Medical Care

Whereas, The American Legion, for the entire period of its existence, has been committed to the need for a single agency of the federal government to handle all veterans affairs; and

Whereas, an integral part of that agency, designated the Veterans Administration, has always been the veterans medical care program; and

Whereas, through the years the Veterans Administration medical care program and its hospital system, with the support of The American Legion, has developed into the finest single system of health delivery service in the world; and

Whereas, a continuing and intense concern of The American Legion is and has always been the maintenance of the integrity of the Veterans Administration medical care program; and

Whereas, there is a real possibility that proposals will be made to merge or associate the Veterans Administration medical care program with other national health delivery systems that are or will be brought into being by the federal government; and

Whereas, such a prospect creates in The American Legion a sense of alarm and concern; and

Whereas, it appears that it would be provident for The American Legion to examine into the situation now existing with reference to national health delivery systems and their possible impact on the Veterans Administration medical care program; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in Houston, Texas, August 31, September 1, 2, 1971, that The American Legion is irrevocably committed to the need for the maintenance of the Department of Medicine and Surgery within the Veterans Administration, and to the need for the preservation of the Veterans Administration medical care program and its hospital system as the single agency for providing health care services to the nation's war veterans; and be it further

Resolved, that The American Legion will oppose with all of its energies and resources any effort to materially weaken, restrict or reduce the Veterans Administration medical care program in the face of the apparent needs of the nation's war veterans; and be it further

Resolved, that this Convention does hereby authorize and direct the National Commander to appoint a special committee to be known as the Special Committee on Veterans Medical Care; the members of the Special Committee to be drawn from the Veterans Affairs and Rehabilitation Commission, and to include representatives from among Department Rehabilitation Directors and Department Service Officers, and the Committee to be provided with staff support drawn from the staff of the National Veterans Affairs and Rehabilitation Division of the National Headquarters, and with professional and qualified consultants as may be necessary; and be it further

Resolved, that the National Executive Committee is hereby instructed to provide, from the funds of the national organization, such moneys as may be necessary to enable the Special Committee to complete its assigned task; and be it further

Resolved, that the Special Committee on Veterans Medical Care is charged to—

(1) examine into the adequacy of the Veterans' Administration medical care program

(2) consider the potential impact on the Veterans' Administration medical care program of a national health insurance plan

(3) restate, following thorough research, the reasons for the continuing necessity of an independent medical care program within the Veterans' Administration

(4) study and examine any and all other matters relating to veterans medical care; and be it finally

Resolved, that the Special Committee on Veterans Medical Care shall submit its report, findings and recommendations to the 54th Annual National Convention of The American Legion.

RESOLUTIONS THAT REQUIRE LEGISLATIVE ACTION

POLICY

A. Increase mileage allowance for VA beneficiaries

1970 Convention Resolution No. 476 (P.R.) urges that the Administrator of Veterans Affairs pay a mileage rate of 10 cents per mile for expenses incurred by beneficiaries while traveling pursuant to a Veterans Administration authorization.

B. Conditional discharges

1970 Fall NEC Resolution No. 31 seeks legislation to establish eligibility to VA benefits of those veterans conditionally discharged or released from active service who immediately reenter such service.

C. Funds for the operation of the Veterans Administration

1971 Convention Resolution No. 420 (Ill.) urges the Congress to give a high priority to the budgetary needs of the VA to insure that sufficient funds will be made available to carry out this nation's commitment of providing first quality medical and hospital care for veterans.

D. Cabinet rank for Administrator of Veterans Affairs

1970 Convention Resolution No. 399 (Texas) seeks legislation to raise the office of the Administrator of Veterans Affairs to that of Cabinet rank.

E. Oppose the merging of VA programs with social security program

1970 Convention Resolution No. 487 (Alabama) urges opposition to any legislation or administrative attempts to merge programs administered by the Veterans Administration with Federal Social Security benefits program.

F. Mustering-out payments for Vietnam era veterans

1971 Convention Resolution No. 194 (Ohio) seeks legislation to provide that each member of the Armed Forces who served on active duty during the Vietnam Era, and who is discharged or released from active duty under honorable conditions, shall be eligible for mustering-out payments.

G. Commissary privileges for certain widows

1971 Convention Resolution No. 980 (Maryland) seeks legislation to authorize commissary and post exchange privileges for the widows of those war veterans who die of a service-connected disease or injury after separation from active duty with the Armed Forces.

H. Opposition to hospitalization of nonveterans in VA hospitals

1970 Convention Resolution No. 570 (Va.) urges opposition to legislative and administrative efforts to authorize the hospitalization of nonveterans in VA hospitals.

I. Recovery of overpayments

1970 Fall NEG Resolution No. 34 seeks legislation to provide that there shall be no recovery of payments or overpayments of any benefits (except servicemen's indemnity) under laws administered by the VA from any person, where, in the judgment of the Administrator, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

J. Oppose removal of limitations on existing attorney or agent fees

1970 Fall NEC Resolution No. 35 urges opposition to the enactment of legislation that would remove the attorney or agent fee limitations imposed by 38 USC 3404 or strike the penalty provisions of 38 USC 3405.

K. Special clothing allowance be provided certain disabled veterans

1970 Fall NEC Resolution No. 37 seeks legislation to provide for payment of a special clothing allowance to those veterans eligible to receive an artificial limb or brace from the VA.

L. Amend the Dual Compensation Act

1970 Fall NEC Resolution No. 38 seeks legislation exempting the Veterans Administration from the Dual Compensation Act as it applies to retired military personnel desiring employment with the Veterans Administration Department of Medicine and Surgery.

M. Transportation costs for burials of certain veterans

1971 Spring NEC Resolution No. 12 seeks legislation to provide that when any retired member of an Armed Force dies while a patient in a United States hospital, the cost of transporting the body to the place of burial shall be borne by the Secretary of such Armed Force.

1971 Convention Resolution No. 215 (Nebr.) seeks legislation to provide that where an eligible veteran dies in a State Veterans Home, the Administrator of Veterans Affairs shall pay the cost of transporting the remains to place of burial.

N. Military honors at burial of veterans

1971 Spring NEC Resolution No. 15 seeks legislation to provide for full military honors at burial services of veterans.

O. Opposition to closing of United States Public Health hospitals

1971 Spring NEC Resolution No. 48 urges the Congress and the President of the United States to restore to the budget funds needed to continue the operation of these hospitals.

P. Veterans Memorial Hospital in the Philippines

1971 Convention Resolution No. 339 (Philippines) seeks legislation to extend beyond June 30, 1973 the grants-in-aid program to the Veterans Memorial Hospital in the Philippines.

1971 Convention Resolution No. 350 (Philippines) seeks legislation to extend beyond June 30, 1972 the grants-in-aid for research in the Veterans Memorial Hospital in the Philippines.

Q. Government-issued grave markers

1971 Convention Resolution No. 388 (Missouri) seeks legislation to provide that the cost of setting government-issued grave markers, not to exceed $100, be borne by the Department of Defense.

NATIONAL CEMETERIES

A. The national cemetery policy of the American Legion

1970 Convention Resolution No. 452 (N.Y.) seeks legislation to: (1) Transfer to the Administrator of Veterans Affairs existing national cemeteries presently under the jurisdiction of the Department of the Interior, and Department of the Army; (2) provide the Administrator of Veterans Affairs with authority and responsibility for the operation, care and maintenance of these cemeteries; (3) direct the Administrator of Veterans Affairs to plan a system of national cemeteries and to establish a program of expansion and distribution of national cemetery sites shall, at all times, be sufficient to assure burial in a national cemetery for those who so desire; (4) authorize the Administrator of Veterans Affairs to acquire such lands as are needed—by gift, purchase, condemnation, transfer, or by any other means; and, (5) provide that jurisdiction of national cemeteries be placed under those committees of the United States Senate which have jurisdiction of veterans affairs; and, (6) petitions the President, the Congress of the United States, and the Secretary of Defense to rescind the discriminatory order of February 10, 1967, which limited burials in Arlington National Cemetery.

B. Burial sites at Custer Battlefield National Cemetery

1971 Convention Resolution No. 100 (Wyoming) seeks legislation to provide additional burial sites at the Custer Battlefield National Cemetery.

CLAIMS AND RATINGS

A. Burial allowance

1970 Convention Resolution No. 104 (Montana) urges opposition to those legislative proposals that would amend 38 USC so as to reduce burial benefits.

1971 Convention Resolution No. 199 (Ohio) seeks legislation to provide that the burial allowance be increased to $500.

B. Armed forces retirement payments

1970 Convention Resolution No. 180 (Okla.) seeks legislation to remove the restriction against the receipt of Armed Forces retirement pay, due to length of service, concurrently with VA compensation.

C. Aid and attendance allowance to children

1970 Convention Resolution No. 195 (Md.) seeks legislation to provide aid and attendance allowance at the rate of $50 per month to a child who is in receipt of death compensation or dependency and indemnity compensation, if such child is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

D. Improve the disability compensation program

Seven-year Presumption for Progressive Muscular Atrophy

1970 Convention Resolution No. 577 (Va.) seeks legislation to provide that progressive muscular atrophy developing to compensable degree within 7 years of separation from wartime service shall be considered to have been incurred in or aggravated by such service.

Special Compensation for Veterans Requiring Hemodialysis

1970 Fa ll NEC Resolution No. 36 seeks legislation to provide that a special monthly compensation be payable to those veterans whose chronic service-connected kidney condition requires hemodialysis on a continuing basis.

Presumption of Service-connected Death in Certain Cases

1971 Convention Resolution No. 370 (Va.) seeks legislation to provide that the widow, children and dependent parents of any person who died from natural causes after a service-connected disability had been rated total and permanent for 10 years shall be entitled to dependency and indemnity compensation.

Two-year Presumption for Psychosis

1970 Convention Resolution No. 541 (Minn.) seeks legislation to provide that a psychosis developing a ten per centum degree of disability or more within two years from the date of separation from war service shall be considered to have been incurred in or aggravated by such service.

Increase Statutory Awards Rate

1971 Convention Resolution No. 71 (Ky.) seeks legislation to increase the statutory awards of compensation payable under 38 USC 314 (k) from $47 to $75.

Increased Compensation (A. & A.) While a Nursing Home Care Patient

1970 Convention Resolution No. 573 (Va.) seeks legislation to provide that a person shall be considered to be entitled to increased disability compensation under title 38, USC, 314 (l) if he is a patient in a nursing home for a service-connected disability.

E. Improve the disability and death pension program

Comprehensive Improvements

1971 Convention Resolution No. 217 (Nebr.) seeks legislation to improve the death and disability pension benefits program for veterans of World War I, World War II, the Korean conflict, and the Vietnam era, and for their widows and children.

Oppose Supension of Payments to Veterans Residing Outside the U.S.

1970 Fall NEC Resolution No. 32 urges opposition to any legislation which seeks to suspend or discontinue payments of disability pension to any war veteran residing outside the United States.

Income Exclusion for VA Pension Benefits

1970 Fall NEC Resolution No. 39 seeks legislation to exclude from pension annual income determinations the additional railroad retirement annuity payable for dependents in the family group.

Effective Date of Disability Pension

1971 Convention Resolution No. 310 (Calif.) seeks legislation to provide that the effective date of disability pension shall be the date permanent and total disability is

established if an application is received within one year from that date.

F. Guerrilla recognition program of the Philippines

1971 Spring NEC Resolution No. 11 seeks legislation for the reopening of the guerrilla recognition program of the Commonwealth of the Philippines by the Department of Defense of the United States.

G. Payments to hospitalized incompetent veterans

1971 Spring NEC Resolution No. 17 seeks legislation to provide that in any case in which an incompetent veteran having neither wife nor child is being furnished hospital treatment, institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, and his estate from any source equals or exceeds $2,000, further payments of pension, compensation, or emergency officers retirement pay shall not be made until the estate is reduced to $1,000.

H. Improve administrative discharge procedures

1971 Fall NEC Resolution No. 14 seeks legislation to further improve and insure due process in the Administrative Discharge Procedure followed by the Armed Forces and the U.S. Coast Guard.

MEDICAL AND HOSPITAL

A. Extend Nursing Home Care to Nine (9) Months

1970 Convention Resolution No. 587 (Va.) seeks legislation so as to extend community nursing home care at VA expense to nine months.

B. Hospital Care in Civilian Facilities of Certain Veteran Dependents

1970 Fall NEC Resolution No. 40 seeks legislation to provide that the surviving dependents of those war veterans who die of a service-connected disability after discharge from active duty in the Armed Forces, as well as the wives and children of permanently and totally service-connected disabled veterans, shall be authorized hospital and outpatient care in civilian medical facilities at Government expense.

C. Medical Services for Non-Service-Connected Disability

1971 Spring NEC Resolution No. 9 seeks legislation to provide that the Administrator of Veterans Affairs, within the limits of the Veterans Administration facilities, may furnish such medical services as he finds reasonably necessary to any war veteran for a non-service-connected disability.

D. Establishment and improvement of State Medical Schools

1971 Spring NEC Resolution No. 18 seeks legislation to authorize the Administrator of Veterans Affairs to provide certain assistance in the establishment of new state medical schools and the improvement of existing medical schools affiliated with the Veterans Administration.

E. Direct Admission for Nursing Home Care

1971 Convention Resolution No. 619 (Convention Committee) seeks legislation to provide that the Administrator of Veterans Affairs may authorize direct admission to any public or private institution which furnishes nursing home care, or care at the expense of the United States.

EDUCATION AND TRAINING

A. Education Benefits for Wives and Widows

1970 Convention Resolution No. 193 (Md.) seeks legislation to authorize educational assistance at the secondary level for eligible wives and widows; and that such training be provided without charge to any period of entitlement.

1971 Spring NEC Resolution No. 14 seeks legislation to permit eligible wives and widows to enroll in correspondence courses.

1971 Convention Resolution No. 544 (Miss.) seeks legislation so as to extend apprenticeship and other on-job training benefits to eligible wives and widows, and wives of prisoners of war and missing in action.

B. Educational assistance and vocational rehabilitation programs

1971 Spring NEC Resolution No. 44 (superseded, in part, by 1971 Convention Resolution No. 342) seeks legislation to improve the education assistance and vocational programs to (1) increase the maximum period of eligibility to 48 months, and (2) increase the monthly subsistence allowance for vocational rehabilitation to a level commensurate with today's cost of food, housing, transportation and other necessities.

1971 Convention Resolution No. 342 (Md.) seeks legislation to improve the educational assistance program to (1) pay the cost of tuition, and such laboratory, library, health, infirmary, books, supplies, equipment, and other necessary expenses, excluding board, lodging, other living expenses, and travel, but in no event shall the payment authorized exceed 75 percent of such tuition cost and fees or $100, whichever is the lesser, for an ordinary school year, (2) a veteran eligible for such tuition, costs, and fee shall be paid monthly assistance allowance, and (3) establish VA guaranteed and direct educational loans for Vietnam era veterans.

1971 Convention Resolution No. 471 (Idaho) seeks legislation to provide that vocational-technical students not be required to make monthly certification of attendance.

INSURANCE

A. Reopen NSLI for one year

1970 Fall NEC Resolution No. 30 supports legislation to reopen, for a one-year period, the right to apply for National Service Life Insurance for those insurable and service-disabled veterans of service between the inclusive dates of December 7, 1941 and September 2, 1945, and of June 27, 1950 and July 27, 1953, under policies providing for a premium charge that will include administrative costs.

B. Special term (RS) insurance be made participating

1970 Fall NEC Resolution No. 33 supports legislation to make policies of insurance issued to veterans under section 723, title 38, USC, participating; and, asks that the Administrator of Veterans Affairs determine the amount in the revolving fund which is in excess of the actuarial liability, including contingency reserves, and pay such excess as a dividend without interest less the annual administrative cost per policy.

C. Special government insurance for Vietnam era veterans

1970 Fall NEC Resolution No. 41 supports legislation to provide a Special Government life insurance program for Vietnam era veterans.

D. Effective date for increase in servicemen's group life insurance

1971 Convention Resolution No. 22 (La.) seeks legislation to provide that the effective date of the increased Servicemen's Group Life Insurance shall be June 1, 1971.

E. Statutory total disabilities

1971 Convention Resolution No. 501 (Texas) seeks legislation to provide that kidney and heart transplants shall qualify as statutory total disabilities for waiver of premiums and payment of monthly benefits for those insured who purchased a total disability income provision rider.

DEPARTMENT OF DEFENSE

A. Extend delimiting date for correction of a military record

1970 Convention Resolution No. 486 (Ala.) seeks legislation to delete the delimiting date for applying for a correction of a military, naval, or air service record.

VIEWS OF PROF. STEVEN WEINBERG ON THE ABM

Mr. COOPER. Mr. President, on February 17, the Senator from Michigan (Mr. HART), the Senator from Missouri (Mr. SYMINGTON), and I placed in the RECORD our views upon the importance of continuing the practice begun during the ABM debate of bringing distinguished scientific witnesses to the Senate to give their views upon important problems of public policy that involve technology. On February 17, we placed in the RECORD replies from a number of distinguished scientists, replies which were in answer to questions we asked about the ORSA report. By inadvertence, a reply by Prof. Steven Weinberg, professor of physics, Massachusetts Institute of Technology, was not placed in the RECORD at that time. I ask unanimous consent that this excellent reply be placed in the RECORD. The quality of Dr. Weinberg's answer seems to me a credible answer to any criticism made of his integrity by the ORSA report.

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

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Cambridge, Mass., December 3, 1971.

Hon. JOHN SHERMAN COOPER,
Hon. PHILIP A. HART,
Hon. STUART SYMINGTON,
U.S. Senate,
Washington, D.C.

DEAR SENATORS COOPER, HART, AND SYMINGTON: Thank you for your letter of November 15, asking for my views on a recent report of the Operations Research Society of America, which deals with the ABM debate. I was one of the scientists criticized by the Ad Hoc Panel, so I was unable to read the ORSA report with an entirely open mind, but I will try to keep this reply as impartial as possible.

Before dealing with your list of specific questions, I would like to take this opportunity to comment on one point that does not seem to have been emphasized in the various remarks on the Ad Hoc Panel report. I am concerned that the public may receive an impression that this is a case of a scientific society finding scientific errors in matters within their area of technical competence. This is not so. The Panel Report states that "Operations Research is an experimental and applied science devoted to observing, understanding, and predicting the behavior of purposeful man-machine systems."

No one has observed an all-out nuclear war, so the emphasis here must be on prediction, and these predictions must be based on assumptions as to the physical capabilities of missiles, radars, and computers. Much of the Panel Report consists of judgments on the assumptions made by ABM opponents and proponents on such technical capabilities: the MIRV-carrying capabilities of the SS–9; the feasibility of offensive and defensive missile re-programming; the kill probability of SS–9 warheads; the feasibility of launching Minuteman missiles while nearby missiles are being attacked; the reaction time of bombers; the feasibility of "pin-down" tactics; etc. These are *not* matters of operations research, but of engineering judgment and evaluation of technical intelligence data, for which operations research provides no special expertise.

The statement of the dissenting minority of ORSA Council Members on p. 1256 of the Ad Hoc Panel report states that "the content [of the report] is outside the technical competence of many of the ORSA Council". Of course, the members of the Ad Hoc Panel

have a right to their opinions on engineering as well as operations-research questions. However, they do not have the right to cloak themselves in the mantle of an irrelevant expertise, in passing judgment on the opinions of others.

Now, to deal with your specific questions.

1. *Was the technical scope of the Ad Hoc Committee report sufficiently broad to be able to evaluate the fundamental questions before the Congress: whether there was a need for deployment of the Safeguard ABM system at this time; its value as a protection of Minuteman against probable Soviet threats; and whether Safeguard was as good a system for protection of Minuteman as alternatives to the Safeguard ABM system such as "Hardsite".*

Definitely not. The Ad Hoc Committee focused on a strange assortment of peripheral issues. For instance, they dealt at length with the capability of Soviet missile forces to destroy our Minuteman forces, although it was generally conceded on all sides that if the Soviets made the effort, they could develop MIRV's with sufficient numbers, accuracy, and yield to put Minuteman at risk sometime during the 1970's. (In any case, the Soviet first-strike capability must be a matter of conjecture even for the Soviets. This is not to say that such problems should not be considered, but only that operations research does not provide any special techniques for their solution.) With regard to the value of Safeguard against probable Soviet threats, the Ad Hoc Committee expressed an unsubstantiated disagreement with some of the specific criticisms of ABM opponents, and ignored other criticisms, such as the vulnerability of the Spartan components of the defense to radar blackout and penetration aids. The Ad Hoc Committee did not analyze the over-all effectiveness of Safeguard as a defense of Minuteman, nor did they compare it with "dedicated" ABM systems such as Hardsite, which many Safeguard opponents would not have opposed. Finally, they did not address themselves at all to what I regard as one of the major issues in the ABM debate (and which was the main subject of my own article in *ABM—An Evaluation*)—the question whether an ABM system, which has defense of the population against light attacks as one of its stated objectives, and which incorporates components like the Spartan which are specifically designed for this purpose would have a destabilizing effect on the arms race.

2. *Was it possible to make a meaningful judgment considering the narrowness of the inquiry?*

No, for the reasons given above. To be fair, it must be noted that the Ad Hoc Committee disclaimed any intention to pass judgment on Safeguard. However the tone of their report as a whole is favorable to Safeguard, and they must have realized that their report would be widely interpreted as a defense of Safeguard.

3. *In protecting the vulnerability of Minuteman, much was believed to depend upon whether one considered "reprogramming of Soviet missiles for failure" and simultaneous attack on U.S. missiles and bombers through "pindown" to be plausible Soviet tactics. Is the plausibility of these tactics a question of operations research or was it one of strategic analysis more broadly requiring consideration of many other factors? All things considered, do you believe that "reprogramming" and "pindown" were plausible Soviet tactics for the mid-seventies?*

The crucial question concerning the "reprogramming" and "pindown" tactics is not how valuable these tactics would be if feasible (a point to which the ORSA report gives much attention) but rather whether these are in fact feasible. This is not at all a matter of operations research or system analysis, but of engineering judgment, assessment of intelligence information, and guesswork as to Soviet strategic doctrine. For instance, in order to judge the "pindown" issue, one must consider the actual physical vulnerability of Minuteman to various radiation, electromagnetic, and blast effects of nuclear explosions; the ease of difficulty of removing any such vulnerabilities; the command-and-control problems of coordinating a first strike from Soviet submarines thousands of miles from Soviet territory; the vulnerability of such massed Soviet submarine fleets off our shores to U.S. ASW efforts; and above all, the extent to which the Soviets would be willing to risk their survival on what must for them be a conjectured vulnerability of U.S. ICBM's in an ill-understood nuclear environment. The Ad Hoc Committee report states that "this type of joint bomber and missile pindown attack may well be feasible" but it does not indicate that the members of the Committee have considered all these issues, or that they have the technical competence to do so. I am personally not sufficiently familiar with the details of Minuteman design or submarine command-and-control systems to judge whether "pindown" is feasible *in principle*, but on the basis of my experience with a variety of strategic problems, I would say that it is far too risky a tactic to be adopted by either side at any time.

Re-programming is another matter. At the cost of complicating their command-and-control system, the Soviets could keep back some fraction (say, 20%) of their first-strike force to use as replacements for ICBM's that fail to launch properly. I also presume that missiles that misfunctioned prior to thrust termination could be replaced, if the failure were known to the on-board guidance computer and if this information was successfully communicated to the launch site. However, there would always be some finite probability for a non-re-programmable failure, either caused by a failure of the guidance computer or communications down-link, or by failure to re-enter properly, or by failure of the fusing mechanism. The actual value for the non-reprogrammable failure probability of Soviet ICBM's is a matter of educated guesswork, probably even for the Soviets, but even the ORSA Ad Hoc Panel felt that Foster's estimate of a 5% probability for all non-re-programmable failures was too low. (Incidentally, here again they were basing their criticism of a participant in the ABM debate, in this case the Director of Defense Research and Engineering, not on any special operations research analysis, but on their own intuition.) My own guess would be that any adversary power, in planning a first strike, would want to allow at least 15–20% for non-re-programmable errors.

One final point on "pindown". I believe it is true that this tactic is not discussed in *ABM—An Evaluation*. However, to the best of my knowledge, *no* unclassified description of this tactic had been made public prior to the publication of this book. In preparing *ABM—An Evaluation*, we took great pains to avoid even the possibility of a breach of security, and perhaps we erred on the side of over-caution. However, the Ad Hoc Committee report shows a complete lack of appreciation for the constraints imposed during the ABM debate by security considerations. Indeed, many of the Ad Hoc Committee's criticisms of the ABM opponents' arguments on ICBM accuracy, Sprint reprogramming, etc. seem to amount to a complaint that we should have been less careful with classified data.

4. *Was the Administration misleading in choosing a particular level of threat against Safeguard; and not considering larger or smaller threats? Is it correct that Safeguard's effectiveness is only evident against a very narrow band of threats?*

The range of threat against which Safeguard would be effective is indeed very narrow, and the Administration did seriously mislead the public and the Congress in tailoring their hypothesized threat to fit the assumed capability of Safeguard. The Ad Hoc Committee report does take the Administration gently to task for this failure, but then goes on to excuse them on the grounds that Safeguard can after all be expanded to meet a growing Soviet threat. However, the Congress and the public were being sold a particular system at more-or-less definite cost, and were not informed that this was just the first installment on a much larger system. If the Administration had provided honest estimates of the future expansion of Safeguard that might be needed and of its cost, the ABM opponents would have been only too glad to shift the argument to one of cost-effectiveness. It should be added here that Safeguard may *not* be expandable after all, if the U.S. and the U.S.S.R. reach an agreement at SALT limiting the number of defensive missiles on both sides. In this case the strategic irrelevancy of Safeguard will be permanent.

5. *Do you believe that the proponents of Safeguard have now conceded that the opponents were right in insisting that smaller, cheaper, and less vulnerable radars be developed?*

The "Hardsite" program is still in the research and development stage, so perhaps it is too early to say that the Administration has conceded this point *publicly*. However, in private discussion I find that even ABM proponents will concede the inadequacy of the present Safeguard design.

6. *Did the Ad Hoc Panel make full use of all the information available to the responsible Committees—the Armed Services and Foreign Relations Committees—both classified and unclassified, concerning the Soviet threat and Safeguard ABM performance capabilities against a range of Soviet threats?*

I have not been able to judge from the Ad Hoc Panel report what information was available to the Panel and what part of this information they actually used. The report refers to official estimates, but the source of these estimates is not explained.

7. *Was the inquiry by the Ad Hoc Panel technically correct and competent in its findings?*

In my opinion, the Panel report displays an incompetence in three respects: in engineering judgment, in operations research itself, and in adherence to the general standards of good scholarship.

With regard to engineering judgment: the Panel appears to rely throughout on "official" estimates from unspecified sources and on their own intuition, without displaying any independent consideration of the relevant technical details. To be fair, they could not have gone very far into these matters on an unclassified level, but they could at least have given the reader a better feeling for the uncertainties involved. In my opinion, they are incorrect in their assessment of the cost of ICBM re-programming; the feasibility of "pindown" tactics; the effectiveness of Sprint re-programming; and the incremental cost of deploying large numbers of RV's on a MIRV'ed SS–9. A realistic discussion of these matters would have to be held on a classified level.

With regard to operations research: the greatest failure of the report is in its unwillingness to come to terms with the really important issue of Safeguard capability as a defense of Minuteman. (See question 4 above). This failure indicates either incompetence or bias or both. In addition, the Panel was frequently guilty of the fallacy of misplaced concreteness. That is, they expressed disagreement with the precise values of various parameters (accuracies, kill probabilities, costs, lead times, vulnerabilities, etc.) used as illustrations by the ABM opponents, without assessing the over-all strategic relevance of a change in these parameters, or the intrinsic uncertainties in

these estimates. (For an example, see the answer to question 7 below.)

With regard to scholarly standards: the Ad Hoc Panel report persistently fails to give precise references for statements it quotes, both of ABM opponents and of official sources. For instance, who is being quoted on p. 1229? What literature on Sprint re-programming is referred to on p. 1222? What plots of N vs. Y are referred to on p. 1189? Also, the Ad Hoc Committee was careless in not quoting sources accurately. I will restrict myself here to two instances in which the report misquoted statements of my own:

(a) On p. 1222, the Report says that "The possibility of preventing the destruction of substantial parts of the Minuteman force by merely launching it on the basis of warning of an impending attack, has been proposed by, among others, Wiesner and Weinberg in the Chayes-Wiesner book." I believe that anyone reading this would get the impression that Wiesner and I had proposed that the U.S. should consider launch-on-warning as a possible U.S. doctrine. This is not so. In my article "What Does Safeguard Safeguard?" in the Chayes-Wiesner book, I point out that an attack on our bombers and Minuteman is difficult because Minuteman might be launched not merely on the basis of radar warning, *but only after destruction of our SAC bombers.* (This is the contingency which the "pindown" tactic is supposed to prevent. Actually, I would not propose that the U.S. should adopt this doctrine, but only that the Soviets would have to reckon with this as a possible U.S. tactic.) In the "Overview" chapter in *ABM—An Evaluation,* Chayes, Rathjens, Wiesner, and I do mention "launch on warning", but only as a possibility that would have to worry an adversary planning a first strike on the U.S.

(b) On p. 1198, the Report refers to a footnote in my article "What Does Safeguard Safeguard? (in the book *ABM—An Evaluation*), as follows: "The reference made by Weinberg to Packard's testimony of March 20 is to a passage in which Packard does *not* say that an SS–9 20MT warhead would have a 0.8 single-shot capability against a Minuteman. He said that it would have that single shot kill probability if the CEP were 'in the range of 0.6 to 0.8 mile' " Later, on p. 1199, the report concludes that I ascribed official validity to a purely hypothetical kill probability. Anyone reading the above statement would conclude that I had misquoted Packard by omitting an important qualification concerning CEP. This is not so. In fact, my footnote (which is actually quoted correctly on p. 1195) reads "In testimony before the Senate Armed Services Committee on March 20, 1969, Deputy Secretary Packard stated that an ICBM *with a CEP of 0.6 to 0.8 miles* would have to carry a 20MT war head if it is to have an 80 percent chance of destroying a hardened Minuteman silo." (Emphasis added.) Also, I never ascribed "official validity" to this kill probability. Anyone reading my article would see that 80% was chosen purely for the purposes of illustration, and that a kill probability of even 100% would still lead to the same conclusion, that Safeguard could easily be overwhelmed. In this context, it was perfectly legitimate to quote Packard to show, not that 80% was an "official" estimate of the kill probability of SS9 RV's, but that it was a reasonable number to use for purpose of illustration.

In fact, the Ad Hoc Committee does not seem to realize that there is no such thing as an officially valid SS–9 kill probability, but only a range of educated guesses.

8. *Should the inquiry by the Ad Hoc Panel have evaluated the testimony and statements of all witnesses pro and con who were called before the two committees? Should the Ad Hoc Panel have made use of such studies as the Report of the Ad Hoc group on Safeguard for FY 1971 (the O'Neill report) submitted to the Secretary of Defense on January 27, 1970?*

Certainly the Ad Hoc Panel, by ignoring most testimony (*and* all Presidential statements) on the ABM, could not reach a balanced view of the ABM debate or of the ABM itself. Of course, if they had found serious flaws in the performance of some ABM opponents, it would be no excuse to point out that they could have found worse errors in the statements of the President or Administration spokesmen. However, the selective way in which the Ad Hoc Panel chose its targets reveals a bias, which I hope will warn the public against taking any of the conclusions of this report seriously. (With regard to the O'Neill report, I do not know whether the Ad Hoc Panel could have had access to this report during the preparation of their own report.)

9. *Did the ORSA Panel apply the same standard of judgment to all witnesses who testified, both pro and con?*

No. I believe that the bias of the Panel will be apparent to any impartial reader.

In looking back over the ABM debate, I am rather proud of the case we made in opposition to Safeguard. I hope that some day the entire debate may be subjected to a competent and impartial review.

Very truly yours,

STEVEN WEINBERG,
Professor of Physics.

U.S. NEWS & WORLD REPORT INTERVIEWS SENATOR ERVIN

Mr. MANSFIELD. Mr. President, our Founding Fathers preciously guarded the freedom of the individual when they insisted upon the first 10 amendments to the Constitution. Those individual liberties are being championed now by the Senate's most vigorous protector of the Bill of Rights, the distinguished senior Senator from North Carolina (Mr. ERVIN). A remarkably candid interview with Senator ERVIN appears in this week's issue of U.S. News & World Report and gives insight into the depth of the commitment of Senator ERVIN to these individual liberties and the need for constant vigilence to their erosion.

I ask unanimous consent that the interview with Senator ERVIN be printed in the RECORD.

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

INVASION OF PRIVACY—HOW BIG A THREAT?
(Interview with Senator SAM J. ERVIN, JR., of North Carolina)

Q Senator Ervin, your Subcommittee on Constitutional Rights has dug deeply into the issue of what some people call "Government snooping." How serious do you think it is as a threat to our constitutional rights?

A I think it's a very grave threat. This arises out of the fact that when people know or suspect that the Government is spying on them and collecting information about them, they refrain from exercising their right to associate with other people for the accomplishment of purposes they believe in and their right to assemble with other people and to petition Government for redress of grievances.

The Supreme Court has recognized this in a number of cases, and it's undoubtedly a fact. Most people are afraid of the Federal Government.

Q Afraid of it?

A Yes. It has what they call a "chilling effect."

Q. What governmental agencies appear to be the main offenders?

A. Well, I hate to say it, but the Bureau of the Census is one of them—not when it collects the information it is required to take, but when it collects information at the instance of various other agencies of the Government, such as the Veterans Administration and the Department of Health, Education and Welfare.

I think that the Passport Office was an offender, because it had a file of undesirable people who might apply for passports. This was particularly true in the days when they had limitations on travel by Communists. States even filed with the Passport Office the names of fathers who had abandoned their wives and children and were wanted on nonsupport charges.

Almost every department of Government now collects information on citizens, some of which, of course, is necessary, as in the case of HEW in administering the Social Security Act and the Medicare Act, and certainly on the part of the Internal Revenue Service in the administration of the tax laws.

Then you have the Secret Service, which, after the assassination of President Kennedy, began to collect files on suspicious characters that they thought might endanger the President or other people in high position. It would have been amusing if it hadn't been tragic—the people that were included in that collection. They asked for information about anybody who would gate-crash at parties, or about people who petitioned high Government officials for redress of grievances, real or imagined, or about people who spoke in harsh terms of high Government officials.

Q. Do you mean that people were listed just for speaking critically of, say, the President?

A. Yes, for talking as Senators and Congressmen do every day. I don't think they'd put Senators and Congressmen on the list, though.

Q. How do Government agencies go about this snooping?

A. A lot of the snooping is done by issuing questionnaires, a lot of it by compelling applicants for Government employment to submit to psychological tests and in some cases to lie-detector tests. That's a particularly prevalent practice in the Central Intelligence Agency and the National Security Agency. But the most aggravated and inexcusable form of snooping that's been done by the Federal Government in recent years was the use of the Army in 1967 and 1968 to spy, both covertly and overtly, on citizens whose only offense was that they were exercising their First Amendment rights to assemble and petition Government for redress of grievances and to protest policies of an Administration they didn't like, such as the Vietnam war and the draft.

Q. Are you satisfied that this Army snooping has been stopped now?

A. Well, we've been assured by the Army that it's been stopped I expect that temporarily, at least, it's been stopped.

You know there's an old couplet that says, "When the devil was sick, the devil a monk would be, but when the devil was well, the devil of a monk was he." And I think that the Army has stopped this, at least as long as the Subcommittee on Constitutional Rights keeps its eyes on it.

Q. What triggered the Army investigation? What was its purpose?

A. The excuse given was that the President needed to know what was going on in the country so he could anticipate where there might be some kind of insurrection against the Federal Government or against a State government, or where there might be some violence that would prevent the enforcement of federal laws. Under such circumstances the President could use the armed forces,

except that in the case of a State he has to be requested first by the State authorities.

And they said this snooping was necessary for the President's information. I think it was totally worthless, however, because they just stored the information in computers.

Q. Did you ever trace the origin of the order to do such things?

A. Not with the way the Army has concealed the thing. But the President is Commander in Chief of the Army and the Navy, and the chief legal adviser to the President is the Attorney General. And it's inconceivable to me that all of this went on without the President authorizing it and without it being known to the Attorney General. We have asked the Department of the Army to send down some generals who could tell us something about this, but they won't do it.

Q. Why would the present Secretary of Defense, who is in a Republican Administration, resist telling you something that went on in a previous Democratic Administration?

A. I asked that question I said: "Here, you're Republicans, and you're not supposed to love Democrats overmuch. And here you are trying to make yourselves accessory after the fact to some Democratic misdeeds by suppressing information and giving a haven of refuge to the Democrats who did these things."

The inference I draw from it is you have some men in the military intelligence who would like to keep these things secret and who have an uncanny persuasive power over the present Administration. That's an inference only. They won't allow the generals to come down here so we can ask them that.

WHEN INFORMATION IS EXCHANGED

Q Senator, is information that is gathered by one federal agency shared with another agency?

A The evidence before the Subcommittee showed that there was a constant interchange. The information gathered by the Army concerning civilians not affiliated in any way with the Army was interchanged not only with the Federal Bureau of Investigation but also with local law-enforcement officers. And I think we had evidence to indicate that on one occasion they interchanged information with the CIA.

Q Are there other agencies that interchange information?

A Yes. You take FBI interchanges: It maintains a national bank of crime information, and it exchanges information with State officials. In fact, it gathers information for State officials and, in turn, transmits information to State officials. And some of this is very harmful.

For example, when I was a judge in North Carolina, the attorneys who prosecuted criminal cases before me got FBI reports on persons coming before the court. Many of them listed a man as having been arrested for a certain crime at such-and-such a place on such-and-such occasion, but it never showed whether he was ever brought to trial or, if he was brought to trial, whether he was acquitted.

This kind of report is very harmful to a man, and in many cases I think it finds its way into employment agencies and is very detrimental to him in getting a job.

Q Is this interchange of criminal records illegal?

A I don't know of any law that prohibits it.

Q Is it dangerous, in your view?

A It's very dangerous. Much of the information is inaccurate—not verified.

Q How about the information gathered by the Census Bureau? Is that exchanged with other agencies?

A The Census Bureau gathers information sometimes at the instance of a private organization. A few years ago, at the request of the American Bar Association, the Bureau sent questionnaires to selected lawyers throughout the country—wanted to know how their practice was divided percentagewise between trial work and counseling, and how it was divided between civil and criminal practice, and, on some occasions, how much they paid their secretaries, and a whole lot of things like that.

They send a lot of questionnaires out to small-business men, and these small-business men go to great expense to collect information abut their affairs. They think they have to do it.

There's a census statute that provides that anybody who doesn't furnish the information which the Bureau of the Census is required to collect is guilty of an offense and can be put in jail, I believe, for 30 days or fined $100.

The Census Bureau never tells the person they send the questionnaire to whether this is something that's required. It leaves them under the impression that they are subject to fine or imprisonment if they don't respond. I introduced a bill to provide that the Bureau of the Census has to advise people whether it is voluntary or compulsory information they are seeking.

Q. What happened to the bill?

A. The bill never made any advancement.

Q. Is it your view, then, that the Census Bureau goes too far in the range of the questions it asks?

A. Oh, yes. They asked certain questions—at the instance, I suppose, of the Veterans Administration—that frightened all of the veterans into thinking that if they didn't answer these questions they'd have their disability allowances canceled. This shows how people are afraid of the Federal Government.

Then, at the request of HEW, they sent out a questionnaire which I'd call in many respects a very foolish questionnaire about things that are none of the Government's business. They asked retired people how often they called up their relatives on the telephone, and how often they went to a beauty parlor or to a barber shop, and how many newspapers and magazines they subscribed to, and things of that kind.

The Bureau of the Census asked people if they have a flush toilet, and things like that.

Such questions are evidently put in there at the request of industry that wants to find out whether there's going to be a good market for their products.

Q. Senator, many people in the country have a fear that their Social Security number is used, or can be used, by the Government to snoop. Is that fear justified?

A. Oh, yes. I think the Social Security number is becoming a universal identification number, because of a lot of banks demand that the man furnish his Social Security number when he applies for a loan, or insurance companies require him to furnish it when he applies for insurance.

And yet the Government assured people, in effect, that it would only be used to identify people for Social Security purposes and tax purposes.

Q. Isn't there a move to use a man's Social Security number as his serial number if he enters the Army?

A. Yes—I understand that is partially the practice now. And, of course, the trouble about dealing with people on the basis of numbers is that you soon get to think of them as numbers—and that most of them are zeros.

"NO LAWS" FOR NEW HAZARDS

Q. Government agencies are increasingly using data banks and computers as central storehouses for information about individuals. Is this raising new dangers?

A. Yes. You see, there are no laws on this subject.

There are no laws which require information that is collected, outside of Social Security purposes and things like that, to be accurate. It's not verified. Much of it is collected by people who are not trained and have no knowledge of what is accurate and what is not accurate. There are no laws which ordinarily restrict access to the information to people who have only a legitimate purpose to be served by having access to it. There are no laws prohibiting its dissemination, except in very rare instances.

The trouble with computers is that fundamentally a computer has multiplied man's capacity to store and retrieve and analyze and disseminate information millions and millions and millions of times. The threat to privacy which the gathering and use of information of this kind entails was not so great before the advent of the computer, because then you had to keep it in paper files, which were bulky, and very few people had access to them. But now you have all this information collected by the Government.

In addition, you have all these credit agencies that are engaged in collecting information on individuals all over the country—millions and millions of people. And there is no way to know whether some of it is accurate or not.

Take credit information: Its largely based on reports of shopkeepers. And if a storekeeper has had a dispute with a customer over a bill, and the customer may have rightly claimed that he got shoddy merchandise, the shopkeepers information goes in the credit report and the customer has no knowledge about it. He doesn't know why he can't get credit.

Q Doesn't the customers complaint go in the record?

A No—his complaint doesn't go in. So you need some laws so that where derogatory information of that kind is collected a man must be apprised of it and given an opportunity to explain it. The way it works now, its sort of condemning the man without allowing him to face his accusers.

Q What about lie detectors? Are they a dangerous invasion of privacy?

A I have frequently described the use of a lie detector as "twentieth-century witchcraft." I think that a brazen liar can pass a lie-detector test without difficulty, but a truthful man who happens to be a little nervous or resentful of insulting questions, such as are frequently asked in these tests, would probably flunk it. If a lie detecter could really do all that is claimed by people who advocate it, we could just disband all our criminal courts and just let the lie-detector test be the judge and the jury.

Q Would you limit the use of lie detectors in law enforcement?

A I would let law-enforcement officers use them in their investigations, but I wouldn't let the courts admit the test results as evidence against a man.

Q Aren't some private business companies using the lie detector as a pre-employment test of individuals?

A Yes, some companies do.

Q Would you limit lie detetcors used by the Government in employment?

A Yes, I have introduced a bill to forbid it.

Q And how about private companies?

A I would do the same thing with respect to private companies that are engaged in activities which affect interstate commerce. That would be the limit of the Congress' legislative power in this field.

Q. Do you think federal employees need special protection against Government snooping into their affairs?

A. Yes, because Government employees are particularly in a position where they could be made "guinea pigs." And I hate to say it, but they have been made guinea pigs.

For example, a few years ago the Civil Service Commission, acting at the instance of President Johnson, issued directives to various agencies of the Government directing them to encourage their employees in

their off hours to get out and do things that would assist in the implementation of the policies of the Johnson Administration.

For example, the Department of the Treasury had a directive issued to its employees that they should go to their local city councils and try to persuade them to pass open-occupancy ordinances; go to school boards and try to get the school boards to put certain things in the curriculum; organize tours of "ghettos" so they could encourage people to support housing programs of the Government.

It even went so far as to help out Lady Bird Johnson's beautification program by suggesting that these Treasury employees should take their own money and buy some flower seeds and grass seeds and give them to people to plant grass and flowers to beautify the community, and even buy paint and paint brushes to paint the houses.

Now, another thing: The Maritime Administration got a directive from the Civil Service Commission which was construed as requiring that employes be requested, at least, to go out in their spare time and help to encourage the adoption of governmental policies. The employes were required to report back to the head of the maritime agency.

And I was sent a notice from a bulletin board down in Norfolk, Va., where they said that on such-and-such a date some professor was going to deliver a lecture on some policy of the Government such as integration, and that all the civilian employes in that division were invited to the meeting—that attendance was not compulsory but that note would be taken of all those not in attendance. Then they brought pressure on federal employes to make contributions to charitable causes—to buy bonds.

At the hospital at Andrews Air Force Base [Md.], where they have many civilian employes, they circulated a card among them which had three squares on it. Employes were to mark the squares. It was in connection with a bond drive. The first square said, "I am now buying Government bonds, but will step up my purchases." The second one said, "I am not now buying Government bonds, but I will proceed immediately to do so." The third one said, in effect, "I am unwilling to accept my fair share of the responsibility for assisting the President in making this bond drive a success."

I thought one of the worst examples came from Vietnam. I got a letter from a captain out there who said his superiors had given him a quota of Government bonds to sell to members of his outfit. But he and his outfit had been up in the fighting for three or four weeks, and he was too busy fighting to sell any bonds. When he got back, he said they threatened him with a bad efficiency report because he hadn't come up to his quota in his bond sales.

"ALL FREEDOM IS ALWAYS IN DANGER"

Q. Lately, one hears a lot of talk about freedom of the press being endangered by Government officials. Is this true, in your opinion?

A. I think all freedom is always in danger. I think freedom of the press can be endangered in several ways. The objective of freedom of the press is to make certain that we have an informed electorate, because an informed electorate is necessary to make our institutions of government function properly. Now, that purpose can be frustrated in several ways.

One way is that you have all of these public-relations employes of the Federal Government who are employed to make the actions of the executive branch appear in their best light. And newspapermen are like some members of Congress: They have got today's work to do, and the quicker they can do it the better for them—or so they think. So they accept these Government handouts. And these Government handouts, in many cases, deceive the people about what their Government is doing or how efficiently their Government is operating. I think that is a threat to the freedom of the press.

Then another threat to the freedom of the press is that a lot of people in public office confer honors on members of the press. And I think that creates a sort of unholy alliance that tends to deny people the right to know what their Government is doing.

Then, of course, you can have freedom of the press threatened not only by favors but by implied threats, and that's particularly true in the broadcast media. The printed word is not quite as susceptible to coercive practices to control it as the broadcast media, because anybody can set up a newspaper if he's got the finances. But nobody can operate anything in the broadcast field without first getting a license from the Federal Communications Commission, and the FCC has authority under certain circumstances to revoke licenses or deny their renewal if it doesn't fully approve of the broadcasts. I think that is a Damoclean sword that hangs over the broadcast media all the time.

Q. Senator, do you think there is too much classification of documents by the Government?

A. Oh, it's carried to ridiculous extremes. There has been testimony before one of the House committees by a man who used to help do the classifying that only about 4 or 5 per cent of the papers that are marked "classified" should really be marked classified.

I had an experience in this field some years ago:

I have been interested in the textile problem, and was interested in how the voluntary quotas the Japanese imposed upon their exportation of textile products to the United States were working. And I got a note from a man in the textile field saying that if I could get hold of a copy of a report from the American consulate in Kobe, Japan, that I would get some very illuminating information on this point. So, taking a shot in the dark, I wrote both the State Department and the Department of Commerce asking for a copy of this report. I got a copy from each Department.

The State Department's copy was marked "confidential" and was accompanied by a statement to the effect that I was furnished a copy upon the understanding that I would not make any public use of it whatsoever.

But the same report was not classified at all by the Commerce Department. And what it stated was that some of the Japanese industrialists manufactured shirts—except they didn't sew the buttons on them. They sent the shirts and the buttons over to Hong Kong to a firm that sewed the buttons on and then exported the shirts to the United States as Hong Kong—rather than Japanese—products.

Of course, the State Department has always tended to be very solicitous about the interests of foreigners, and they wanted to suppress this information that indicated the voluntary quotas were being evaded.

"THE FBI HAS A PRETTY GOOD RECORD"

Q Returning a minute to the FBI—many people express alarm about the FBI's operation as invading personal privacy. What is your view?

A I would have to say the FBI has a pretty good record of keeping its reports confidential—with the exception of disseminating records of criminal arrests and criminal convictions. And, of course, the dissemination of records of criminal convictions, I think, is perfectly legitimate and enables the proper enforcement of law, because a man's past record of conviction of crime is a relevant factor to be taken into consideration in imposing sentence on him.

The FBI collects a lot of trivia. It doesn't profess to analyze its reports.

Nobody has ever brought me any hard evidence that would indicate the FBI has ever exceeded its legal authority. Now, mind you, its legal authority is very broad:

It has full authority to investigate people—the conduct of people who it believes have committed crimes.

It also has the full legal authority to investigate the conduct of people who it has reason to believe are about to commit crimes.

It also has authority to exercise surveillance over domestic subversion—whatever that is. I have never been quite sure what subversion is. I think some people think at times I'm a subversive, since I don't like some governmental tyranny.

So I think it's very difficult for the FBI to exceed its authority.

I do think that some of the trivia they collect, such as some of that which was revealed by the papers that were found in the FBI office at Media, Pa., would indicate that they were really collecting information about political activities and political thoughts of people. But they may have had full authority to do that on the theory that those people were subversive—or about to get subversive.

WIRETAPPING: "DIFFICULT" PROBLEM

Q. Do you think the FBI exceeds its authority in the use of wiretaps?

A. The wiretapping proposition is a very difficult one.

I was one of the cosponsors of the omnibus crime bill—some people call it "the ominous crime bill." It was a good bill in one respect on wiretapping. Up until that time, under the law it was legal for anybody to wiretap anybody or to exercise electronic surveillance over anybody. The only restriction on wiretapping was that you could listen but you couldn't tell anybody what you heard. And, of course, in the Department of Justice what one official of the Department of Justice told another was not communicating to anybody else, in their theory.

This omnibus crime bill makes it illegal for anybody to wiretap except for law-enforcement purposes, and therefore it improves the right of privacy to that degree. It requires—with the exception of an emergency situation—that before the Federal Government can exercise electronic surveillance in law enforcement a court order must be obtained on a showing that the surveillance is justified—that certain serious crimes are involved. It leaves it up to the States to have their own wiretap laws.

Now, as I recall the bill, it does not attempt to deal with foreign subversion, foreign espionage or domestic subversion. And the Department of Justice has taken a position that the President has an inherent right to have electronic supervision or surveillance exercised on any person for domestic subversion. I just don't believe that the Constitution permits that, because I don't think the President can suspend the Fourth Amendment. And I think the Fourth Amendment protects the right of privacy for persons' thoughts and what they say in their homes, just as it does their papers and effects.

Fortunately, although some of the lower district courts had split on that question, there's a very fine opinion in a case from a Michigan circuit judge that holds that the President has no such power. The Supreme Court has agreed to review that case, and we'll probably get a decision in this session.

Q. Senator the Judiciary Committee has pending before it more than two dozen proposed amendments to the Constitution. Are you concerned about this, or do you think our Constitution really needs a lot of amending?

A. I think it needs very little amending. I hate to say this, but I think the people who drew our Constitution were much more knowledgeable in the fundamentals of sound government than are many of those who now occupy high office in the United States.

They had more time to think. They spent more time reading history than they did political platforms. They were not subject to a whole lot of pressure groups. So they wrote their own convictions. And they had studied the history of mankind's fight for freedom and the right of self-government, and they had learned important lessons.

The people who drew the Constitution went through all the great documents of history that secured the liberties of the people. They went through all the principles of the common law. And they were determined that none of the liberty ever wrested by the people in their centuries-long contest with arbitrary power should be lost. So whatever they found in these great documents of history they inserted in the Constitution.

People, politicians who take dictation from pressure groups are not very well qualified to write constitutional principles, because the pressure groups are looking to achieve selfish objectives. The people who wrote the Constitution were trying to secure rights for all men.

"PERIL" IN RIGHTS AMENDMENT

Q Would you discuss some of these proposed amendments? What about the one on women's rights, for example?

A I am the legislative fool who rushes in where legislative angels fear to tread.

That amendment passed the House with only 16 dissenting votes, and 83 Senators were cosponsors of it. But I think this amendment would imperil the future security of the United States.

It would rob women who elect to be wives and mothers—and who unfortunately become widows—of necessary legal protections. It poses serious threats to the privacy of men and women and boys and girls. It poses serious threats to the ability of Congress to declare certain sexual offenses, like the rape of a woman by a man and the seduction of an innocent, virtuous woman by a man. It poses serious threats to the power of the States to enact such laws.

So I spoke against it.

Once, after I made a speech against this amendment, a delegation of ladies from the National Women's Party asked for an audience with me to point out the error of my ways. They were very charming ladies of about my vintage, and they asked what objections I had to the amendment. And I said: "One objection—and a very crucial one—is this: It would prohibit every legal distinction between men and women. Therefore, under this amendment Congress couldn't draft men without drafting women for military service. It couldn't enlist men for combat service without enlisting women for combat service. It would have to convert the service academies into coeducational war colleges. And I think that would imperil the security of the country."

They said: "Oh, but we want to be drafted."

And I said: "Now, ladies, I have always made it a practice to try to be a gallant gentleman insofar as making references to the age of a lady is concerned, but I'm going to vary my practice, on this occasion, because I am compelled to infer that notwithstanding your youthful appearances you are probably a few months above the draft age. And if you want to convince me that women want to be drafted, you are going to have to send some sweet young things within the draft age up here to do it."

I can't see why the business and professional women wish to take away from their sisters who elect to be wives and mothers—and unfortunately become widows—the protection which the law now throws around them.

Felix Frankfurter [late Supreme Court Justice], who in my book was a pretty wise man, said that, as a general rule, law should deal with people of both sexes simply as persons, but that the Creator had made certain distinctions between men and women, and that in any rational society the law was going to recognize these differences.

Q. How about the proposed amendments to bar busing of schoolchildren for racial balance in school enrollments?

A. I favor such an amendment because I consider that, unfortunately, we don't get laws constitutionally and soundly interpreted nowadays in racial questions. Our political climate is rather foggy. And the Supreme Court of the United States and other judges have piled so much judicial and intellectual rubbish on top of the equal-protection clause of the Constitution that you can't even see it any more.

The equal-protection clause, in my honest judgment—if rightly interpreted—outlaws busing of children for integration purposes or at the instance of the Federal Government for any other purpose. All the judicial rubbish that has been piled on it hasn't altered the meaning of the equal-protection clause.

The equal-protection clause is probably the simplest clause in the Constitution. All it means is this: No State shall treat differently people similarly situated.

Now, when a federal court orders a school board to bus children for the purpose of mixing races in the schools, it violates the equal-protection clause in two respects:

In the first place, the federal court says to the school board: "You've got to divide the children residing in this school district or this attendance zone into two groups. You can let the first group attend their neighborhood schools in the district, but you must refuse to permit the other group to attend the neighborhood schools in the district." Now, that clearly violates the equal-protection clause because it treats children similarly situated in a different manner.

It violates the equal-protection clause in another way. The Supreme Court held in the 1954 school-desegregation ruling that the equal-protection clause prohibited the State from excluding any child from a particular school on account of the child's race. Oceans of judicial sophistry cannot wash out the plain fact that that is denying the children who are bused of their right to attend their neighborhood schools on account of their race.

So the forced busing of schoolchildren by an order of the federal court is a violation of the equal-protection clause for school-integration purposes, and the Federal Government has no jurisdiction over assignment of children on any other basis.

Q Do you predict that some kind of antibusing amendment will be adopted?

A Well, Senator John C. Stennis [Democrat, of Mississippi] has been predicting for a long time that when they applied the same law in this respect to the North—or the same requirements to the North—that they did to the South, we might have some sanity restored to this field.

And one Senator, whose name I shall not call, voted against the antibusing amendment I offered last April and spoke against it. But a short time ago he stated he was now against busing because they had started busing in his State. So I went over, and I congratulated him on seeing the light. He said:

Yes, my own ox has been gored.

You know, I used to say about some of these civil-rights acts that I envied members of the Senate who would weep about the sins of the far-distant South because it blinded them to the sins on their own doorsteps. And you can always endure with a great deal of complacency tyrannies that are being practiced on people who are far off, but when those same tyrannies are practiced on your people at home you have a different attitude about it.

TOWARD A "DOSSIER SOCIETY"

Q Senator, a final question: You expressed concern about a year ago that we were headed for a "dossier society" in which everybody would have a number, and under that number would be filed all the information on him. Do you think that the process of creating such a society has been slowed or reversed?

A No. I think it has been accelerated virtually every day.

GRASSROOTS THINKING

Mr. MILLER. Mr. President, on February 7, 1972, Mr. V. O. Figge, President of the Davenport Bank & Trust Co. of Davenport, Iowa, presented his annual report to the stockholders.

I ask unanimous consent that an extract from this report be placed in the RECORD as a matter of interest in the grassroots thinking of a community leader in one of our midwestern cities.

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

As we move into the seventies, it might be well to reminisce and also to look beyond the immediate horizon.

We live in an age when prognostications on both domestic and international affairs are senseless and meaningless. This has lately been proven again by the utterances of high government officials, including the president, and those so-called experts in business and in the world of finance, and by economists who have become too numerous to mention.

We live in an age when "sights" are set for virtually only a day at a time—and when tomorrow's headlines may bring startling changes, which were not generally foreseen nor planned for.

Just a short time ago devaluation of the dollar was unthinkable. Our dollar was supposedly sacred—devaluation was not even to be mentioned in "nice" circles—it would have been thought sacrilegious—but we *have* devalued the dollar, and unless we mend our ways we may in the future devalue it *again* and *again*. Actually, our dollar had already been devalued for us by important foreign governments who recognized our dilemma before we did—formally. *They* knew that inflation had gotten out of hand in this country; *they* knew that because of extremely high costs our products were not competitive in world markets; *they* knew we were not realistic in the management of our affairs.

A few months ago the president forecasted a balanced budget, with a small surplus, but at the end of the fiscal year 1971, the Treasury's own figures showed a deficit of twenty-three billion dollars. His estimate was based on full employment, which has not materialized. Today we have unacceptably high unemployment figures. We are presently faced with an unconscionable budget deficit, which will run, perhaps, forty billion dollars or more, and for the year 1973 we have already had an official projection of an additional twenty-five billion dollar deficit which, based on past record, could conceivably run twice that much. These deficits during the present administration alone will total possibly ninety to one hundred billion dollars! This, added to our present debt, brings us to the alarming and astronomical total debt figure of approximately five hundred billion dollars! The annual interest on this debt alone will run twenty-five to thirty billion dollars.

This unenviable record is not unique to the present administration. It is the history of other administrations preceding this one, regardless of party.

High officials in government and important people in industry have repeatedly said that we would not resort to controls. Controls,

they said, would not work and we would not use them—but we now have imposed controls. Perhaps, these controls will mitigate to some extent the impact of inflation—but not for long. In spite of the controls, inflation is still with us, and, of course, it has been running unchecked for many years. This is the real crux of our trouble.

We have talked at length about halting ruinous inflation, but so far it has been purely talk. We haven't done it, and seemingly no one has the intestinal fortitude to do it, especially in an election year—and, for politicians, every year is an election year.

We are still living in an age when crime is running rampant throughout the country.

We are still living with all of our social problems. They have not been solved.

We are still at war, even though on a reduced scale, and we are still living in an age when the threat of war is with us constantly all over the globe. We are still living beyond our means at all government levels, and as individuals. We continue to spend vast sums of money promiscuously, domestically and around the world, and there is no end in sight.

We have many men in government in Washington today, who neither know how to balance budgets, nor do they very much care. Men who in private life have never held a job of importance, neither have they ever run a business, nor have they ever met a payroll. These are the men who, in an election year especially, will vote to spend additional billions for vote-getting schemes, completely disregarding the budgetary results. This is nothing short of total fiscal irresponsibility. These are the men of both parties who represent us in the Senate and in the House, and who, in the final analysis, must approve or disapprove all major expenditures. These are the men who are running the biggest business on earth—our government.

What would you think of a business man who is forced to come to the market to borrow large sums of money, when he has to admit to his creditors that he has been operating in the red, with sizeable losses year after year? Who would take his promise to pay and advance him much needed money—unless he gets his house in order? That is the exact position of our government—at all levels. We must come to the market to raise huge sums—billions of dollars—to finance our deficits. We have been piling up debt so fast, and raising debt limits so high that our dollar remains suspect in international circles. In the face of these huge deficits, how can inflation be controlled—deficits themselves spell out inflation with capital letters! There may come a time, and in the not too distant future, when *our own government's* promise to pay will not be acceptable in the market place. Should that time ever come, all of us will have a rude awakening, an awakening which even at a very late date might conceivably be a blessing in disguise.

These are just some of the things we live with and face today—and every day. Some of these problems in time can be solved if properly and honestly approached. Some of them on the other hand will not be solved in our day, and, importantly, some of them, if not solved, can easily, over a period of time, ruin us.

V. O. FIGGE, *President.*

PEOPLE-TO-PEOPLE PROGRAMS

Mr. MILLER. Mr. President, in recent years, there has been a healthy development of interest on the part of our citizens in people-to-people programs with other members of the family of nations. This has generated a large number of exchange student programs, of which, I am advised, Youth for Understanding is the largest.

Founded in 1951, more than 30,000 students from over 40 countries have participated, and the program continues to grow. There are over 200 hundred YFU students currently living with families in my State of Iowa, and a comparable number of Iowa students living with families overseas.

Youth for Understanding cooperates with the Bureau of Educational and Cultural Affairs of our State Department, and under the dynamic leadership of its founder, Mrs. Rachel Andresen, who is presently its executive director, with offices at Ann Arbor, Mich., many interested young people between the ages of 16 and 18 will be providing the leadership tomorrow which will help achieve the understanding needed to secure the world peace all of us pray for.

I ask unanimous consent that an extract from the February revision of YFU's brochure be printed in the RECORD.

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

HISTORY OF YOUTH FOR UNDERSTANDING

Youth for Understanding began in 1951 when the Detroit, Michigan area Rotary Clubs agreed to host 75 German teenagers who were selected for an exchange experience by the United States State Department. When it became apparent that the participating Rotary Clubs could not find sufficient homes for these students among their membership, Mrs. Rachel Andresen, the Executive Director of the Ann Arbor Council of Churches, was asked to lend her assistance. Her educational and professional background in the area of social work and her extensive experience with a variety of state and community organizations well suited her to cope with this challenging situation and to find the necessary homes which met with the State Department requirements.

In January, 1952, the Rotarians and the State Department asked her to officially supervise the program for the remainder of the year. A request for more German students for Michigan for the following school year was granted on the condition that Mrs. Andresen would be made the permanent supervisor and that the program function on a statewide basis. The Ann Arbor Council of Churches received permission to act as the official agency from the Michigan Council of Churches and named this area of their activities "Youth for Understanding." Mrs. Andresen, as Executive Director of the Ann Arbor Council of Churches, was responsible for the total operation of the Council, as well as its new exchange project.

During the next five years, the Occupation Budget was utilized for the selection and financing of students brought to Michigan. The role of YFU continued to be that of home placement and supervision. In 1956, the State Department continued to select students, but withdrew its subsidy as a result of the termination of Germany's occupation status and its normal establishment as an independent republic. However, some funds were made available for program development and in this way continuation of the program on a private selection basis was encouraged. Although most of the students at that time were from Germany, it was during this period that other countries were being added to the program.

In 1955, the second phase of operation was added to the exchange program. American teenagers were taken to European countries for ten weeks of their summer vacation. Returned exchange students from previous years found placements for them with the help of their parents. Although only a few students participated in this phase of the program the first few years, they brought favorable accounts of their experiences back to their communities and schools and because of their enthusiasm, Youth for Understanding began to grow.

This growth included the addition of the third phase of the program, a youth chorale. The Youth for Understanding Chorale consisted of a group of Michigan teenage musicians recommended by their school music departments and also meeting the general requirements of all other exchange students. Beginning in 1957, this group met every week for practice in Ann Arbor, Michigan, starting in the fall. During the summer of 1958, the teenage musicians toured Europe, performing before public audiences and in the European schools. During their tour they were housed in the homes of families who were found by the returned exchange students from previous years. The musical group was well received and has continued as an integral part of Youth for Understanding since that year. It alternates its tours, traveling one year to Europe and the next year to South America. It will tour Germany, Austria and Yugoslavia in the summer of 1972.

During these years of expansion into other countries, emphasis was placed on the development of local committees to oversee the program in their respective areas. The development of organized local committees came about through contacts with interested individuals who had either heard of the program through returned students or had deliberately been contacted and asked to help.

Throughout the United States, a system of regions and areas have been set up. There are five general responsibilities for area representatives.

Primarily, the area representative acts as the liaison between local communities and the Youth for Understanding national headquarters. This involves forming community committees by contacting local high schools and members of the community who are interested in publicizing Youth for Understanding, selecting host families and American exchange students, and who can provide supervision and a well-rounded experience for international students in the community. The area representative then works with the community committee, supplying them with information, materials, travel and counseling consultation and problem-solving, coordinating activities with the Ann Arbor office.

Secondly, the area representative finds homes in the local communities for international students, matching interests, home atmospheres and community activities with those of the student. Schools are consulted to insure that they will take these students in and can work with the area representatives and host families in solving problems which may arise.

Thirdly, the area representative selects recommended American students for the summer and year programs abroad, working with the community committee to determine the qualifications of each student.

Fourthly, the area representative sets up a scholarship committee as part of the community committee, which works on fund raising to help worthy students in the area participate in the Youth for Understanding program.

A fifth responsibility is to provide the overall supervision for the Youth for Understanding program in that area, using guidelines set forth by the Supervisor of Area and Field Representatives in Ann Arbor.

The committees are not isolated in their own communities since they are in constant contact with the central office in Ann Arbor and with each other. Committee chairmen are encouraged to offer advice as to the direction the program will take and conferences are held at necessary intervals with committee members for purposes of evaluation and recommending different procedures.

These committees are under the supervision of 90 area representatives.

Although it is not regarded as a separate phase of the program, the development of exchange programs with South American countries represents the values gained by Youth for Understanding from person-to-person contact. Some Uruguayan students had taken part in the exchange program in the earlier years, but a large-scale exchange program had not developed previously because of school difficulties. The reversed seasons between South and North America created a school year calendar opposite to ours. Thus, in order to complete a full year of school in the United States, a South American student had to leave his school before the year was finished and return during the next year, which his classmates had already begun. Because of this, South American countries were requiring that any of their students who participated in an exchange program would have to make up two years of school. Thus, not very many South American students applied as exchange students.

The tour of South America by the Youth for Understanding Chorale in the summer of 1960 resulted in the opening of many new contacts in these countries and stimulated renewed interest in exchange programs. A committee was formed in Uruguay which worked out a compromise plan with the Uruguayan Minister of Education. Uruguayan students were permitted to finish their school year in December, take part in the exchange program in the United States for the rest of the American school year and return to their own school and go on with their original class. This plan is now the normal calendar pattern of exchange of Youth for Understanding with all South American countries. Students from the United States, however, visit South American countries on the same basis as they visit those in Europe and Asia.

An important part of the American overseas program is the Thirteenth Year Abroad Program. It started in 1961 when six American students went overseas. It permits American high school graduates to attend a European secondary school and live with a family for a period of fourteen months. A total of 435 American students have participated in this experience.

A new program known as the Community College Program was begun in December, 1967. It permits older foreign exchange students to attend community colleges in the United States. Currently eleven students are attending community colleges in California, Iowa, and Michigan.

Youth for Understanding effectuated a major change in its orientation and evaluation policies for outgoing and incoming students in the summer of 1970 with the introduction of the Saginaw Valley College sessions. Approximately 6,170 exchange students participated in the sessions last summer. They were held on the campus of Saginaw Valley College, a state-supported, four-year college located near Saginaw, Michigan, which Youth for Understanding rented for the summer. There were three basic programs: (1) orientation for outgoing American students, (2) evaluation sessions for returning European and South American students, and (3) orientation for incoming European students. (See Appendix B for more information.)

The planning and development of Youth for Understanding has been industrious and imaginative. The program is flexible, allowing new phases to be introduced when desirable and developing new ideas that are unique to the exchange student programs. The variety of programs offered illustrates this point.

As a result of its increase in size, particularly the addition of the South American program, Youth for Understanding was incorporated as a non-profit organization in 1964. However, it still receives moral support for its activities from the Michigan Council of Churches and the Ann Arbor Council of Churches.

The central office, which was originally housed in Lane Hall in a room donated to the Ann Arbor Council of Churches by the University of Michigan, has made a series of moves, and is now located in a former fraternity house of the University of Michigan known as the "Hoover Mansion." The program is administered by an Executive Director, Mrs. Rachel J. Andresen, governed by a Board of Trustees, employs 50 full-time office and staff workers, and has leaders involved in each of the communities which participates in the program.

In addition to the involvement of 45 countries, exchange students have been placed or selected from committees in 42 different states of the United States. This has been due to a large extent to the movement of persons out of Michigan who have carried with them the knowledge and enthusiasm about the program. Youth for Understanding welcomed its 20,000th exchange student, a girl from Finland, in August, 1969. The latter occasion was attended by the Honorable John Richardson, Jr., Assistant Secretary of State for Educational and Cultural Affairs. As of February 1972, more than 30,000 students had participated.

CARL HAYDEN: ARIZONAN

Mr. HANSEN. Mr. President, I wish to pay respect to the late distinguished Senator from Arizona, Carl Hayden, whose years of public service to community, State, and Nation, alone more than matched the life expectancy of most men.

Carl Hayden's life can be marked almost step for step with the development and history of his native State of Arizona. He was born in the Arizona Territory when the great city of Tempe still was known as Hayden's Ferry.

Before Arizona became a State, Carl Hayden had acquired a college education, been in business as a merchant and miller, served on the Tempe Town Council and as treasurer, and then became sheriff of Maricopa County.

He was elected to Congress when Arizona was admitted into the Union as a State and served there until his retirement from the Senate in 1969. Carl Hayden was a distinguished Member of the Senate and a distinguished Arizonan. His memory will be long cherished by the grateful people of Arizona and by those of us who had the good fortune to know him.

ARIZONA LEGISLATURE SEEKS RESTORATION OF VETERANS DAY OBSERVANCE TO NOVEMBER 11

Mr. GOLDWATER. Mr. President, I certainly cannot speak for other Senators, but I myself always feel a little lost when November 11 rolls around each year. Perhaps, I spent too many years celebrating that day as a memorial observance for the signing of the armistice which ended World War I and later marking that day as a traditional day of observance for the veterans of American wars.

It is with a great deal of sympathy that I call the Senate's attention today to a memorial adopted by the 30th Legislature of the State of Arizona urging that the President and the Congress give consideration to the prompt enactment of legislation to return Veterans Day to the traditional day of observance, November 11 of each year.

Mr. President, I ask unanimous consent that the memorial passed by the Arizona Legislature be printed in the RECORD.

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

ARIZONA MEMORIAL 1004: A MEMORIAL RELATING TO VETERANS DAY; URGING CONGRESS TO ENACT LEGISLATION RETURNING OBSERVANCE OF VETERANS DAY TO NOVEMBER 11

To the Congress of the United States:

Your memorialist respectfully represents:

Whereas, the Congress of the United States in 1968 enacted legislation which changed observance of Veterans' Day from November 11, the date of the armistice ending World War I and the traditional day of observance of that historical event; and

Whereas, the change of Veterans' Day to the fourth Monday in October for the sole purpose of adding a three-day weekend to the holidays of the year is not a sufficient reason for breaking with tradition, memories, sentiments, and history and the reduction which follows in participation in patriotic ceremonies.

Wherefore you memorialist, the Senate of the State of Arizona, prays:

1. That the President and Congress give their most earnest consideration to the prompt enactment of legislation which would result in the return of Veterans' Day to the traditional day of observance, November 11, of each year.

2. That the Honorable Wesley Bolin, Secretary of State of the State of Arizona, transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States and to each Member of the Arizona Congressional Delegation.

Passed the Senate February 3, 1972 by the following vote: 27 Ayes, 3 Nays, 0 Not Voting.

Approved by the Governor—February 3, 1972.

Filed in the Office of the Secretary of State—February 3, 1972.

CARL HAYDEN

Mr. GRAVEL. Mr. President, Arizona and the Nation have lost one of their great leaders with the passing of Carl Hayden. He quite literally gave the bulk of his life to the public service, first at his home in Tempe, Ariz., and then to the Nation.

He represented the State he loved from the time of its entrance into the Union until 1969, when he voluntarily retired from the Senate. Behind him stands a record of national service, first in the House of Representatives and later in the Senate, that all men can honor and few can equal.

I did not have the pleasure of serving in the Senate with Carl Hayden because his retirement and my election coincided. Yet I know the benefit of his service is felt in the Senate today and will continue to be.

DEATH OF DR. GEORGE W. CALVER, RETIRED CAPITOL PHYSICIAN

Mr. SCOTT. Mr. President, I was deeply sorry to learn that Dr. George W.

Calver, the first official physician to Congress, passed away early Sunday morning, February 27.

Dr. Calver served Congress for 38 years, from 1928 to 1966. He was first assigned to the House of Representatives, where his only office was the Democratic cloakroom. Two years later the Vice President requested that he also be allowed to administer to the Members of the Senate, and a special Office of the Attending Physician was established in the Capitol.

Dr. Calver was a good friend as well as a good physician to Members of Congress during those 38 years. We have missed him since he retired, and we will miss him even more now.

U.S. DISENGAGEMENT FROM SOUTHEAST ASIA

Mr. SCOTT. Mr. President, an excellent appraisal of the circumstances that led the Nation into the war in Southeast Asia and the efforts being made by President Nixon to disengage and bring the troops home is published in the January 29, 1972, issue of the Economist. I ask unanimous consent that the article be printed in the RECORD.

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

THE LAST PEACE PLAN

On Monday it will be four years since the Vietcong commando squad slipped out of the building opposite the American embassy in Saigon, and the great Tet offensive had begun. That is as long as it took in the second world war to get from the German occupation of Jugoslavia and Greece to Hitler's suicide in Berlin, and it is almost as long as the whole of the first world war. This week, just before the fourth anniversary of Tet, Mr. Nixon made public what is almost certainly the last offer of a compromise it is open to him to make. He suggested that the communists should put up their man for a new presidential election in South Vietnam, and help to supervise the election, and that the present president should step down a months before the voting. By Thursday both North Vietnam and the National Liberation Front still seemed hostile to the order. That in itself speaks volumes about the legitimacy of their political claims in Vietnam. The four years since Tet are long enough for the conclusions that many people came in to the panic of 1968 to have been put to the test, and for a start to be made on a balance-sheet of this war.

THE NEW STALEMATE

Unless there is a total collapse in the morale of the South Vietnamese army, or in the will power of the three or four men who have been running North Vietnam since Ho Chi Minh's death, the fighting seems to have reached something close to deadlock. But it is a deadlock of a sort that would have seemed inconceivable in 1968, or indeed at any time in the 1960s: a deadlock that leaves most of South Vietnam, and the great majority of its people, outside the control of the communists. The area the North Vietnamese army and its local allies undisputedly control consists of little more than eastern Laos and north-eastern Cambodia, and the neighbouring fringes of South Vietnam, and is largely unpopulated.

It is not easy to see how either side is going to break the stalemate with the forces now at its disposal. The South Vietnamese have not yet found out how to fight this sort of war well enough to destroy the army that North Vietnam keeps in its enclave. But then it is not strictly necessary for them to do so: the war as it is being fought at the moment costs them about 15,000 soldiers killed a year, which seems to be a figure they can bear, and it does keep the communists at arm's length. It is the North Vietnamese who have to break the deadlock if they are to avoid the failure of their war policy. They can probably occupy the rest of Laos any time they want to. But that is not going to help them much unless it has an effect on the war in Cambodia and South Vietnam. And with the forces they now have available in those two countries—about 70,000 men in Cambodia, against a Cambodian army of 200,000, and perhaps 275,000 available for use in South Vietnam, including the divisions stationed just over the border in North Vietnam itself, against a South Vietnamese army of more than a million supported by American aircraft—it is not at all clear that they have the weight to swing the fighting back their way.

There are two things that could still win the war for the North Vietnamese. The first would be to call up enough extra men, and spend enough extra money, to double the size of their army in the south. But that would mean reversing the decision they took in 1970, to divert resources from the war in order to give their people a slightly better standard of living. It is a change they have so far refused to make. The second is to hope that the number of men they are putting into the war at the moment will be enough to reconstruct some of the base areas in South Vietnam which the communists lost after the fighting in 1968, and that the Saigon government will then make a big enough mess of its job for these base areas to become the springboard for another great offensive later on.

That means starting all over again from where things were at the beginning of the 1960s. It is asking a great deal of the men who are being invited to live the life of a guerrilla for several more years. But it seems to be the policy North Vietnam is following. It is presumably hoping that the process can be speeded up if General Giap's men can inflict some sharp defeats soon on the South Vietnamese army, and thereby start the disintegration of morale in the south that this policy depends on. No doubt that is the aim of the attacks the North Vietnamese are expected to make in the next couple of weeks. Nobody who has followed the course of this war is going to say flatly that these attacks will not succeed. But the chances are better than even that they will not, and that North Vietnam will still be left holding the short end of the stick when the rains start again in May.

THE RECEIVED IDEAS

This description of the state of the war will now be fairly widely accepted, even by people who would not have admitted it a year ago; and plainly it does not square with the received idea that the Americans have demonstrably failed in Vietnam. That is the trouble with received ideas: by the time everybody is nodding sagely and saying how true they are, events have generally left them behind. But the charge of failure is made at another level as well. The Americans, it is said, have suffered an irreparable defeat to their self-confidence, and self-respect, whether or not they eventually turn out to have achieved the purpose for which they originally sent their army to Indochina in 1965.

Certainly they made some major mistakes in the way they tried to fight the war between 1965 and 1968, and the realisation of error hits the Americans ever harder than it hits most people. The original mistake was to believe that the best way to make it a quick war would be to make it a big war. That is why their army went plunging around the countryside looking for an enemy to fight; why so many civilians were killed; and why the slow accumulation of carelessness and nervousness made it statistically almost inevitable that, in the end, there would be an atrocity like My Lai. It is why the Americans placed so much reliance on air power before they realised how limited a weapon air power is in a war like this.

WHAT THE WAR DID NOT DO

These were all valid reasons for arguing that the war was being fought the wrong way, or even for arguing that the wrong methods had made it so bloody that it ought to be abandoned. They did not mean that the Americans should never have got involved in the war at all. The basic facts about the fighting in South Vietnam remain what they were in 1965: that the government of North Vietnam had had a hand in it from the beginning; that the communists were winning because of their superb military efficiency, but that this was no more a measure of the desirability of the political system they were fighting for than the superb military efficiency of Hitler's army was, or Mr. Brezhnev's army is now; and that most of the other countries of south-east Asia believed that the outcome of the fighting would have an important effect on their own future. Those things have not been made untrue by all the agony of conscience the war has produced.

It is not unreasonable to hope that the Americans will begin to see this, as their country's part in the war recedes into the past. They may even be willing to re-examine the other piece of false conventional wisdom about Vietnam, which is that the war was the main cause of the social crisis the United States is going through.

Of course, the war was one of the things that contributed to that upheaval. But there were at least two other causes which had nothing to do with Indochina. There was the crisis over the status of the blacks, which had led to large-scale rioting in a number of American cities in 1964, the year before President Johnson sent his army to fight in Vietnam. And there was the brief rebellion of the young against the middle-aged, which was a result of the great secular change that the whole of western society is going through in the second half of this century, and which was certainly not an exclusively American phenomenon. It is worth remembering that the one western government the students did almost manage to overthrow in 1968, General de Gaulle's, was also the one that had openly come out against the Americans over Vietnam. The fact is that the American crisis of the 1960s happened because the United States was hit by three separate problems at the same time. The result was spectacular, partly because the American system of government is a particularly flexible one, which rises and falls to every wave it meets, and partly because a lot of Americans proved to be incapable of facing a rough sea. That is something the allies of the United States are going to remember. But they should also remember that there would certainly have been an American crisis over the past few years even if there had never been such a place as Vietnam.

What the historians eventually say about the war will depend not on what happened in America but on what the Americans were trying to do in Vietnam itself, and whether in fact they managed to do it. One American government after another has got itself into trouble by giving different explanations of its motives for being in Vietnam. There is nothing unusual about that: most wars are fought for a number of different if complementary purposes, and public opinion oftens gets confused about which is which. In this war the United States seems to have had two main aims.

WHAT IT MAY HAVE DONE

The first was to stop the expansion of communist power in south-east Asia. That is not just a phrase: it meant preventing another communist party from coming to power by the use of force in another country which had not previously been governed by communists. The whole broader rationale of American policy came under this heading. The government of the United States wanted to demonstrate to its allies in other parts of the world that it was prepared to stand by the undertakings it had made to them. It wanted to preserve an American sphere of influence on the mainland of Asia for the coming period of manoeuvring between the three superpowers, which was already foreseeable in the middle of the 1960s. But, above all the United States had to justify these wider considerations by showing that it was in the interest of the south-east Asians themselves that the region should not fall under communist control. If there is one main theme running through all the different things President Johnson said about Vietnam when he sent the troops in, it is that he wanted to keep alive in the area the conditions in which the liberal idea of democratic government might take root.

The usual reply of the critics of the war, when they are faced with this argument, is that South Vietnam was not a democracy in 1965, and that there is no real difference between a market dictatorship and the messy little military dictatorship the Saigon regime had deteriorated into at the time. But there is a difference. Perhaps the biggest single lesson the world has learned about politics in the past generation is that once a communist party has screwed itself into power it is a desperately hard business to unscrew it again. The quite extraordinary concentration of power that Lenin gave to the handful of men at the top of the party in the Soviet Union in 1917, which has been imitated in every other communist country since then, is almost impossible to dismantle. Chairman Mao tried to do it with his cultural revolution in 1966, and Mr. Dubcek tried it in 1968, but at the end of the day both China and Czechoslovakia found they were still being run by a handful of men wielding a monopoly of power in the name of the single permitted party. Even the Jugoslavs, in the present trouble in Croatia, are discovering that there is no appeal against the judgment of President Tito.

By comparison with this, even the sort of right-wing dictatorship that South Vietnam has become in the mid-1960s does hold out some prospect of moving towards democracy if the conditions are right. It does so because there are important centres of power which remain outside the control of the men at the top of the government. There are capitalists, and landowners, and religious leaders, and local barons, and maybe trade union bosses, all of whom are very likely tyrants in their own domains, but who do at least wield some independent power which has not been absorbed into the power of the single all-competent party, as it would be in a marxist country, and who therefore keep the possibility of choice alive. That is the heart of the pluralist system of politics, and it is the decisive advantage of pluralism over one-party communism. It provides the necessary conditions out of which competing parties, a free vote and the rest of the democratic structure may one day emerge.

THE ONE CLEAR FAILURE

And in fact that was what began to happen in South Vietnam after 1965. The second main war aim of the United States was not just to hold open the possibility of a democratic Vietnam, but actually to create one while the war was still being fought. The South Vietnamese constitution of 1967, and the election of a president and parliament that year, were an attempt to bring representative government to Saigon. No doubt President Johnson insisted on elections in Vietnam partly because he thought they would please American public opinion. Certainly both President Thieu and the Saigon parliament have proved to be imperfect specimens of the democratic idea. But the attempt was made, and those who know Mr. Johnson would be prepared to bet that the attempt was not entirely a domestic calculation on his part.

It is this second aim of American policy that looks like being the most certain casualty of what has happened to the Americans since Tet in 1968. The presidential election held in Vietnam last October, the second under the system set up in 1967, was a failure because Mr. Thieu disqualified one of his opponents and the other dropped out of the race rather than be steamrollered at the polls. Pretty clearly Mr. Thieu had drawn his own conclusions about the withdrawal of the American army from Vietnam. He was willing to go along with the experiment with democracy so long as the Americans were fighting half the war for him. It became a luxury he was not prepared to afford if the war had to go on indefinitely and the Americans were going to help him with little more than some bombers and some logistics specialists.

The same reaction has been visible among the Americans' allies all around eastern Asia. The Cambodian parliament dissolved itself in October. The generals in Thailand dismissed their parliament in November. The president of South Korea declared a state of emergency in December. There are local circumstances that help to explain each of these actions, but it is unlikely that any of them would have happened if the Americans were not pulling out. Quite possibly the eventual judgment on the Americans' part in the Vietnam war will be that they kept the prospect of democracy alive in the area by intervening in 1965, and then delayed its arrival for a generation by panicking in 1968.

That is how the balance-sheet is starting to take shape. Whether it will look even as good as that when the final account is struck now depends almost entirely on the fighting men. The last chance of a negotiated settlement has probably disappeared if the communists really do reject the terms Mr. Nixon offered on Tuesday.

The central issue in Vietnam has always been whether the communists would submit their hopes of coming to power in Saigon to some kind of vote, or insist on fighting their way in at bayonet-point. *The Economist* has argued ever since 1966 that a place would have to be found for the National Liberation Front in the political structure of South Vietnam, including a place on the ballot forms, but that at first the front would have to accept that it was a minority, and accept the role of an opposition. As long ago as 1969 President Thieu offered to let the front run in an election, and join in a commission to supervise the election's fairness. Now he proposes to withdraw from the presidency a month before the voting takes place. It is hard to see what further concessions he can make, short of accepting the communists' demand that he should hand over the government—without an election—to a "provisional coalition" which they would certainly expect to dominate.

Perhaps it is no bad thing if the apparent rejection of Mr. Nixon's offer does define the matter as starkly as this. At least it may remind the Americans of the issue involved in Vietnam, and that may make it easier for Mr. Nixon to keep a residual force there—including the American aircraft the South Vietnamese army still cannot do without. This is a war that has been stripped down to its essentials. The South Vietnamese have lost most of their American help; by the end of April Mr. Nixon will have brought home all but 69,000 of the more than half a million troops who were in Vietnam when the Tet offensive broke out four years ago. But the North Vietnamese have lost the parts of South Vietnam they controlled before they were beaten in the Tet offensive; they have lost many of their Vietcong allies in the south, who were killed in the savage fighting in 1968; and since 1970 they have had to fight the Cambodians as well as an expanded South Vietnamese army. It could still go either way.

THE TWO UNDERLYING FACTS

Which way it goes can still be affected by a recognition of two things. The first is that there can be no such thing as a politically neutral government in Vietnam, "provisional" or permanent. The issue is being fought between two fundamentally different ideas, and it is impossible for a government to represent neither of them, or both. The question is whether the issue is to be settled by superior force, or by trying to find out which idea most people actually prefer. The second is that the North Vietnamese still have their army fighting on the soil of three neighbouring countries, when the Americans have taken almost all theirs away. The connection between these two things is clear enough, and should not be ignored. The Americans have expended a great deal in Indochina, but they can still preserve their intellectual self-respect.

A PREVIEW OF THE NATIONAL PARK CENTENNIAL CELEBRATION

Mr. HANSEN. Mr. President, the 100th anniversary of the establishment of the first national park is 1972. That first park, which continues as the most famous in the world, is, of course, Yellowstone National Park, which was carved out of Wyoming's northwest corner.

While the centennial celebration will be observed throughout the Nation, at all our national parks, the special emphasis quite naturally is upon Yellowstone—unique, the oldest, and most beautiful. Wyoming is proud to be a key part of the centennial celebration.

Several million Americans visit Yellowstone annually, and the park season of 1972 will be no exception. People from all over the world will be visiting Yellowstone during the centennial celebration.

Those who anticipate visiting Yellowstone and those who may not be able to visit Yellowstone, but wish to know about the natural beauty of this great park, will be able to see a preview of some of the fishing available in the park.

The American Broadcasting Co. televised a special program entitled "American Sportsman" on Sunday afternoon, February 27. It featured a fishing trip for native cutthroat trout on Yellowstone Lake in the park. Those doing the fishing were Peter Kriendler, manager of the 21 Club in New York, and Curt Gowdy, the internationally known sports commentator.

Mr. Gowdy, a native of Cheyenne, Wyo., most recently broadcast from Japan the results and commentary of the winter Olympics. Mr. Gowdy was the first sports announcer honored by the National Television Academy of Science and Letters for excellence in television broadcasting.

Mr. President, I hope Senators viewed the program Sunday afternoon and saw trout fishing at some of its best, and the scenic beauty of Yellowstone Park that is second to none.

SENATOR CARL HAYDEN

Mr. STEVENS. Mr. President, Carl Hayden left the Senate prior to my appointment in December 1968. However, I had occasion to know him when I was with the Department of the Interior between 1956 and 1960.

Many Senators have already told of the character and the accomplishments of this great American. I will not add to them except to say that, if the measure of the man is the extent of his accomplishments, Senator Hayden's greatness is reflected throughout the State of Arizona and the entire United States. His work in land reclamation and other worthy areas will provide a lasting tribute.

But more than that, he was a man truly loved by all, whether Senator or citizen, Democrat or Republican, Easterner or Westerner. He was, indeed, a good man and a good friend.

THE AMERICAN LEGION

Mr. STEVENS. Mr. President, I join with Senators in extending a warm welcome to the members of the American Legion who are in our Nation's Capital this week for their annual Washington conference. Some of the men who are here are officers of the Legion from my State. Under the leadership of Comdr. Bob Blair, the American Legion in Alaska is doing a fine job this year in its programs of service to the veterans and to the State.

The American Legion is justly proud of the fact that its 2.7 million members make it the largest organization of war veterans in the world. Included among its members, who have served in four wars, are nearly 500,000 veterans of the Vietnam era. The organization in 1971 recorded its seventh consecutive year of membership growth. Today the Legion is presenting its legislative program to the Veterans' Affairs Committees of both Houses of the Congress.

Since the American Legion was chartered by the Congress in 1919 it has had a significant impact on American life. As a "voice of the veteran" the Legion has a notable record of supporting legislation not only for the benefit of veterans and their dependents but also in the interest of our Nation.

The American scene and the world have undergone profound changes since the Legion was founded. The American Legion has changed too in its outlook and in its dimensions. It is today a four-war organization. It has not changed, however, in its patriotic character, in its ideals, in its objectives, and in its integrity. It is still true to the original purposes set forth so vividly in 1919 in the preamble to its constitution.

As the "voice of the veteran," the Legion has a notable record of supporting legislation for veterans and their dependents. The justly famous GI Bill of Rights, enacted in the closing days of World War II, bears the mark of the Legion, as does the Veterans' Administration, established in 1930.

The American Legion and its auxiliary, which number over a million members, have a right to be proud of their accomplishments during the past five decades.

But legionnaires and auxiliary members are not looking back to past accomplishments. They are looking forward, marching with the same sure step and with the same concern for veterans and their dependents, for all children and youth, and for the Nation itself.

The Legion now is caught up in high intensity activity for our younger veterans. Legionnaires are doing all they can to secure employment for the Vietnam era veteran, to assist him in his educational aspirations, to help him with his rights and benefits and to welcome him home from what has proven to be a very unpopular war.

Thousands of American communities are better places in which to live and rear children because of the civic works of the Legion's 16,500 Posts. I salute my fellow legionnaire on this occasion and wish them continued success as they continue to serve our Nation and our Nation's veterans.

SALUTE TO LITHUANIANS

Mr. TUNNEY. Mr. President, the people of Lithuania have engaged in a long and fearless struggle against tremendous odds in an effort to gain independence for their country. I would like to join my distinguished colleagues in saluting these courageous people, during the month most important in their history.

Lithuania has been subjugated to foreign control for all but 22 years of its existence. Yet the spirit which prevailed in 1251, when the Lithuanian principalities were united into one kingdom by Mindaugas the Great, has never ceased to unite these people. Following World War I, a democratic government was established in Lithuania. The taste of freedom was savored for less than a quarter of a decade. Invading German and Soviet armies crushed the structure of Lithuania's democracy, but force alone could not conquer the spirit of freedom. Throughout the war, the people prayed for the reestablishment of peace and independence. With the defeat of fascism, a new form of tyranny gripped the Baltic nation. Stalin moved rapidly into Lithuania, and the tiny country became a satellite colony of the giant Communist power.

No amount of terror and oppression has succeeded in destroying the hope of Lithuanians that they will one day be able to live in a democratic state once again. Individual liberty remains their goal. I share the dream of Lithuanians all over the world that one day we may again witness the joyful celebration of a free, democratic government in Lithuania.

ALASKA NATIVE CLAIMS

Mr. STEVENS. Mr. President, three items have recently appeared in the Federal Register that will be of considerable interest to the people of Alaska.

On February 4, 1972, in volume 37, No. 24 of the Federal Register at pages 2679–80, proposed regulations concerning the preparation of the Alaska Native roll were published. These will be promulgated pursuant to section 25 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, Public Law 92–203).

As noted, public comments and expressions are sought. They are due within 30 days from February 4 and should be filed with the Commissioner of Indian Affairs.

In the Saturday, February 5, 1972, Federal Register—volume 37, No. 25—at pages 2818–20, General Order No. 1 of the U.S. Court of Claims was printed. This set up the procedure under which claims for fees and expenses under the Alaska Native Claims Settlement Act (Public Law 92–203, 92d Congress, first session, December 18, 1971, 84 Stat. 688), are to be processed.

On Friday, February 11, 1972, in volume 37, No. 29 of the Federal Register at page 3056 appeared Public Land Order 5156 withdrawing lands and formal reservations in Alaska from all forms of appropriations under the public land laws. These lands were also withdrawn from mineral leasing. This withdrawal is to last until December 18, 1973, unless sooner modified or terminated. These lands include all of the lands and water areas in the reserves set aside by legislation. Executive and secretarial orders for Natives use or for administration of Native affairs, including those created under the act of May 31, 1938 (52 Stat. 503), which was revoked by section 19(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 710, Public Law 92–203).

Because the regulations under 25 CFR part 43h, the procedures for claims for fees and expenses, and the land withdrawal order are of such importance to the people of my State, Mr. President, I ask unanimous consent that they be printed in the RECORD in their entirety

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

PROPOSED RULEMAKING

DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, [25 CFR PART 43h], ENROLLMENT OF ALASKA NATIVES—APPLICATIONS, PREPARATION, AND APPROVAL OF ROLL

Notice is hereby given that it is proposed to revise Subchapter F, Chapter I, of Title 25 of the Code of Federal Regulations. This revision is proposed pursuant to the authority contained in section 25 of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, Public Law 92–203.

The purpose of this revision is to provide regulations to govern preparation of a roll of Alaska Natives.

Since this revision will affect the rights of Alaska Natives to participate in the Alaska Native Claims Settlement and imposes a deadline for applying for enrollment, public comment and expression are deemed advisable. Accordingly, all persons who desire to submit comments, views, or arguments in connection with the proposed revision shall file the same with the Commissioner of Indian Affairs, Bureau of Indian Affairs, Washington, D.C. 20242, not later than 30 days after publication of this notice in the FEDERAL REGISTER.

Subchapter F of Chapter I, Title 25 of the Code of Federal Regulations, is revised to include Part 43h which shall read as follows:

PART 43h—PREPARATION OF A ROLL OF ALASKA NATIVES

Sec.
43h.1 Definitions.
43h.2 Purpose.

43h.3 Requirements for enrollment.
43h.4 Enrollment in regions.
43h.5 Enrollment in a 13th region.
43h.6 Applications for enrollment.
43h.7 Determination of eligibility.
43h.8 Appeals.
43h.9 Preparation, certification, and approval of the roll.
43h.10 Establishment of a 13th region.
43h.11 Non-Tsimshian Metlakatla Community members.
43h.12 Special instructions.

AUTHORITY: The provisions of this Part 43h issued under 5 U.S.C. section 301; R.S. §§ 463 and 465, 25 U.S.C. sections 2 and 9; and sec. 25, 85 Stat. 688, 715.

§ 43h.1 Definitions.

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, Public Law 92–203.

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Area Director" means the Area Director, Bureau of Indian Affairs, Juneau, Alaska, or his authorized representative.

(e) "Coordinator" means the head of the Enrollment Coordinating Office, Pouch 7–1971, Anchorage, Alaska 99501, having the responsibility for coordinating all activities regarding preparation of the roll.

(f) "Roll" means the roll of Alaska Natives prepared pursuant to the Act.

(g) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians whose Alaska Native ancestry predates the Treaty of March 30, 1867, and who are not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

(h) "Village" means any tribe, band, clan, group, village, community or association in Alaska listed in sections 11 and 16 of the Act, or which meets the requirements of the Act, and which the Secretary determines was, on the 1970 census enumeration date (April 1, 1970) composed of 25 or more Natives.

(i) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than 25 Natives, who comprise a majority of the residents of the locality.

(j) "Region" means the geographic area covered by the operation of one of the 12 existing Native associations recognized in section 7(a) of the Act, or its successor regional corporation, and may include the 13th region if established as provided by section 7(c) of the Act.

(k) "Permanent residence" shall mean the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home.

(l) "Regional Solicitor" means the officer in charge of the Anchorage Region of the Office of the Solicitor, Department of the Interior.

(m) "Sponsor" means a parent, recognized guardian, next friend, next of kin, spouse, executor or administrator of estate, the Area Director or other person who files an application for enrollment on behalf of another person. It does not include an enumerator.

§ 43h.2 Purpose.

The regulations in this part are to govern exclusively the preparation of a roll of Alaska Natives pursuant to section 5 of the Act. The provisions of Parts 2 and 42 of Title 25 of the Code of Federal Regulations shall not be applicable to enrollment procedures and appeals provided for in this Part 43h.

§ 43h.3 Requirements for enrollment.

The roll shall consist of the names of all persons who meet the definition of Native and who were born on or before and were living on December 18, 1971.

§ 43h.4 Enrollment in regions.

(a) *Residents of Alaska.* A Native residing in Alaska at the time of filing his application for enrollment shall be enrolled in the region in which he was a permanent resident on April 1, 1970.

(b) *Nonresidents of Alaska.* A Native who at the time of filing his application for enrollment is not a permanent resident of one of the regions in Alaska shall be enrolled according to the following order of priority:

(1) In the 13th region, if it is formed and he so elects, or

(2) In the region where he resided on April 1, 1970, if he had resided there without substantial interruption for 2 or more years, or

(3) In the region where he previously resided for an aggregate of 10 years or more, or

(4) In the region where he was born, or

(5) In the region from which an ancestor came.

A Native may be enrolled in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) Eligible children born on or after April 2, 1970, and on or before December 18, 1971, shall be enrolled in the region in which one of their parents is enrolled.

§ 43h.5 Enrollment in a 13th region.

A Native eligible for enrollment who is 18 years of age or older and is not a permanent resident of one of the 12 regions may, on the date he files an application for enrollment, elect to be enrolled in a 13th region for Natives who are nonresidents of Alaska, if such region is established pursuant to subsection 7(c) of the Act. If such region is not established, he shall be enrolled as provided in subsection 4(b) of these regulations. His election shall apply to all dependent members of his household who are less than 18 years of age, but shall not affect the enrollment of anyone else.

§ 43h.6 Applications for enrollment.

(a) All applications for enrollment shall be in writing on forms provided by the Bureau of Indian Affairs and shall be signed by or for the head of each household, spouse, and/or the dependent members of his household under 18 years of age. A separate application shall be completed and signed by or for other members of a household 18 years of age or older.

(b) The application shall contain, among other information, the applicant's social security number, name, address, sex, date and place of birth, residence as of April 1, 1970, the village from which his ancestors came, and for a nonresident of Alaska, his election regarding establishment and enrollment in a 13th region. Social security numbers and cards will be issued to those persons who do not have them.

(c) Completed applications must be filed with the Coordinating office (Kaloa Building, 16th and C Streets), Pouch 7–1971, Anchorage, AK 99501, not later than March 30, 1973. For purposes of these regulations, "filed" means received by the Coordinating Office.

(d) *Residents of Alaska.* Enumerators shall be sent to the principal villages to assist in the completion and filing of applications and centers will be established in urban areas to furnish assistance in the completion and filing of applications. Persons who are missed by the enumerators may apply to the Coordinating Office by mail or in person.

(e) *Nonresidents of Alaska.* Natives not residing in Alaska shall be furnished application forms, together with instructions for completing the forms, upon request made to the Commissioner, the Area Director, or the Coordinator.

§ 43h.7 Determination of eligibility.

Determinations of eligibility shall be made by the Coordinator. Each applicant shall be notified in writing of the decision. If such determination is favorable, the name of the applicant shall be placed on the roll. If the decision is adverse, the applicant or sponsor shall be notified by certified mail, return receipt requested, of the decision together with the reasons for rejection and of his right of appeal.

§ 43h.8 Appeals.

Appeals from rejected applications must be in writing and filed with the Coordinating Office not later than 45 days after the date of receipt of the rejection notice. Prior to submission of the appeal to the Regional Solicitor, the Coordinator may reconsider the prior determination and may enroll the applicant. If the Coordinator does not enroll the applicant, he shall forward the appeal, application, and all pertinent information to the Regional Solicitor. Determinations on appeals should be made by the Regional Solicitor on behalf of the Secretary and shall be final. The applicant shall be notified in writing of such decision.

§ 43h. 9 Preparation, certification and approval of the roll.

The Coordinating Office shall prepare a roll listing enrollees by village or appropriate region. The roll shall contain for each person, his Social Security number, name, last known address, sex, date of birth, degree of Native blood, residence as of April 1, 1970, and the village and/or region in which he is enrolled. Upon completion the Coordinator shall affix to the roll a certificate indicating that to the best of his knowledge and belief the roll contains only the names of persons who were determined to meet the requirements for enrollment as Alaska Natives. The roll shall be submitted to the Secretary for approval.

§ 43h.10 Establishment of a 13th region.

If a majority of all eligible Natives 18 years of age or older who are not permanent residents of Alaska elect, pursuant to subsection 5(c) of the Act, to be enrolled in a 13th region for Natives who are nonresidents of Alaska, a region for the benefit of the Natives who elected to be enrolled therein shall be established and they may establish a regional corporation pursuant to the Act.

§ 43h.11 Non-Tsimshian Metlakatla Community members.

Applications for non-Tsimshian Native Alaska members of the Metlakatla Indian Community will be conditionally accepted subject to a determination of their eligibility for inclusion on the Alaska Native roll.

§ 43h.12 Special instructions.

To facilitate the work of the Area Director, the Commissioner may issue special instructions not inconsistent with these regulations.

HARRISON LOESCH,
Assistant Secretary of the Interior.

FEBRUARY 1, 1972.

[FR Doc. 72–1710 Filed 2–3–72; 8:49 am]

U.S. COURT OF CLAIMS [GENERAL ORDER NO. 1], ALASKA NATIVE CLAIMS SETTLEMENT—CLAIMS FOR FEES AND EXPENSES

FEBRUARY 2, 1972.

Procedure in claims for fees and expenses pursuant to sec. 20 of the Alaska Native Claims Settlement Act (Public Law No. 92–

203, 92d Cong., First Session, Dec. 18, 1971, 84 Stat. 688), before the Chief Commissioner, United States Court of Claims.

1. *Purpose.* The purpose of this order is to establish guidelines and procedures applicable to the filing of claims and answers thereto before the Chief Commissioner, pursuant to the enabling Act cited in the caption. This order may be amended or supplemented and subsequent orders will issue pertaining to procedures beyond the pleading stage.[1] Where rules of the U.S. Court of Claims are cited in any General Order, they are adopted by reference. (Section 20(d)(7) of the enabling Act.) The rules may be obtained from the Clerk or found in title 28, United States Code.

2. *Captions.* The role of the U.S. Court of Claims in these matters is ministerial and only to provide the facilities and personnel for adjudication of these claims without itself being involved in the decision-making process. None of the claims are before the court and none are subject to any judicial review. (Section 20(d) (8) and (10.) Accordingly, all papers of the parties shall be captioned as follows and designated as either (i) for fees and expenses (for attorneys and/or consultants) under section 20 (b), (c), and (d) or (ii) for native association costs under section 20(g):

Before the Chief Commissioner of the U.S. Court of Claims, pursuant to the Alaska Native Claims Settlement Act, section 20, Public Law No. 92-203, 85 Stat. 688.

No. ----------

John Doe, or ---------- Association of Natives, Claimant.

Attorney (and/or Consultant) [2] Fees and Expenses (section 20 (b), (c), (d)) or Native Association Costs (section 20(g)).

(Filed: ----------, 1972)

3. *Attorneys.* Individual parties, including bona fide associations of natives, may present their own claims or may be represented by an attorney duly admitted to practice law before the U.S. Court of Claims or who, with his petition, certifies to the Clerk that he is a member in good standing of the bar of the highest court of the Jurisdiction of the United States in which admitted. If a claim for a native association is presented by a nonattorney, such petition shall have attached thereto a power of attorney from the association identifying him as a member thereof and satisfactorily showing that he has authority from the association to prosecute the claim and to accept service on behalf of the association of all papers in connection therewith. Said power of attorney shall be executed by an officer of the association authorized to do so and shall be authenticated by a person authorized to administer oaths and affix his seal thereto.

4. *Pleadings allowed; filing; service*—(a) *Generally.* Every claim shall be commenced by the filing of a petition with the Clerk of the U.S. Court of Claims, 717 Madison Place NW., Washington, DC 20005, and by payment of the filing fee specified by Rule 221. The Clerk will docket and serve the petition as required by section 20(d)(5) of the Act. (Rules 22(a) and 23.) Those served may answer as shown in paragraph 6 of this order. Claims under section 20(b), (c), and (d) and under section 20(g) of the Act shall not be combined in the same petition, nor shall answers thereto, if any, be so combined. Claims under section 20(g) shall not include any amount for attorney and consultant fees and out-of-pocket expenses. Claims for attorney and consultant fees and out-of-pocket expenses under section 20 (b), (c), and (d) shall not include any costs claimable under section 20(g).

(b) *Signature; oath.* All pleadings and papers shall be signed and sworn to under oath. The manner and effect of signatures will be as further described by Rules 42 and 203.

(c) *Service; time.* Date of service shall be the date of filling with the Clerk. At the time of serving a pleading or other paper, the Clerk shall enter the fact of service on his docket and this record, together with the date stamped on the paper, will be final and conclusive evidence of the date of filing the same and service thereof. Time will be affected as shown by Rule 25 (a) and (d). Claims not filed within the times limited by the Act are forever barred. (From December 18, 1971: 1 year for attorneys and consultants; 6 months for native associations. Section 20 (c) and (g).)

5. *Content of petition.* Each pleading shall be simple, concise, direct, in separate numbered paragraphs (Rule 34 (b) and (c)), and meet, insofar as possible, the following basic minimum requirements:

(a) The name and address of any person or association making claim for services rendered or expenses incurred shall be shown and an explanation shall be given of the capacity of such a person or association to claim, whether as an attorney duly admitted to practice in a given jurisdiction, or as a consultant, or as a bona fide native association.

(b) The name and address of the individual, or entity on whose behalf the services were rendered or expenses were incurred, shall be stated.

(c) There shall be a statement of the time and place where the claim arose, and the items and amounts claimed. Where the claim is based upon a written contract, a certified true copy thereof shall be annexed to the petition.

(d) The claim shall state in detail the nature of the service rendered or expenses incurred and explain the reasonableness thereof, the time and labor required, the need for providing the service or incurring the expenses, whether the same was intended to be, in whole or in part, a voluntary public service or compensable, and the relationship of the service or expenses to the enactment of proposed legislation identified by bill number, title, hearing dates, report numbers, committees, and Congress. (Section 20(d) (2) and (3).)

(3) Any action taken on the claim by Congress or by any department or agency of the United States, or by claimant's client, including reimbursement or compensation made in whole or in part, shall be stated. (Section 20(d)(1). If the claim is predicated in whole or in part upon services or expenses in connection with an action dismissed before any court or Government agency by this Act, a copy of the order of dismissal shall be attached.

(f) If the claim is based on or supported by any books of account, time, or other records, the petition shall so state and shall be accompanied by a statement (schedule), under oath by the author thereof. This statement shall itemize the basic figures, costs, and rates of the claim and include a computation of the total amount of each item that is based upon or derived from books of account or other records. Each separate portion of the statement shall contain a reference showing the particular books and records and pages thereof from which it was taken. Where the statement includes items based upon allocations of entries, it shall itemize the same for the period involved and shall show the accounting method or principle upon which the allocations were made. The statement shall be accompanied by a declaration that the books and records upon which it is based (including ledgers, journals, payrolls, original invoices, vouchers, checks, notes, and other records and documents needed for a verification of amounts asserted) will be made available for examination on direction of the Chief Commissioner or his designee. The statement shall show the address where such records may be examined or offer to submit them for audit to the Chief Commissioner or his designee in Washington, D.C., and shall further show the name and address of the person who prepared the records and who will be made available for the furnishing of information in connection with the examination. Where books and records supporting a claim are not identified and made available as required herein, the commissioner in his discretion may refuse to receive them in evidence or may prohibit their use otherwise.

(g) Where the claimant is the owner by assignment or other transfer of the claim, in whole or in part, he shall attach to the petition a certified true copy of all instruments of assignment or transfer, and an affidavit setting forth the true consideration paid therefor and stating that the claimant is the bona fide holder and owner thereof and whether or not the claim was purchased for the purpose of instituting a claim in these proceedings. In addition, the information required by this subparagraph shall be included with respect to the claimant's assignor or transferor and any prior assignors or transferors.

(h) The payment to which the pleader deems himself entitled shall be stated.

6. *Defenses.*—(a) *Generally.* An answer, contesting any claim filed pursuant to section 20 of the Act, may be filed within 90 days of the date of service of the petition. (Section 20(d)(5) and paragraph 4 of this order.) All answers shall be filed with the Clerk. There shall be separate answers to separate petitions and such answers shall not be combined in the same pleading.

(b) *Form of denials.* An interested party desiring to challenge a claim shall in his answer state in short and plain terms his defenses or objections thereto and shall admit or deny the averments upon which the adverse party relies. Unless the pleader intends in good faith to controvert all the averments of the claim he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. If the pleader is unable to obtain knowledge or information sufficient for him to form a belief as to the truth of an averment, the answer shall so state and such statement shall have the effect of a denial.

(c) *Affirmative defenses.* An answer shall set forth affirmatively the defenses of accord and satisfaction, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of limitations, waiver, mistake, denial of performance or occurrence, and any other matter constituting an avoidance or affirmative defense. (Rule 37(b).)

(d) *Service; signatures.* Answers shall be docketed and served in the same manner as claims presented by petitions and shall be signed as required by Rule 42 and subject to requirements of service and time as provided in paragraph 4 of this order.

7. *Motions*—(a) *Generally.* Every application for an order shall be by written motion filed with the Clerk. The motion shall set forth the relief or order sought and shall state with particularity the grounds therefor. The provisions of this order relating to captions, signing, service, duplication and number of copies shall apply to all motions and related papers filed pertaining to these

[1] Suggestions of interested parties for the content of future Orders pertaining to procedures, including hearings in the matters before trial commissioners and review panels, provided by section 20, will be appreciated and considered by the Chief Commissioner, This Order, of necessity, issues sua sponte in the absence of knowledge of the identity and number of all interested parties.

[2] Select appropriate heading for petition.

claims. Any brief, memorandum or affidavit in support of any motion or in support of any objections or response to a motion, shall be included in or attached to each copy of such motion, objections, or response.

(b) *Objections and responses.* Objections or a response to a motion shall be filed within 15 days after service of such a motion: *Provided,* That if a motion states that the adverse party or parties against whom the motion is directed have no objection thereto, it may be acted upon as soon after filing as practicable, without awaiting the expiration of the 15-day period. No reply to an objection or response to a motion shall be allowed except upon order.

TITLE 43—PUBLIC LANDS: INTERIOR; CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR; APPENDIX—PUBLIC LAND ORDERS [PUBLIC LAND ORDER 5156]

ALASKA—WITHDRAWAL OF LANDS IN FORMER RESERVATIONS

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights, all of the lands and water areas in the reserves set aside by legislation, Executive and Secretarial Orders for Native use or for administration of Native Affairs, including those created under the Act of May 31, 1938, 52 Stat. 503, which were revoked by section 19(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 710, are hereby withdrawn from all forms of appropriation under the public land laws, including selections by the State of Alaska under the Alaska Statehood Act (72 Stat. 339), and from location and entry under the mining laws (30 U.S.C. Ch. 2), and from leasing under the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. section 181 et seq. (1970), in furtherance of the right of any Native Village Corporation or Corporations to acquire title to the surface and subsurface estates in the reservations, pursuant to section 19(b) of said Act.

2. The withdrawal made by this order will remain in full force and effect until December 18, 1972, unless sooner modified or terminated. Any of the lands or water areas not selected under the provisions of the Alaska Native Claims Act, supra, and not withdrawn by said Act or otherwise, shall at 10 a.m on December 18, 1973, be open to selection by the State of Alaska under the Statehood Act, and to appropriation under the public land laws generally, including location and entry under the mining laws, and to leasing under the mineral leasing laws at 10 a.m. on March 18, 1974.

3. This order shall become effective upon publication in the FEDERAL REGISTER (2-11-72).

HARRISON LOESCH,
Assistant Secretary of the Interior.

FEBRUARY 4, 1972.

[F.R. Doc. 72-2073 Filed 2-10-72; 8:47 a.m.]

THE AMERICAN LEGION

Mr. CURTIS. Mr. President, a very important group of citizens has descended on Capitol Hill today to express their views on legislation and other matters of concern to them.

This group—State and local as well as national officers of the American Legion—makes an annual pilgrimage of this type to Washington.

You will not find them picketing or shouting or chanting or demonstrating in front of the Capitol or at the Washington Monument.

They will go from office to office in the House and Senate buildings, pleading the case of the veterans of all wars and at the same time telling their elected representatives the actions that should or should not be taken, for the general good of the country, on foreign as well as domestic matters.

There will be Government decisions made with which they do not agree, and the legionnaires will express their disagreement forthrightly, but they never abandon those qualities of patriotism which reflect themselves in respect for the flag, for the institutions of Government and our society, for the Office of President and for the other offices of the Republic which we hold so dear.

The Legion group that has visited with me today has covered a broad range of topics, from a desire for increased benefits for Vietnam veterans to getting a new doctor's clinic for a small community. The legionnaires from Nebraska are men of compassion, men of intense concern for their fellow man and for their home communities and State, men of outstanding citizenship. As they have grown older, they have maintained youthful hearts and ideals. They are an inspiration to me, and I am glad to have them with us.

FOREIGN FISHING VESSELS THREATEN OUR RESOURCES

Mr. STEVENS. Mr. President, today I wish to remind the Senate of the continuing threat of foreign fishing fleets which are off the coasts of the United States. There can be no doubt that the fishing activity of nations who fail to meet the standards set for American commercial fishermen is a serious menace to our marine resources. Using techniques that are forbidden to our own fishermen, fishing in areas closed to Americans, destroying gear that has been legally set by our crabbers in reckless forays into American waters, foreign exploitation of our fisheries resources jeopardize the legitimate conservation interests of the State of Alaska and the United States. The economic impact of short-sighted policies which have permitted the United States to decline to a sixth-rate fishing power will be felt, not only in the maritime States, but throughout the Nation.

However, the economic consequences will be greatest in my State of Alaska, where many depend entirely on the sea for income and whole families look to the Alaska fishery for a large part of their diet. I have been notified by the Alaska Fish and Game Department that the salmon pack this year may be the poorest in an even year in a decade.

The threat is there today, just a few miles outside our waters:

One hundred and six Russian vessels and 16 Japanese are fishing for herring on both sides of the international date line just off Nunivak Island.

Ninety-five Russian fishing vessels and 53 Japanese are fishing for ground fish in the Unalaska and Dutch Harbor area.

Two Russians are fishing above Adak, one Japanese and three Russians are near Shumigan.

Between Semedi Islands and Chirikof Islands, 12 Russians are trawling for shrimp.

In an area just outside Kodiak, four Japanese and three Russians fish for black cod and perch.

Two Japanese vessels are at Cape Yakataga.

Ten Japanese are between Cape Fairweather and Sitka.

In the future, I intend to notify this body each week of this continuing threat to America's commercial fishermen and our Nation's marine resources.

The message should be loud and clear: If the United States is to maintain its sustained yield from our fisheries resources, these foreign vessels must come under the control of at least the same laws that apply to U.S. fishermen.

A NATIONAL FIRE SERVICE

Mr. ROTH. Mr. President, on February 17, 1972, my distinguished senior colleague from Delaware (Mr. BOGGS) appeared before the National Commission on Fire Prevention and Control to urge the establishment of a national fire service and a program of better equipment and training for the Nation's firemen.

In his statement, Senator BOGGS offered highly deserved praise for the nearly 2 million Americans who man the 22,300 volunteer fire departments throughout the Nation. I fully agree with my colleague when he said:

Our Nation owes a great debt to the men and women who volunteer their time and efforts.

Mr. President, because I think the remarks of Senator BOGGS are of such great interest to all of us, I ask unanimous consent that the text of his testimony be printed in the RECORD.

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

TESTIMONY BY SENATOR J. CALEB BOGGS

Chairman Bland, Distinguished Members of the National Commission on Fire Prevention and Control:

It is a great personal honor for me to appear before you this morning during this initial series of hearings into the danger of fire. These hearings, together with others that you will hold throughout the country in the months ahead, should add significantly to our knowledge of problems associated with fire. The study and recommendations that you will prepare should have great meaning in lives saved and property damage prevented.

As a matter of fact, the Washington Post carried a most interesting editorial two days ago discussing the importance of the Commission's hearings. I think it is worth quoting the Post's view that "this serious attempt to come up with some new thinking deserves public attention and support, as a significant—and extremely difficult—examination of an age-old environmental problem."

I am particularly honored to share in this task as an Advisory Member to your Commission.

It is also a great pleasure for me to testify before the Commission since our great Direc-

tor of the Delaware State Fire School, Louis Amabili, serves as one of your members. If I might digress for a moment, Mr. Chairman, we in Delaware hold Mr. Amabili in the highest regard. His knowledge of fire safety and the training of fire fighters should add greatly to the Commission's work. Mr. Amabili has been a leader in making Delaware, the First State, one of our safest States.

The passage of Public Law 90–259, which created this Commission, was a most significant event. Its importance derives from the fact that our nation, for the first time, will be making a unified effort to enlarge our fire fighting knowledge and ability. When this Act became law, a clear need existed to explore and develop more effective fire control and fire prevention measures. That need is as clear today.

Many important issues relating to fire safety will be brought to the Commission's attention. It is very important, for example, that you consider the benefits in establishing a National Fire Service Academy.

It is also clear that we need to improve both protective measures and alarm systems for earlier detection of fires. This should reduce property loss and increase the likelihood that no one will be injured as a result of fire.

A particular need exists for more public education in fire protection programs. Too often, I fear, the public lacks the information it needs to recognize the danger of fire that may exist in the basements and attics of our homes.

We have a need, in some areas, to improve fire fighting equipment. This should be done in concert with an exploration of new technologies in fighting fire.

A need exists to find and distribute improved protective equipment for fire fighters. Last year, 210 firemen were killed in the line of duty. Improved protective clothing and breathing apparatus would have lessened that tragic toll significantly, I believe. I am confident that the Federal Government can play an important role as a catalyst in such development work.

Improved training is also vital. There has been great progress, I am happy to note, in the development of legislation that would allow Federal vocational education funds to be spent to train volunteer firemen.

An amendment that I had the honor to sponsor would make Federal vocational education funds available to States for financing the training of volunteer firemen. This amendment was accepted by the Senate Labor and Public Welfare Committee and included in its Higher Education-Vocational Education bill last year. The House then passed a substantially different higher education bill, which did not include any vocational education provisions. The Senate, I anticipate, will soon revise its earlier higher education bill to bring it into general conformity, with the House bill. This would be in preparation for a conference on the two bills. I would hope that the vocational education amendment would be retained in conference.

Mr. Chairman, I am no expert on fire fighting. I cannot hope to tell you what kind of improved equipment we need or how our fire fighting response can be sharpened. Rather, I am a layman who holds in the highest possible regard the dedication and the sacrifice of our nation's fire fighters.

I should like to devote the remainder of my testimony on the great work of our volunteer firemen, who dedicate their time and risk their lives without financial reward.

Fire prevention services in this country simply cannot be upgraded significantly if our volunteer firemen are neglected. I do not say this in any way to downgrade the paid services. They are great.

But a recognition of the importance of the volunteers is a recognition of reality. In this country, we have approximately 22,300 volunteer fire departments, compared with 1,700 paid fire services. In manpower, there are 2,000,000 volunteers, 10 times the 200,000 paid firemen in our nation. Such an army of dedicated volunteer firemen is a wealth we must support strongly.

Our nation owes a great debt to the men and women who volunteer their time and efforts. It is a debt President Nixon recognized not long ago when he made this statement:

"The American tradition of voluntary involvement—of freely committing one's time and talents in the search for civic improvement and social progress—gives an extra dimension to the meaning of democracy."

This is true. In 1969, President Nixon recognized the future role that volunteers should play in our civic life when he established a National Center for Voluntary Action. At that time, the President said:

"In the coming years, the continued progress of our society is going to depend increasingly upon the willingness of more Americans to participate in voluntary service and upon our ability to channel their service effectively."

I mention these fine words of our President because I believe the Commission should do everything it can to augment the role of the volunteer in any recommendations it renders. These are men whose dedication and spirit must be encouraged for the benefit of our nation.

Volunteer firemen have always been important in the history of our nation. George Washington was a volunteer fireman. He joined the Alexandria, Va., volunteers at age 18, and remained active with them throughout his lifetime.

In fact, Washington's whole life was a personification of the ideals of the volunteer firemen: "unselfish public service; courage; duty." It was these words, incidentally, that were inscribed on the U.S. Commemorative Stamp that was issued in 1948 on the 300th anniversary of the volunteer fire service in America.

Alexander Hamilton was a volunteer fireman. So was John Hancock.

I know we are all proud of the great record and service of the volunteer firemen in this nation. It is work on which it is impossible to set a true dollar value. Each year, it involves millions of hours of unselfish community work. No slide rule can measure the value to mankind when a volunteer saves a family's home or rescue a life.

Your fellow Commission member, Mr. Amabili, has calculated that the work of volunteers in a small State like Delaware produces annual savings in labor cost alone exceeding $20 million.

Delawareans would be more than willing to pay that expense, I am confident, if it were necessary. But due to the generosity of volunteers, the State's annual contribution is held to about a quarter of a million dollars, together with a like amount contributed by the counties. In addition, the paid professionals that serve Wilmington operate on an annual budget of about $3 million.

Also, about $1.2 million is raised annually and distributed to Delaware fire companies from a 3½ percent levy on all fire insurance sold in the State.

Any remaining costs for Delaware's 60 volunteer systems is borne by charity drives and various social functions.

Mr. Chairman, included at the end of my testimony is a breakdown on the paid and volunteer fire services in Delaware.

In addition, Mr. Chairman, virtually all of Delaware's ambulance and rescue services, outside Wilmington, are operated by our volunteer fire companies.

Nor should we overlook the fact that the fire hall is often a center for the social life of small communities. The Ladies Auxiliaries of our volunteer fire stations work actively in civic affairs, sponsoring fire-safety drives, babysitting clubs, and other programs.

Mr. Chairman, I have used the word "volunteer" in this discussion to describe a certain type of fireman. Unfortunately, it is occasionally assumed that the volunteer fireman lacks the training of a paid firemn.

This simply is not true. Possibly, we ought to refer to them as volunteer experts or volunteer professionals. They are as well trained as anyone. In Delaware, these volunteer expert fire fighters often accumulate over 500 hours of training in their first three years of service with a volunteer fire company.

Delaware's volunteer services make no compromise in any respect in the offering of the best possible service. Two of our three counties, New Castle and Sussex, have central dispatch services for all fire equipment. Kent County will have it within six months.

The average response time for a volunteer department is 2 to 3 minutes; it is quite rare for a response to take 4 minutes. If several members are at the hall when the alarm sounds, the response time can be less than 30 seconds. And the wide use of radio monitors in the homes of volunteers means that the volunteer expert can sometimes be on the scene of a fire before the fire truck.

Let me emphasize: whether a man is paid or not does not reflect the extent of his ability or training.

The growth and progress of our volunteer service has enabled Delaware to hold its fire losses at a constant level of about $4 million a year over the past several years. This is very significant, I believe, in view of the steady rise in property values during that period.

In conclusion, I want you to know that the Congress and the nation are looking to this Commission for guidance in lessening the national danger posed by fire. We await the recommendations that the Commission will make following your hearings and investigations.

FIRE SERVICES IN DELAWARE

Wilmington Bureau of Fire (paid).
Apparatus:
18 Pumpers.
4 Aerial Units.
2 Rescue Units.
1 Boat.
0 Ambulance.
Manpower: 250.
Stations: 9.
Operating Budget: $2,991,112.00.
Population: 80,000 (estimated).
Volunteer Fire Companies: 60.
Apparatus:
225 Pumper, Pumper-Tanker Combinations.
42 Field Fire Units.
10 Aerial Units.
41 Rescue Units.
13 Boats.
60 Ambulances.
Manpower: 3,500 active (7,176—total membership).
Stations: 64.
Appropriations: Approximately $450,000.00 (from State and County tax money).
Population: Approximately 500,000 (excluding Wilmington).
Value of Apparatus: $15,000,000 (estimated).
Value of Related Equipment: $3,000,000 (estimated).
Value of Buildings and Real Estate: $20,000,000 (estimated).
Value of Services Performed: $21,000,000 (estimated) (64 stations at ⅓ million dollars).

SENATOR CARL HAYDEN

Mr. DOLE Mr. President, the entire Nation was saddened by the death of former Senator Carl Hayden, of Arizona.

Senator Hayden was a unique figure in American history and a singular one in the story of his home State. During the first 57 years of Arizona's statehood, Carl Hayden served his fellow Arizonans in Congress—15 years in the House and 42 years in the Senate. This record stands without equal and gives ample testimony to the quality of service he rendered his State as well as to the esteem in which he was held by its citizens.

The Senator from Kansas had the privilege to reside in Arizona for a period during Senator Hayden's service, and I recall that even more than 20 years ago Carl Hayden was a household word in his home State and a respected and admired public servant in the eyes of his constituents.

Senator Hayden's retirement at the end of the 90th Congress denied me the privilege of serving in the Senate with him, but, needless to say, he was well known to and highly regarded by Members of the House of Representatives on both sides of the aisle during my service in that body.

Carl Hayden was an outstanding American and a towering symbol of integrity, devotion to duty, and dedication to the public interest. Arizona and the United States profited immeasurably from his lifetime of service, and all Americans now mourn his death.

"THE TRIAL OF MARY LINCOLN"—A RARE TREAT

Mr. RIBICOFF. Mr. President, television viewers across the country recently had the rare treat of viewing the premiere performance of a new and powerful opera, "The Trial of Mary Lincoln." This musical-drama based on the 1875 insanity trial of President Lincoln's widow was produced specifically for television and received enthusiastic bravos from all quarters.

It was particularly pleasing to me that much of the well deserved praise for this success has been showered on the opera's librettist, Anne Howard Bailey of Waterbury, Conn. I have had the pleasure of knowing Anne Howard Bailey for many years, and along with countless television viewers, have enjoyed watching the numerous television dramas she has written.

"The Trial of Mary Lincoln" has emerged as one of television's finest hours and as a personal triumph for a very talented writer. I join Anne Howard Bailey's many friends and admirers in wishing her many more successes.

I ask unanimous consent that a number of reviews of the opera by leading critics be printed in the RECORD.

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

[From the New York Times, Feb. 14, 1972]

ORIGINAL OPERA TONIGHT ABOUT MARY LINCOLN

(By John J. O'Connor)

As music and artistic director of N.E.T. Opera Theater, Peter Herman Adler has been articulately pleading for time—time to demonstrate that he could go beyond imports and co-productions to original and imaginative opera presentations specifically tailored for television.

Tonight Mr. Adler solidly justifies those pleas with "The Trial of Mary Lincoln," the first specially commissioned work to be produced by N.E.T. Opera Theater. Being presented at 8 P.M. on Channel 13 as the Public Broadcasting Service's "Special of the Week," the production runs for an hour, a good length for TV viewers, most of whom are not overwhelmed by the prospect of opera marathons lasting several hours.

The libretto, written by Anne Howard Bailey, is supercharged with melodramatic scenes and events inspired by American history. And the score by Thomas Pasatieri, a 26-year-old composer, is a felicitous blend of arias, ensembles, waltzes and lullabies.

The work, in short, is that rare specimen likely to appeal to the professional and to the viewer who couldn't care less about opera, primarily because he doesn't know much about opera and what he does know is distorted by social and cultural misconceptions. Television can be an essential tool in erasing those misconceptions, and that is what Mr. Adler has been proving with remarkable success.

The central action of "The Trial of Mary Lincoln" takes place in May, 1875, at the Cook County courthouse in Chicago. With her son, Robert, as plaintiff, Mrs. Lincoln is on trial to determine her sanity. The courtroom is empty except for the key characters in the trial, including Mrs. Lincoln's sister, her former servant woman, and some close friends.

Taking advantage of the TV medium, the action flows constantly between the present, which is the trial, and the past, events that range in intensity from strained to tragic. As the trial progresses, Mrs. Lincoln becomes more bitter and hysterical and, in the end, is declared insane.

Strictly as history, the opera is questionable in its portrait of Mary Lincoln. While including examples of her consuming social ambitions, her abrasive and ill-informed habits of meddling in her husband's career, the libretto attempts to invest its heroine with tragic stature.

But while Mrs. Lincoln was buffeted by tragedy in the assassination of her husband and the deaths of three of her children, she herself was rarely little more than pathetic. Her trial was indeed moving, but after one year in a nursing home, she was pronounced of sound mind and was given back control over her affairs.

Historical opera, however, like historical drama, has never been noteworthy for its devotion to historical facts. It devises its own context, and within that the focus is on artistic rather than historical feasibility. Within the "Trial of Mary Lincoln," that focus is feasible and, if not tragic, frequently powerful.

The performances are excellent, musically and dramatically. As Mary Lincoln, Elaine Bonazzi, mezzo-soprano, is superb and is splendidly supported by Wayne Turnage, Carol Bogarde, Chester Watson and Louise Parker. The complex structure of the plot—its time transitions all but impossible on a theatrical stage—is expertly directed by Kirk Browning.

Finally, the costumes by Lewis Brown and sets by William Ritman make this one of the most handsome productions yet presented on N.E.T. Opera Theater. Mr. Adler has used his time well. With "The Trial of Mary Lincoln," he is entitled to a good deal more.

[From the Los Angeles Times, Feb. 14, 1972]

MUSIC, DRAMA IN "LINCOLN"

(By John Rockwell)

Thomas Pasatieri's opera "The Trial of Mary Lincoln," to be televised in its world premiere tonight at 8 (locally on Channel 28), is a great success—a gripping, moving hour of musical-dramatic entertainment.

Yet at the same time it does raise once again the preplexing question of the role of music in popular modern opera.

Based on the 1875 insanity trial of Mary Lincoln in Chicago, Anne Howard Bailey's libretto makes subtle, dramatically valid use of flashbacks to key events in the subject's life. The pace is fluid and chronologically complex in a way which the stage could hardly approximate, yet never seems gimmicky or convoluted.

PERSONAL INTERACTION

The prevailing ambience is of supercharged personal interaction, mirrored in subtle facial expressions. There is no chorus, closeups predominate; the camera focuses one's attention in a manner unparalleled by anything in an opera house. Best of all, tonight's cast of singing actors, though trained for the stage, are all masters of dramatic intimacy.

The theme itself, too, is a challenging one. Whatever the ultimate historical truth about Mrs. Lincoln may be—like all such questions, there is no one answer—she appears here both individually sympathetic and symbolically appropriate.

A proud, high-born Kentucky girl, she married "beneath" her and found herself mired in the traditional role of wifely helpmate. Her insanity trial, however, justified it may or may not have been, was only a footnote to a life marked by frustration, tragedy and animosity. This is a "woman's story," perhaps, but midday melodrama elevated to art and social comment.

DEFIANTLY UNMEMORABLE

Yet all that said, the music of this opera still seems almost defiantly unmemorable. Pasatieri is a 26-year-old composer who already has eight operas to his credit before this one, presumably all in the same bland, tunelessly tonal idiom.

Serious contemporary music, unpleasant to the general public's ear, has clearly proven unsuitable for popular opera. Yet the special potency of musical drama still appeals, and the result is a blitz of musicless operas in recent decades, strong dramatic statements in which the music fits in as film background accompaniment with vocal obbligato. "The Trial of Mary Lincoln" is one of the best of such efforts.

The cast, headed by mezzo Elaine Bonazzi in the title role, sings well enough to fulfill the intimate, tonally constricted demands of the medium and of Pasatieri's recitative-like vocal writing. Peter Herman Alder conducts members of the Boston Symphony with presumed authority, and such matters as sets, costumes and ancillary technicalities are all in good hands. Kirk Browning directs.

The opera will be repeated Saturday at 7 p.m.

[From the New York Post, Feb. 10, 1972]

LINCOLN'S WIDOW IN NEW TV OPERA

(By Harriett Johnson)

"The Trial of Mary Lincoln," a new opera for TV with music by Thomas Pasatieri and libretto by Anne Howard Baily, is authentic American history and this heightens its power, but the skill of librettist and composer are the alchemy which gives the work stirring life.

President Lincoln's widow was brought to trial by her son, Robert, in 1875 and was declared insane. From these facts Miss Bailey has created a drama which, though far from maudlin, has in its several previews attended by the press and others closely involved, moved more than one present, to tears.

Pasatieri, only 26 years old, but already with several operas to his credit, is a gifted composer in the Menotti tradition, and like Menotti, of Italian descent. He writes melody

which can be sung, though not always with spontaneous ease. Yet he is knowledgeable about what the voice can do and sensitive in his style to its needs and possibilities.

In "The Trial of Mary Lincoln," he uses a kind of endless-melody, song speech which propels itself forward as the emotions rise and carries us along too. The instrumental background is sometimes almost too rich. Under Peter Herman Adler's sensitive and knowing musical direction the orchestra seldom overwhelms but when it does we resent it because in this particular TV spectacle we are caught up in a human drama set off by music, to the extent that we don't want to lose a word.

Pasatieri's music is certainly relevant but, while it may be momentary illusion, the story is what really counts when we see "The Trial of Mary Lincoln."

He has not written an express monodrama but it amounts to this because Mary Lincoln's testimony is both the meat and bread-and-butter of the opera. Everyone else is there to feed what she says. Thus too much praise cannot be lavished on mezzo-soprano Elaine Bonazzi as Mary Todd. She is a singing-actress who is identified in depth with the character and personality of Lincoln's widow. At the end we learn explicitly that Mrs. Lincoln is deranged but the opera's viability lies in the suspense of not being convinced until the climatic finish, and empathy is with her along the way.

There are several flashbacks (pictoralization of her testimony) illustrating her life before the trial with which the opera opens. We witness her vanity, her experamental flights, her contravagance, her will to interfere and dominate, her temperamental flights, her conflicts of duty and devotion. Color TV enhances it all, especially the party scenes.

The plan of the libretto enables us through television mobility to get psychological insight into Mary's personality in a way not possible in conventional opera. Kirk Browning's stage direction has produced action as vivid and telling as the impact of the live theater. Sets are designed by William Ritman, costumes by Lewis Brown. David Griffiths is associate producer.

The supporting cast is first-rate; Wayne Turnage as Robert Lincoln; Elizabeth Pritchett as Mrs. Faye; Louise Parker as Elizabeth Keckley; Carol Bogarde as Elizabeth Edwards; Chester Watson as Leonard Swett; Mark Howard as Ninian Edwards; Julian Patrick as Stoddard; Fred Stuthman as the Judge; Alan Titus and Robert Owen Jones as Confederate Soldiers.

"The Trial of Mary Lincoln" will have its world premiere by the NET Opera Theater Monday at 8 p.m. over the Public Broadcasting System, Channel 13. There will be a repeat showing Feb. 19 at 8 p.m.

[From Opera News, Feb. 26, 1972]

"TRAIL OF MARY LINCOLN"

Thomas Pasatieri's *Trial of Mary Lincoln*, produced by NET Opera and shown nationally on February 14, completely succeeds as dramatic entertainment. Not only does the opera afford sixty minutes of gripping, well-photographed theater, it rewards home viewers with a real star performance: Elaine Bonazzi's in the title role. As the widow of the martyred but fallible president, the mezzo uses her remarkable face and intensely expressive voice to convey the tragedy of a power-hungry, unsure and completely unbelievable woman. Though Miss Bonazzi has lyricism in her voice, bel canto is not her strong suit. She does possess an ability given to few, that of conveying with her voice alone great extremes of feeling—madness, girlish gaiety, feminine protectiveness, vanity and many more. Notable even in this magnificent tour de force was her convulsive, agonized summoning of Lincoln's ghost.

Pasatieri's music sometimes seems to fade behind Anne Howard Bailey's superb libretto (Miss Bailey's success, not incidentally, may come from her experience with TV: she has some 450 network dramas to her cerdit), but it never disappears. Using a rich tonal palette with the usual contemporary suggestions of Britten (particularly in the courtroom portions) and impressionism, Pasatieri employs music to highten the drama and create atmosphere. On first hearing, the slightly out-of-kilter waltzes of the second ballroom scene pleasantly remain in the recollection, along with some unusually effective writing for winds to express Mary's sadness and, later, her insanity.

The plot begins and remains throughout the opera's one act in the Cook County Couhthouse, where Mrs. Lincoln's insanity hearing took place. Brilliant use of flashbacks details the course of the lady's life from her wooing days through her marital disputes and loss of a son, to Ford's threater and the tragic decade 1865–75. No one, in the context of 1875, seems really a villian; the ghastly events just happen, and their result seems none the easier to take for its inevitability.

As her son Robert, Wayne Turnage turns in a strong, manly performance, and Carol Bogarde gives even more as her sister Elizabeth. Her high lyric soprano does Pasatieri's music a good turn indeed, particularly in a lovely lullaby: the composer writes an appropriate, simple, singable song when the situation demands it. Julian Patrick sings Lincoln's clerk with attractive resonance, and again baritone Alan Titus makes a good impression, this time in a walk-on role as Mary's Confederate nephew.

On this occasion, director Kirk Browning merits great praise for the general brilliance of the production, and Francis Mahard's sets perfectly catch the flavor of Civil War America. In the pit, Peter Herman Adler conducts members of the Boston Symphony with care and concern to keep the music's drama and yet not cover a word of the text. Bravo to NET!

TRAGIC MARY LINCOLN SINGS

However *The Trial of Mary Lincoln* may eventually rank in the annals of opera, it's a dramatically powerful hour of television. With music by 26-year-old Thomas Pasatieri and a text by Anne Howard Bailey, the work is based on the insanity-commitment trial of Abraham Lincoln's widow, held in Chicago in 1875. It was commissioned by the NET Opera Theater and receives its premiere Feb. 14 from 8 to 9 p.m. over stations of the Public Broadcasting Service.

It is no disparagement of the opera to say that the music is its least important element. Mr. Pasatieri's score is more telegenic than operatic; it creates mood and heightens the drama rather than depicting characters or generating its own climaxes. But it provides a substantial and sonorous background for the story.

And a moving story it is, with the embattled widow remembering the days of glory and battling against attempts by her son and others to have her "put away" as an irresponsible spendthrift. Miss Bailey's terse and cogent libretto manages to remain fair to everybody, so that the case emerges as a true tragedy rather than a domestic squabble.

The story is told with steadily mounting impact through facial close-ups, personal confrontations, and dramatic flashbacks. Every word comes through with remarkable clarity; in fact the characters seem to speak almost as much as they sing. Headed by Elaine Bonazzi as Mary Lincoln and Wayne Turnage as her son Robert, the cast performs with a strong sense of conviction and intensity, and the courtroom and Civil War settings are graphic and realistic. And although the composer and librettist have omitted Abraham Lincoln himself, both visually and vocally, his presence never seems far from this bitter drama.

[From the Daily News, Feb. 15, 1972]

"THE TRIAL OF MARY LINCOLN" POINT-SCORER FOR TV OPERA

(By Kay Gardella)

Over the years there has been a tremendous resistance to opera on television. Many objections have been legitimate, many a result of a close-minded attitude toward the arts in general. But last night, with the debut of a work commissioned by the NET's Opera Theater, "The Trial of Mary Lincoln," a new thinking could easily emerge.

This work by Thomas Pasatieri, a successful opera composer with eight operas to his credit, has been tailored for television and uses the electronic medium to advantage. The opera, with libretto by Anne Howard Bailey, is more dramatic than lyrical. It appears to be always underscoring the drama rather than generating its own life.

Featuring mezzo-soprano Elaine Bonazzi in the title role, the opera deals with that tragic moment in history when the widow of Abraham Lincoln is put on trial for her sanity. The key set is the Cook County courtroom in 1875 where Robert Lincoln, son of Mary, has instituted his mother's trial because of her eccentric behavior.

For Miss Bonazzi, it is a virtuoso role aided considerably by close-ups. Expertly directed by Kirk Browning, her face reflects a sub drama of conflicting emotions as she confronts her loved ones who testify against her. Flashbacks are used cleverly to show the difficult life role Mary Lincoln played—wife of an assassinated President, a mother who buried three children and a strong-willed woman who meddled in affairs of state.

Miss Bonazzi, a handsome woman, is ably supported by a cast which includes Carol Bogarde, Chester Watson, Louise Parker and Wayne Turnage, who plays her son Robert.

As for Lewis Brown's costumes, they play almost as important a role as Peter Herman Adler's direction, or Pasatieri's music. Part of the $250,000 production had to be spent on those elegant gowns. Even the black mourning-style costume worn during the trial by Mary Lincoln was handsome. It suggested that though Abraham Lincoln was never seen in flashbacks his presence towered over the bitter opera.

COMPOSERS TAKE NOTE

While the opera ends when Mary Lincoln is committed, it should be noted that one year later the widow of Abraham Lincoln was released from the nursing home and declared sane. From an operatic point of view, it was pointless to feel compelled to make this known. The sanity hearing seemed a fine choice for a one-hour television opera.

This brings us to a point that has perhaps been considered over and over again. And that is that television does lend itself to focusing on a single experience, and from a musical point of view composers while working on larger, more grander works could elicit a single segment from their production for television.

Certainly "The Trial of Mary Lincoln" could easily be envisioned as merely one act of a larger opera. And while grand opera itself is somehow destroyed by the small screen, segments of grand opera need not be. So an enterprising composer, with loftier ambitions, might be able to use television as a stepping stone to something much bigger. TV, in the meantime, would profit, too, as in the case of the Pasatieri work.

MARY, MARY, QUITE CONTRARY

THOMAS PASATIERI'S "The Trial of Mary Lincoln," which will be broadcast by the N.E.T. Opera next Monday night, is the work of a sincere composer who takes his tradition seriously and writes for the voice with unusual skill. The texture of his scoring for orchestra is not only expert but dramatically

effective and pleasing to the ear. Since he is only twenty-six years old, he may be a spearhead of something I have heard a lot about, though I have experienced very little of it: a return by younger composers to melodic writing. If this happens, there is still a chance for a reconciliation between contemporary opera and the musical public.

By means of flashbacks, the opera portrays many episodes in the life of Abraham Lincoln's wife, while devoting its main narrative to the trial at which she is adjudged insane and from which she is taken to the madhouse. She has been brought to trial by her son Robert over a question of her financial responsibility as well as the state of her mind. The flashbacks show her flamboyant behavior during the Civil War, her efforts on behalf of the wounded Union soldiers, her confrontation with a nephew, who is fighting on the other side, the death of her child just after she has been gaily dancing in the White House ballroom, and several other incidents. Lincoln is merely a presence offstage. There are several quite moving scenes. If the opera has a fault, it is that Mary Lincoln never quite attains the stature of tragic heroine. The flaws in her character are too obvious. For all her sorrows, she is basically a frivolous woman and a meddlesome one. And so the emotional punch that real tragedy would have produced is somewhat vitiated. On the other hand, the opera shows Mr. Pasatieri to be an extraordinarily gifted young operatic composer, and I expect great things from him.

The role of Mary Lincoln is sung by Elaine Bonazzi, and is done with such remarkable dramatic insight that Mary almost becomes the tragic heroine one looks for. Miss Bonazzi is one of the outstanding actresses on the contemporary operatic stage, and her portrayal—even though the role is not entirely successful—is something to remember. Other excellent singers in the cast are Carole Bogard, Chester Watson, Elizabeth Pritchett, Louise Parker, Julian Patrick, and Alan Titus. The sets, by Francis Mahard, and the costumes, by Lewis Brown, are appropriate, and Kirk Browning's direction is admirable. The conductor is, as usual, the able and enterprising Peter Herman Adler, who commissioned the work for N.E.T. The libretto, by the way, was done by Anne Howard Bailey, who has written countless television dramas as well as the libretto of Leonard Kastle's "Deseret," an opera done with some success a dozen years ago by the N.B.C. Opera Company.

FLOOD DISASTER IN WEST VIRGINIA

Mr. BYRD of West Virginia. Mr. President, I met with President Nixon today for a briefing on his recent trip to China.

While I was at the White House, I had an opportunity to express appreciation for his efforts in securing Federal aid for the West Virginians injured and left homeless by this past weekend's tragic flood. I also expressed the hope that the President would be able to personally visit the area damaged by the flood.

I have been assured that all Federal agencies involved are placing their highest priority on providing such aid as may be needed; and I am continuing to maintain daily contacts with the agency heads to assure that their efforts produce meaningful results.

As a member of the Senate Appropriations Committee, I have called on all Federal agencies engaged in the relief work to submit as soon as possible their estimates on the funds that will be needed to provide all the aid possible to persons hurt by the flood, for restoration work in the area, and to take all possible steps to prevent a future recurrence of such a tragedy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired.

EDUCATION AMENDMENTS OF 1972

The PRESIDING OFFICER. At this time, in accordance with the previous order, the Chair lays before the Senate the unfinished business which will be stated by title.

The assistant legislative clerk read as follows:

Calendar No. 576, 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.

The PRESIDING OFFICER. The pending question is on agreeing to amendment No. 947 of the Senator from New York (Mr. JAVITS).

Mr. PELL. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second legislative clerk proceeded to call the roll.

Mr. JAVITS. 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. JAVITS. Mr. President, how much time remains to the proponents of the amendment?

The PRESIDING OFFICER. One minute remains to the proponents.

Mr. JAVITS. Mr. President, I withdraw that amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. JAVITS. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 1, line 2, of the Mondale amendment, after the words "be applied" insert: "in all regions of the Nation".

Mr. JAVITS. Mr. President, how much time do I have on this amendment?

The PRESIDING OFFICER. There are 30 minutes on the amendment, 15 minutes to each side.

Mr. JAVITS. I yield myself 10 minutes.

Mr. President, the Senate is now engaged in the final 36 hours of endeavoring to come to a decision upon this phase of the bill, which really involves the basic controversy in the bill, as we all saw yesterday when the track was cleared for amendments which had to do with education. On Friday we cleared the road for amendments to be offered yesterday, and of course they can be offered today and tomorrow as well, which relate to the higher education aspects of the bill; and it was very clear from the proceedings of yesterday that while there were some amendments, they did not involve the fundamental issues, but that the fundamental issues in the bill, which had a substantive impact on how Senators would vote, related to busing and school desegregation.

So, Mr. President, in dealing with that question today, in debate and through the voting which will take place during the middle of the day, and without in any way, though the unanimous-consent agreement permits it, very fully going into other phases of busing and the school desegregation problem, whether applied to section 901 or other sections of the bill, I say that we are dealing with what will make the bill stand or fall here in the Senate. For that reason, Mr. President, the big competing ideas here are the idea incorporated in the Griffin amendment, which will be voted on again today, and the idea incorporated in the Scott-Mansfield amendment, which will likewise be voted on today.

I should like to address myself to the Griffin amendment. It is well-known that I am opposed to it. I find a rather interesting analogy between the Griffin amendment and what we did about equal employment opportunity. There, Mr. President, after a 5-week struggle, we finally came to a resolution of our problems and adopted essentially Senator DOMINICK's formula for giving some power, greater power than it has had, to that commission, but less power than the committee sought to give it in the bill reported to the floor.

That was considered so reasonable a compromise that an overwhelming majority of 71 Senators voted to close debate; and that by no means represented the total number of Senators who were in favor of that compromise, which was even greater. That bill is a progressive milestone.

Mr. President, last Friday the Senate passed, by a vote of 43 to 40, the so-called "Griffin amendment." Today we will have the opportunity to reverse that action.

For 5 weeks prior to the consideration of the pending legislation, the Senate debated, and ultimately adopted, legislation expanding the authority of the Equal Employment Opportunity Commission to deal with discrimination in employment practices. As cofloor leader of that bill, along with the distinguished Senator from New Jersey, I fought every step of the way to extend protection against discrimination. In the end, a compromise was necessary in order to secure passage, but the final result was clearly an affirmation by the Senate of its commitment to equal opportunity in the vital area of employment. That bill is a progressive milestone.

Compare that with the Senate's action last Friday. The Griffin amendment may well be the most regressive measure in seeking equal opportunity for children in education on which the Senate has taken affirmative action in years. Unlike the Scott-Mansfield compromise amendment adopted a day earlier, which deals with the legitimate concerns expressed by many parents about excessive and educationally coun-

terproductive busing, the Griffin amendment reacts to unfounded fears and sheer emotion in a way which may effectively cancel out the long, painful struggle for equal educational opportunity to which the Senate had therefore been committed.

In the first section of the amendment, the Federal courts are purportedly denied jurisdiction to order what they have held the Constitution to command. We are told by the Senator from Michigan and the Senator from North Carolina that Congress has the constitutional authority to bridge the separation of powers in this way because of power over lower court jurisdiction. But the authorities they cite are unpersuasive at best. Ex parte McCardle, a Supreme Court decision which upheld the right of Congress to prohibit the courts from entertaining writs of habeas corpus, is readily distinguishable. In that case, the Congress sought to deprive the courts of a whole area of subject matter jurisdiction, not just the constitutional remedies which make jurisdiction meaningful. Furthermore, as at least one scholarly commentator has noted, alternative ways remained available after Congress had acted in for the vindication of the very constitutional rights in issue. See Ratner, Congressional Power over the Appellate Jurisdiction of the Supreme Court. 109 Pa. Law Review 157. Indeed, there is some question whether Ex Parte McCardle remains good law today. See *Glidden Co.* v. *Zdanok* 370 U.S. 530, 605 (1962)—dissenting opinion.

The proponents of the Griffin amendment cite the validity of the Norris Laguardia Act in support of their contention that Congress may use the basis of lower Federal court jurisdiction to limit remedies. But in the Norris-Laguardia Act the remedies limited, that is, injunctions in labor disputes, did not derive from the exercise of constitutional rights. It is quite a different matter to limit the courts in their exercise of general equity jurisdiction and to withhold from them the implements necessary to vindicate constitutional rights. Indeed, in *Battaglia* v. *General Motors Corp.*, 169 F. 2d 254, 257 (2d Cir. 1948), *cert. denied* 335 U.S. 887, the Court said:

> We think . . . that the exercise by Congress of its control over court jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is, while Congress has the undoubted power to give, withhold and restrict the jurisdiction of courts other than the Supreme Court, it must not exercise that power so as to deprive any person of life, liberty or property without due process of law.

As the Supreme Court held in Bolling against Sharpe, a companion case to Brown against Board of Education that racial segregation in the schools is prohibited by the due process clause of the fifth amendment as well as the equal protection clause of the 14th amendment, the principle enunciated by the Court in the Battaglia case would seem to lead to a finding of unconstitutionality for the Griffin amendment and indeed Senator GRIFFIN himself has recognized that possibility.

Notwithstanding the question of its constitutionality, the Griffin amendment would operate to deny equal rights to black and other minority schoolchildren. Efforts by its proponents to say the issue is "quality education" rather than desegregation are as imprecise as the President's August 3, 1971, statement that he does not favor busing for busing's sake. Those of us who wish no turning back in the desegregation of schools are indeed concerned with quality education. And, neither the Senator from Michigan nor any of his Southern colleagues who have led the battle against school desegregation have provided us with any evidence to contradict the evidence compiled by the Select Committee on Equal Educational Opportunity, that neither dollars nor institutional reforms, both desirable in their own right, can have as substantial an impact on educational disadvantage as desegregation.

The issue is not, as the Senator from North Carolina would have us believe, whether black children cannot learn when they are isolated from white children. It is whether disadvantaged children, of all races, benefit in terms of cognitive school achievement from a heterogenous classroom environment, and whether all our children are going to appreciate and benefit from a pluralistic society, one which must still free itself from the yoke of racial prejudice and resulting segregation.

The first section of the Griffin amendment undercut the basic enforcement mechanism of desegregation, the courts; the Senator from Michigan then give us two "insurance" provisions, presumably included to salvage as much as possible in the event the first provision is held unconstitutional. The second section of the amendment, if adopted, would have the effect of repealing title VI of the Civil Rights Act of 1964 as it presently is most relevant to public education. No longer would the Department of Health, Education, and Welfare be permitted to withhold funds from a school district which is in violation of the constitutional command to desegregate its schools. At the very least, this provision would require relitigation of the vast majority of desegregation plans already in effect throughout the country, and attendant delays, confusion, and divisiveness. At worst, it could authorize segregation of thousands of school districts.

In its third section, the Griffin amendment imposes a legislative stay on all school desegregation. In voting for the Scott-Mansfield amendments, I expressed doubts about the advisability, and even the constitutionality, of its provision staying for 16 months court orders requiring school district consolidation or interdistrict assignment of students. At least the objectionable provision in Scott-Mansfield is limited by its own terms to legal questions not yet fully resolved by the Supreme Court.

The Griffin amendment paints with a much broader brush. By staying all desegregation orders which will require transportation it encourages frivolous appeals and delays interminably the implementation of adjudicated rights.

Mr. President, last Friday was a dark day in the history of our national commitment to equal opportunity. I hope that the Senate will heed rationality and conscience and reverse its earlier decision.

I consider the amendment most regressive. For all those reasons, I hope it is defeated in the Senate.

Mr. President, I yield all but 1 minute of my remaining time to the Senator from South Dakota.

BUSING—NO TIME FOR RETREAT

Mr. McGOVERN. I thank the Senator from New York.

Mr. President, the Griffin amendment and others like it have been mislabeled "antibusing" amendments.

That label does not define either their purpose or their effect.

Their purpose is to respond to unreasoning political panic.

And their effect is to retreat on our national commitment to equal opportunities for all Americans, regardless of the color of their skin.

In the process they can only mask and divert attention from the real concerns of the American people.

Black, white, brown, and red Americans who were in school just a few years ago are still exposed to the constant risk of death or disability in needless war.

There is still a risk that our children will someday choke on polluted air and water.

There is still the fact that millions of American children are denied a decent education, regardless of their race, because we are too busy building overkill.

There is still a risk that inadequate food and nutrition will start many of our children in life with crippled minds and bodies.

And there is still the risk that our children will inherit the same racial divisions and suspicions which have plagued us for nearly 200 years.

Yet with those and other issues unresolved, some act as if the survival of the American way of life turned on whether or not some of our children will be bused to integrated schools.

That, I submit, is a sorry spectacle to present to the American people in 1972.

These proposals respond to no national revulsion against busing. The school bus is not public enemy No. 1.

Certainly it is an inconvenience to have to ride a bus to school, rather than to have the school within walking distance. No one disputes that.

But about 65 percent of the schoolchildren in this country ride buses and other vehicles to school every day, simply because school is too far away to walk. Such busing has nothing to do with race.

And there is, of course, no amendment to prohibit busing of that kind.

Nor are these amendments directed against all racially motivated busing.

In fact the school bus has been used for decades as a vehicle to affect the racial makeup of schools. It has been used to bus white children past black schools and black children past white schools, and to keep black and white children apart.

And these amendments are not designed to prevent unreasonable or excessive busing. In fact, in some instances they will likely preserve such busing.

The Supreme Court decision which inspired much of today's controversy, for example, involved a situation where some

26,500 pupils were being bused for an average one-way trip of a full hour, for the purpose of maintaining a dual school system. Now, under the decision in the Swann against Charlotte-Mecklenburg case, the average bus ride has been cut in half.

With few exceptions that has been the experience throughout the South. Desegregation, accomplished in part by busing, has been accompanied by reductions in the average distances children must travel to school.

Further, the Supreme Court has held in connection with the Charlotte case that—

> 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.

What the Court has said, in effect, is that where there have been deliberate official efforts to maintain segregated schools, and where other methods are insufficient to remedy those wrongs, then busing will be used—but only if it is not harmful to health or to the educational process.

It is clear that excessive or unreasonable busing is not a question which is before either the Congress or the American people.

Rather we are considering whether reasonable incremental busing can be used, when other remedies fail, as a means of fulfilling our 18-year-old commitment to integrated schools.

The PRESIDING OFFICER (Mr. GAMBRELL). The time of the Senator from South Dakota has expired.

Mr. McGOVERN. Mr. President, will the Senator from New York yield me more time?

Mr. JAVITS. I have no additional time.

Mr. ALLEN. Mr. President, although I disagree with the arguments the Senator is making, I yield him 5 minutes of our time.

The PRESIDING OFFICER. The Senator from South Dakota is recognized for 5 additional minutes.

Mr. McGOVERN. I appreciate the generosity of the Senator from Alabama in yielding me this time, especially since he does have an opposing view.

Mr. President, we must consider that question in the recognition that without busing as a tool, desegregation will probably stop dead in its tracks.

What is before the Congress is whether we want to return to the undemocratic dual school system, or move ahead to a society where our children see each other as equals and where there is quality education for all. That is the question involved in the Griffin amendment.

That question has been stated very clearly by the Governor of Florida, Mr. Askew, to whom we owe so much in the way of wisdom and prudence on this issue.

Before we yield to the current busing hysterics, we ought to consider the costs.

The Supreme Court estimated those costs as long ago as 1954.

Based on extensive psychological and sociological studies, the Court found then, as a fact, that separation of pupils based on race was harmful to educational and mental development. The Court held, in Brown against Board of Education, that—

> Separate educational facilities are inherently unequal.

The Court was forced to rely largely on theoretical data in reaching that conclusion. But its judgment has since been confirmed beyond any rational doubt, through years of experience in carrying out its mandate for school desegregation.

An extensive Federal study, "Equality of Educational Opportunity," usually referred to as the Coleman report, has found that the educational progress of black children is measurably improved by attendance at integrated schools.

A study sponsored by the New York Board of Regents, "Racial and Social Class Isolation in the Schools," reached the same conclusion.

In an important Senate address less than 2 weeks ago, Senator MONDALE cited case after case of enhanced performance records by minority children attending integrated schools. His remarks were grounded in the brilliant documentation compiled by the Select Committee on Educational Opportunities which Senator MONDALE has chaired with such distinction and devotion.

And it follows that regardless of how they are dscribed, regardless of misleading titles and confusing rhetoric, the amendments now before the Senate are proposals to deny black children the chance for equal educational opportunity. They are proposals to deprive black children of the right to develop their full potential as human beings. That is the inevitable result of these amendments.

Some might think it is worth that price to overturn the school bus. They ought to admit it.

But whether they will or not, I disagree—with every fiber in my being.

The Nation has responded to the quest for human rights. The Congress has adopted legislation assuring equal access to public accommodations—so that blacks can eat in the same restaurants, sleep in the same hotels, and ride in the same seats on public transportation as whites.

We would find it unthinkable to retreat on those programs.

We have adopted legislation to end racial discrimination at the registrars' desk and in the voting booth.

No one suggests that we should undo that legislation.

We have also addressed the issues of equal access to jobs and housing. There is conflict over the implementation of those programs.

But, again, there is no suggestion that we reverse ourselves and turn back to the old discriminatory practices.

To do those things would be to abandon the lessons purchased at such tragic cost in the 1960's.

It would restore the chains of injustice which have shamed our country for nearly 200 years.

It would write out of our conscience and our policy much of what our most brilliant and beloved leaders of the 1960's—John Kennedy, Robert Kennedy, and Martin Luther King—lived for and fought for through their tragically shortened lives.

Is it more acceptable, then to rob black children—whose voices are not so loud, and whose rage is not so immediate—of the protection guaranteed by the 14th amendment?

Can we see a need in these antibusing amendments that is so compelling that it justifies perpetual discrimination with respect to one of the most fundamental basic conditions of human dignity?

We have gone too far with this repulsive strategy of fear.

We have seen too much faltering leadership on the question of racial quality over the past 3 years.

We have flirted too much with the old racial divisions that nearly tore our country apart.

Let us reaffirm instead our commitment to true equality of opportunity.

Let us encourage the same cooperation and compassion which have brought us so far already toward a country which sees the true worth—and searches for the truly decent instincts—in every one of its people.

Mr. President, I ask unanimous consent that certain supporting editorial items and a brilliant speech by the distinguished Governor of Florida Reuben Askew be printed in the RECORD, and I thank the Senator from Alabama and the Senator from New York very much for yielding me this time.

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

[From the Washington Post]

WILL THE UNITED STATES BE ASKED TO ELECT PRESIDENT ON RACISM BASIS?

The white political leadership of White America is making its ideas perfectly clear in this election year. There are some real problems for the candidates to take stands on: the war, the arms race, unemployment, the economy, the health care system, the cost and conduct of local governments, the environment. But it appears that what the political leaders will fight over is the most effective way to beat the blacks, the browns, the poor. If the campaign continues to develop the way it has begun, we shall be asked to choose in November a President of the United States not for his race, but for his racism.

Each of these leaders gives his own reasons, but what they all are doing is obvious. Sen. Edmund Muskie has made it clear he does not think he could win the presidency with a black on the national ticket. Sen. Henry M. Jackson (D-Wash.) has made it clear he is willing to give constitutional sanction to racial fears by proposing an antibusing amendment. Gov. George Wallace of Alabama clearly believes that the Old South will rise again—in the North, on Capitol Hill.

And Mr. Nixon's views, as he says, are well known. He has tried to construct a Supreme Court that will decide the law according to his preferences. He has said he favors equal job opportunities, but his administration joined the Southern bloc in the Senate this year to beat back efforts to give the Equal Employment Opportunity Commission independent enforcement powers. He has repeatedly stated his opposition to what he calls "forced economic integration of the suburbs."

His opposition to school busing has never been a secret. He has created his own opportunities to talk about it. He has strengthened the forces in Congress which want to

prohibit the use of federal funds to pay for busing, thus depriving local school boards of the help they need to follow court orders. And his willingness to consider backing a constitutional amendment prohibiting busing has greatly improved the chances of House members who want to bring a discharge petition to a vote, to force out of the House Judiciary Committee an antibusing amendment proposed by Rep. Norman Lent (R-N.Y.).

The danger is obvious. If an amendment of that kind were sent out to the state legislatures, or conventions, in a campaign year, all other business of government and all other political purposes would be hidden behind it. They will be hidden behind it in the Florida primary March 14 when a busing referendum, with no binding authority, will be on the ballot.

What can happen nationally is evident in the Florida situation. Gov. Reuben Askew has fought patiently and decently, but hard, to promote racial equality in his state, and to use school busing to achieve integration. He says this is his responsibility under the law and under court mandates. Now, inevitably, he will be drawn into the battle over this referendum and thus into a presidential primary campaign he would rather stay out of.

Askew and a few other Southern governors have found from experience that school integration does work, that education can be improved while equality is being ensured and that busing is the most efficient means of accomplishing these aims at this time. It is not easy, but, when governors and school boards have decided it must be done, they have proven it can be done, and with good results. Now, in the midst of their efforts, Askew and school boards and administrators are being forced to wage a battle against popular hatreds whipped up once again by the President and a pack of people who want to be President.

Historically, integration was thought of as a Southern problem and solutions were first imposed on the South by the courts. In the last few years, the people in the South have elected governors—witness North Carolina, South Carolina, Florida, Arkansas—who have decided to make those solutions work. In the race for national power, it is the President and some members of Congress who are seeking ways to prevent those solutions from working.

The Supreme Court itself has been brought under tremendous pressures as a result of this political antibusing compaign. It has cases coming up to it involving a number of large northern cities. Now it must decide them in the midst of crisis of authority, for the politicians have invited the people to oppose power and prejudice to the law, and to the concept of law. This is the politics of revolution.

It is the politics of racial suppression. No matter what reasons the President and these congressional politicians give, what they are doing is a clear message to the blacks and other minorities that the government will not exert itself further to guarantee their rights under the law and it is a message to the whites that the law does not rule anymore.

[From the New York Times]

THE FIFTH OPTION

(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-ordered 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 and restraint to a highly emotional 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.

[From the Los Angeles Times, Apr. 12, 1971]

THE COURT'S INTEGRATION DECISION

The Supreme Court has tried mightily to sweep away quibbles, and doubts, and delays.

The Supreme Court has said that "the constant theme and thrust of every holding from (1954) to date is that state-enforced separation of races violates the equal protection clause" of the Constitution. The Supreme Court has said that school authorities must exclude no pupil of a racial minority from any school, "directly or indirectly," on account of race. The Supreme Court has said that to this end cross-town bussing is permissible; school assignment by race is permissible; gerrymandering of districts is permissible. The neighborhood school concept falls before the command of the Constitution: official racial discrimination is not allowed.

The decisions were unanimous. The justices who made them were appointed by Presidents Roosevelt, Eisenhower, Kennedy, Johnson and Nixon. The four opinions were written by Mr. Nixon's appointee, Chief Justice Warren E. Burger. The decisions are the law of the land, and they have behind them the force of a constitutional, philosophical, and, indeed, political consensus.

The Court has gone far toward settling the arguments about what the South must do to undo the results of the separate school systems it once supported. The Court has been as precise as it could be. It cannot be absolutely precise; and the working out of school desegregation plans in the South, or anywhere else for that matter, is extraordinarily complicated. Much depends on the willingness of the administration, which sought a less rigorous resolution than the Court reached, to support the Court's commands with the affirmative action of the federal government.

And the Court hasn't yet tackled, as Burger pointed out, the whole tangled question of what must be done by school systems outside the South. (Neither, of course, has Congress; note that the Senate Wednesday voted down Sen. Abraham Ribicoff's proposal to require the integration of inner-city black children into white suburban schools throughout the nation.)

But you cannot conclude that Los Angeles and other California and Northern cities are wholly unaffected by the Court's chain of reasoning.

"We do not reach in this case the question whether a showing that school segregation (as) a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree," Burger wrote.

That statement and others by Burger leave well open the possibility that even in non-Southern school districts, which never operated overtly separate school systems, discriminatory action by school authorities would require remedial action by the courts. Which, in fact, relates to what former Superior Judge Alfred Gitelson found in Los Angeles: that by selecting sites, building schools, drawing district lines and denying transportation to minority students, the Los Angeles Board of Education was unconstitutionally discriminating.

Judge Gitelson may well be upheld; this, for Los Angeles, is the principal message in the Court's decisions.

For the country, the larger message, it seems to us, is that we are definitely going to proceed toward becoming an integrated society.

The process is going to be difficult; the problems multitudinous.

Burger confessed that the Court cannot make every wrong right; and he was careful not to insist upon precise and rigid balancing of the races in the schools. "In an area as sensitive as we deal with here," he said, "words are poor instruments to convey the sense of basic fairness inherent in equity." Yet it was to that sense of basic fairness, inherent in the Constitution and in the traditions of the nation, that the Court addressed itself; and its four decisions show the country what it truly is, and what it must become.

[From the Baltimore (Md.) Sun]

"THIS CASE"

A unanimous Supreme Court has taken the next logical step in the series of rulings that began in 1954, when forced school segregation by race was held to be unconstitutional. Since then the federal judiciary has said time and again that not only must old separate school systems be discarded, but also that officials have a duty to take affirmative actions to see that actual desegregation follows legal desegregation.

Though the court was once again unanimous in its finding, this most recent decision is going to be controversial. There are two aspects of the ruling to which many Southerners strongly object, and there is no shortage of political leaders willing to make political capital out of this resentment. True political leadership would be to urge acceptance of the inevitable ruling, and to search for ways to improve both the educational systems in the region and the relations between the races. We single out the South because the ruling singles out the South and the Border states which once had dual school systems.

The aspects of the ruling Southerners will object to most is of course that having to do with busing. The court says that the neighborhood school concept is not acceptable in a formerly dual system if the results are segregation. Since that is the usual result, the affirmative action school systems may be ordered to take, the court ruled, is busing students past their "neighborhood school" to a distant one. For years that practice has been accepted in the white South if the schools at the end of the trip were all-white. Those who oppose it now do so for reasons that are race-related. The court has said very clearly now for 17 years that such opposition to school desegregation may not prevail.

The second aspect of the courts' ruling that Southerners are going to object to is that having to do with racial ratios. The court said these may be used by school officials to decide how students will be assigned, and by courts to test the equity of assignment plans. Southerners have insisted that since assigning pupils to meet a ratio meant using race as a basis for official action, this was forbidden by the 1954 decision. The court now has unequivocally rejected that argument.

Many Southern spokesmen are saying that the court is discriminating again, and that *de facto* school segregation in the North is allowed to stand even though that is no different from what now exists in the South. That is true. The court said pointedly that the constitutionality of the sort of school segregation that exists where there was never a dual school system is not an issue in "this case":

"We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree." Many people believe *de facto* segregation does result from state actions and is unconstitutional.

What this decision does is force the South to be equal to the North in doing away with every vestige—and legacy—of a dual school system. School systems that meet that requirement and then resegregate along Northern lines will presumably be as constitutional in North Carolina as in North Dakota. Or as unconstitutional. The Chief Justice said, "It does not follow that the communities . . . will remain demographically stable. . . . Neither school authorities nor district courts are required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished."

"This case" then has brought the South to equity with the North. That is the meaning of the decision. Some future case will deal with the national problem of segregated schools in our society. Perhaps busing and racial ratios will be required everywhere. What seems clear now is that they will eventually be required everywhere or nowhere.

That is exactly as it should be. Rights of Americans should no more be based on geography than on race. Furthermore, as many Negro children attend schools in the North and West as in the South now. So both the Census and the Supreme Court have set the stage for a national resolution of our dilemma. Yesterday the Senate refused to face up to the issue, when presented with a plan for national desegregation. But the issue is here to stay, and senators will, we hope, think some more about such plans.

[From the New York Times, Apr. 22, 1971]

JUSTICE BURGER'S WARNING

Although the Supreme Court has ruled unanimously that busing of pupils to achieve school desegregation is constitutional, the issue at the heart of Chief Justice Burger's opinion is not busing at all. It is rather the court's belief that the school authorities of Charlotte, N.C., and other Southern districts, have openly defied the 1954 Supreme Court ruling that outlawed the maintenance of dual school systems.

Chief Justice Burger does not minimize the legitimate objections to extensive busing, particularly to that of young children over long distances. He also acknowledges the undesirability of fixed mathematical norms—and explicitly recognizes that some schools, because of their location, will in fact remain segregated.

But the ruling—with all nine Justices in agreement—emphasizes that the district under review had deliberately maintained a segregated system at least until 1969 and that the school board had "totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own, notwithstanding the patient efforts of the district judge. . . ."

Because busing has become so intensely political an issue—made more so since President Nixon has deliberately exploited it—the real significance of the Burger ruling is in danger of being obscured. The opinion underscores the fact that bus transportation has been an integral part of public education for years, making possible the transition from the one-room schoolhouse to the regional school. A giant transportation system is used by well over one-third of the total public school population, largely unrelated to integration.

But busing has also long been the tool of many Southern districts for the specific purpose of maintaining segregation. The Charlotte district, for example, had been transporting 23,600 pupils of all ages for an average one-way trip lasting an hour. Under the district court's ruling now upheld by the Supreme Court, one-way transportation would not have required "over 35 minutes at most."

The Chief Justice concedes that in the absence of a history of discrimination, "it might well be desirable to assign pupils to schools nearest their homes." It is precisely because, in the case under review and many others like it, discrimination has been deliberately perpetuated in direct violation of the 1954 ruling that some uncomfortable remedies are now held legitimate. Even so, the opinion emphasizes the need to make such remedies realistic and workable.

At the same time, Chief Justice Burger has served notice to those inside and outside the Administration who would ignore or obstruct earlier rulings identified with his predecessor that he does not intend to allow the Supreme Court to be undercut or influenced by political pressures in the area of civil rights.

[From the Washington Post, Jan. 24, 1972]

THE COURT ON THE SCHOOLS: CLEAR AS A BELL

In common usage—but not in the eyes of the law—there are three types of racial "segregation" in our schools. One is that which exists in schools mostly—but not exclusively—in the South, where it can be demonstrated that there has been deliberate intent on the part of the government officials at some level to segregate school children solely on the basis of their race. The dual school systems of the South and a number of school systems in the North where such (covert) intent has been established, fall into this category of segregation which was outlawed by the Supreme Court in 1954. A second type of school "segregation" is that which can be demonstrated to proceed, at least in part, from the racially discriminatory actions of government officials in areas other than education—in housing, for example. This category would include much of the so-called "de facto school segregation" on the constitutionality of which the court has yet to speak. The third type is simple racial concentration in our schools for which no specific government intent or activity in any field is held accountable. This too has not been before the high court.

The wise and well-written decision which Chief Justice Burger handed down for a unanimous court on Tuesday, in fact dealt exclusively with the first of these categories. This point was one the Chief Justice stressed repeatedly throughout the decision, and it is worth remembering. For in the central case at hand—*Swann* versus *the Charlotte-Mecklenburg (N.C.) Board of Education*—the court made abundantly clear that *only in the context of remedying a state-inflicted wrong, or overcoming the effects of past segregation on an official, deliberate basis,* was it upholding the authority of federal courts to impose school desegregation plans that might involve busing, non-contiguous zoning, racial proportioning and the rest. Thus:

"All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems."

And again, in one of the companion rulings:

"The Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely

to be useful starting points in shaping a remedy."

There are not just "starting points," but also terminal points suggested in these decisions: Chief Justice Berger made evident that the Supreme Court does not view these remedies and compensations as carrying on in perpetuity for past wrongs, but rather as steps leading to a conclusion, to some point where the offending districts will have fulfilled their responsibility to dismantle their dual school systems and overcome the vestigial effects traceable to them.

Although the court confined its ruling to school districts that have been (or yet may be) found guilty of deliberate, officially inspired segregation, the language of the decision did have some implication for the kinds of cases on which it has yet to rule. Chief Justice Burger was very tidy and specific in limiting the scope of the decision and in distinguishing between the two principal types of case the court has not heard. Of what we have called the second category of segregation, he observed:

"We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree."

He thus left open the possibility that the court might find a constitutional violation, say, in a case where school segregation was found to be a direct consequence of officially abetted housing discrimination. But he did not leave a lot of room for such a finding in an outright racial balance case where no official intent could be found to have produced racial concentrations of students. Thus:

"If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse."

All this, of course, has yet to be spelled out in actual high court rulings, but the line of thought behind the distinctions made by the Chief Justice is one that we find important and persuasive. The notion that government should be empowered, even directed, to deal with citizens solely on the basis of their race for a purpose no matter how well-intended is one that we find particularly perilous and repugnant. That, however, is the notion behind much of the current movement to establish racial proportions on a fixed formula basis in the public schools, particularly Senator Ribicoff's plan. We have discussed before—and we will shortly come back to—our reasons for finding Senator Ribicoff's proposed legislation in this field a bad bill and a prospective hinderance rather than help to the achievement of racial justice in the schools.

Desegregation of the schools in the North conceivably will be expedited by some future court decision on housing-related racial concentrations in the schools. But we are convinced that it could be expedited now by a concerted, forceful effort to demonstrate that many Northern school districts are in fact guilty of discrimination within the meaning of the Supreme Court's rulings from Brown down to the present case.

To Challenge Demagogy

(By James A. Wechsler)

If John Mitchell, as Mr. Nixon's campaign manager, can dictate the shape of things, the transcendent emotional issue of 1972 will be school busing.

According to the battle-plan, passions already aroused will be so inflamed by autumn that all other concerns will be thrust into the background. Millions of white unemployed in major cities will be urged to fill idle hours by enlisting in the crusade to "save your local school" from the black hordes. Similar sublimation will be available for those harassed by the cost of food, or the prolongation of the war and the continued internment of American prisoners.

Efforts to initiate any great debate on such matters as the bulging military budget, an inequitable tax structure that still shelters the affluent and on the widening, explosive gap between haves and have-nots abroad and at home will be (so the script goes) blanketed by a deepening obsession with the busing business, with its somber overtones of racial bitterness.

Many Democrats seem plunged into gloom by the prospect; once again one hears the despairing murmur that Mr. Nixon holds all the cards, and can play out this game just about as he pleases—alternating in the role of international statesman and artful domestic agitator.

The problem presented for the Democrats is a real one. The spectre of busing—especially in those situations where it means the transportation of white children into congested black slum areas—haunts many anxious families who are unafflicted by racial primitivism. And those fears have been projected into a dread of any busing, including those in which it is the black children who do the traveling. Although school busing is an ancient American institution (and 18,000,000 public school children, or nearly 40 per cent of the student populace, are transported that way each day), the words have become a fighting phrase.

Sen. Jackson (D-Wash.) has chosen to "meet" the issue by total, craven surrender to the historic segregationist position. He has already moved to introduce a Constitutional amendment of his own that would in effect repeal the Supreme Court school decision of 1954—the extreme recourse from which the Administration has so far refrained. Jackson's mind is primarily on the Florida primary, where his campaign could be suddenly aborted; he has desperately resolved to try to out-Wallace Wallace.

But the other Democratic contenders have generally refused to run for cover (although Hubert Humphrey appeared ready for capitulation in a little-noted interview shown on a CBS news broadcast Tuesday night). Nevertheless most of them appear to be on the defensive, and at times seeking to score peripheral points at each other's expense.

The climate will get worse unless a swift attempt is made to recapture the initiative. The matter is of sufficient urgency to call for unprecedented, coherent countermeasures that would involve a minimal degree of selflessness among those competing Democrats.

It is beyond the realm of "realism" for representatives of Muskie, McGovern, Lindsay, Humphrey, McCarthy, Chisholm and Hartke to meet and formulate a point declaration designed to clear the air before it is more seriously poisoned by the "anti-busing" fumes?

The statement would embody a warning to the country that a concerted drive is under way to sweep momentous issues under the rug by making diversionary discord over busing the central domestic battleground in the politics of '72. It would summarize the vast, unsolved problems, trials and torments confronting the nation—some of them cited earlier here—that will be obscured by aggravated turbulence over the busing argument.

While agreeing that reasonable people may disagree over the application of busing plans in specific situations, it would emphasize that the present hysteria imperils much of the progress achieved since 1954 through the conscientious cooperation of many citizens of goodwill, very notably in the South. It would pledge united resistance to proposals that would in effect give legislative—or Constitutional—sanction to regression. The signatories might even identify themselves with the words recited by Chief Justice Warren Burger in the Charlotte-Mecklesbury, N.C., case:

"Absent a Constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school system."

Whatever exact formulations were adopted, the statement could help to restore perspective, and some moral focus, in a time when mindless demagogy is striving to create an ugly "one issue" campaign and take the country for a rough ride.

John F. Kennedy, Presidential Message

The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated. If an American, because his skin is dark cannot eat lunch in a restaurant open to the public, if he cannot send his children to the best public school available, if he cannot vote for the public officials who represent him, if, in short, he cannot enjoy the full and free life which all of us want, then who among us would be content to have the color of his skin changed and stand in his place? Who among us would then be content with the counsels of patience and delay?

Busing Fight Creates Chaos for Democrats in Florida's Primary

(By Norman C. Miller)

Tallahassee, Fla.—School busing is erupting into a white-hot issue in the Florida presidential primary, and that's extremely bad news for the Democrats.

For busing—an increasingly emotional issue not only here but across the nation—threatens to engulf the Democrats in such divisive strife that the party's nominee, whoever he or she turns out to be, could be badly damaged before taking on President Nixon. "Busing is a potentially catastrophic issue for us," worries one national Democratic strategist.

More immediately, the emergence of busing as the overriding issue in Florida increases the chances that George Wallace will beat the major Democratic candidates in the March 14 primary. And victory here would give the Alabama governor fuel to keep the busing issue blazing in later primaries.

What is bringing the controversy to a boil in Florida is the legislature's enactment of a bill enabling the March primary voters to cast a straw vote on a U.S. constitutional amendment to ban "forced busing." In effect, the primary is being turned into a referendum on busing—and no politician in Florida doubts the outcome. "Every poll I'm familiar with shows the antibusing vote will be 75% to 80%," says Richard Pettigrew, the Democratic speaker of the Florida House, who sought to block the straw-vote bill.

Dramatic Impact

The impact on the Democratic presidential contest has been swift and dramatic. Some of the candidates are running for cover, hastily backing plans to limit busing.

Mr. Wallace is pounding harder, accusing his senatorial opponents of first voting for busing and then retreating for reasons of "pure political expediency."

This hammering is drawing enthusiastic responses from his Florida audiences. Here, as elsewhere, the issue is increasingly pitting blacks and probusing white liberals

against white working-class Democrats who are angered or apprehensive about court-ordered busing that most often involves their children.

And the White House, with little to lose and much to gain from the issue, has helped to foment the Democratic discord here. A key Nixon aide played a part in pushing through the legislature the bill enabling Floridians to express their opinions on an antibusing constitutional amendment. GOP State Sen. Richard Deeb, author of the straw-vote measure, discloses that he received encouragement and advice from Harry Dent, the President's Southern political agent, during the legislature's bitter struggle over the bill.

The split that busing creates among Democrats is even more divisive in some of the party's crucial Northern constituencies than here in the South. In Michigan, actual and prospective court-ordered busing to desegregate schools has already torn the party. White liberal Democrats have scrambled swiftly to the antibusing side; a probusing position would be "suicidal," says Democratic Congressman Lucien Nedzi, who represents a predominantly white Detroit district.

A "COP-OUT"?

But such explanations are met with charges of "cop-out" by Douglas Fraser, a vice president of the United Auto Workers union, the most potent organized force in Michigan Democratic politics. And Democratic Rep. John Conyers, a Detroit black leader, declares that it is "incredible" that white liberals "seem intimated and compromised by the shrill voices of bigotry."

Here in Florida, the major Democratic presidential candidates have widely diverged in their reactions to the flare-up of the busing issue. Some clearly have rushed to build up their defenses against the increased Wallace threat.

Sen. Henry Jackson, who had already been talking an antibusing line, quickly proposed a constitutional amendment to prohibit "mandatory" busing and to insure "freedom of choice," that old Southern rallying cry, in school assignments. Sen. Hubert Humphrey, the veteran civil-rights warrior, suddenly emphasized in Miami last week that he is "against forced busing to achieve racial balance" and promised to support legislation (as yet unspecified) that would attempt to stop it.

Sen. Edmund Muskie reacted uncertainly at first, refusing to say he'd vote on an anti-busing constitutional amendment. A couple of days later, Mr. Muskie declared that he was against such an amendment and that some busing is necessary to achieve integrated schools. But he carefully added that busing was the least desirable school integration method.

THE LIBERAL VIEWPOINT

The most liberal of the major candidates, Sen. George McGovern and New York Mayor John Lindsay, have continued to defend the use of busing. Indeed, Mayor Lindsay, who's seeking to convince Floridians that he's a gutsy fighter, is emphasizing his probusing stand and is charging Gov. Wallace with taking a "racist" antibusing line.

Mr. Wallace is playing the busing issue for all it's worth, and his campaign is taking on an emotional fervor that sometimes seemed lacking earlier. At Jacksonville the other night, a crowd of 10,000 roared its approval when the Alabamian accused his Democratic foes of switching or softening their busing positions. As he named his senatorial opponents who have "voted to bus our children to kingdom come," the foot-stomping crowd derisively chanted the names along with him.

Among the state's leading Democratic politicians, only Gov. Reubin Askew and House Speaker Pettigrew have dared take an outspoken stand against the antibusing measure on the ballot. At considerable political risk, Gov. Askew is urging that Floridians accept busing to achieve full desegregation. At his insistence, the legislature also approved a second straw-vote measure that asks the voters whether they favor "equal opportunity for quality education" and "oppose a return to the dual school system." The governor hopes an affirmative vote on this second question would offset the expected vote against busing. (Gov. Askew's views on the busing situation are detailed in a separate story appearing on page 10).

In the Florida race, antibusing talk may be a plus for Sens. Humphrey and Jackson, but it could hurt them when they reach the primaries in some Northern states such as Wisconsin, where the issue isn't feverish. In the North, the traditionally liberal forces in the party may be repelled by an antibusing line. "Humphrey is going to wind up losing part of his liberal and black constituency with his antibusing talk," argues one McGovern backer.

But where the issue has become heated in the North, the Democratic candidates who still support busing will find themselves at a disadvantage. "There is no way a presidential candidate can come into Michigan and tell people who deliberately moved close to a school that their kids can't go to that school," says Congressman Nedzi. Even at the risk of alienating blacks and the UAW's liberal leaders in the state, argues another Michigan Democrat, "the candidates are just going to have to take a stand against busing here and not permit themselves to be outdone by the Republicans."

The Michigan busing controversy was inflamed last fall by extensive court-ordered busing in Pontiac. Now Detroit is under a court order that poses the prospect of massive busing next fall. And threatened or actual busing orders have caused consternation among white parents in other Northern cities including Boston, Waterbury, Conn., Indianapolis, Denver, San Francisco and South Holland, Ill.

The danger for the Democrats in the North is shown by the AFL-CIO's retreat from its support of school desegregation. Last week, the federation's executive council adopted a policy statement "wholeheartedly supporting busing of children when it will improve the educational opportunities of the children." But the AFL-CIO leaders explained that this policy didn't support busing of children from white suburban areas to schools in black neighborhoods—which is the type of busing the courts are increasingly saying is necessary for desegregation.

That policy certainly won't please many black Democratic leaders. Right now, for example, the 13 members of the House who form the congressional black caucus are drafting a position paper denouncing any efforts to restrict busing to one-way movement of black children. "There was no outcry until they started busing white children," Rep. Louis Stokes (D., Ohio), the caucus chairman, says bitterly. "Black children have been bused for years."

AFL–CIO chiefs concede that white union members could turn away from the Democratic nominee if he supports busing, and that black unionists might sit out the election if the Democratic candidate goes against busing. Lacking a strategy to deal with the dilemma, the AFL–CIO leaders simply hope the storm over busing will subside.

A CHANCY HOPE

That is a very chancy hope, as the Florida experience shows. The moderate Democrats, who now lead the state party here, thought until recently that the busing controversy was fading. In the 1970 elections, the "new breed" Democratic candidates—Mr. Askew for governor and Lawton Chiles for U.S. Senator—walloped two Republicans who sought to ride the busing issue.

This beating was before communities throughout Florida were ordered by courts to begin much more extensive busing effective last September. Nevertheless, last summer's fears of massive resistance by whites and of racial violence in the schools didn't materialize. Before school started, Gov. Askew appealed to parents to accept busing as necessary for desegregation and people apparently responded to his call. The schools continued to operate in general peace, and some politicians concluded the busing issue was dead.

But the surface calm masked intense resentment building up among many whites (and, some say, among blacks) as parents and their children experienced the daily inconveniences of busing. In Jacksonville, for example, School Superintendent Cecil Hardesty says: "The mood of the people is much angrier now than it was in the fall. They've had a bellyful of busing."

SURFACING FEELINGS

George Wallace's entry into the presidential primary and the legislature's consideration of the straw-vote on busing brought the antibusing feeling to the surface. At first, state Democratic leaders thought they could easily keep the busing issue off the primary ballot. It was opposed by Gov. Askew and the party's entire legislative leadership, and the Republicans who were pushing it were outnumbered two-to-one in the legislature.

But GOP Sen. Deeb invoked a rarely used parliamentary device to force the bill to a floor vote in the Senate. After that, there was no stopping it in either house. The entire legislature is up for reelection this year and "there was a strong feeling by most people on the floor that they couldn't afford to vote against" an antibusing measure, says House Speaker Pettigrew.

However the vote turns out on the two rather contradictory ballot questions dealing with school desegregation, there already are disturbing signs of heightened racial tensions in some public schools. A week ago, racial violence forced a big Jacksonville high school to close early, and Superintendent Hardesty maintains the "demagogic" antibusing talk by politicians was at least one cause.

"This issue is being used politically and it is intensifying the tensions we already have," Mr. Hardesty says. "There may be a lot of bloodshed as a result of the political debate before we get a solution."

REMARKS OF REUBIN O'D. ASKEW, GOVERNOR OF FLORIDA AT THE GOVERNOR'S LUNCHEON CENTRAL FLORIDA FAIR, ORLANDO, FLA., FEBRUARY 21, 1972

I want to thank you all for the Opportunity to be with you today to help kick off the 60th Annual Central Florida Fair.

You've certainly come a long way since 1912, when this fair opened with relatively few exhibits and even fewer people.

Just in the past year, we've witnessed the opening of Disney World and now, just last Friday, it was my pleasure to join in the announcement of a $50-million Ringling big top in Polk County not far from the Disney complex.

Orange County and Central Florida have truly come into their own.

I wish you continued sucess in developing the economy of this area, while at the same time taking steps to see that *that* development is *not* at the expense of our beautiful environment here in Central Florida . . . an environment without which none of this would have been possible in the first place.

Ralph Waldo Emerson once said that "this time, like *all* times, is a very *good* one, . . . if we but know what to do with it."

I'm not sure that I *know* what must be done in order to bring out the *good* in today's times.

But I'm convinced that sitting by and waiting for the inevitable is not the answer.

And so I come before you today to say a few things with which you might disagree, a few things which are decidedly unpopular, but a few things which I feel *must* be said in the interest of Florida and her people—all of them. And in doing so I am not attempting in any way to judge nor place labels on those who may disagree.

As I'm sure most of you know by now, there'll be three questions added to our Presidential primary ballot on March 14.

The questions are:

1. Do you favor an amendment to the United States Constitution that would prohibit forced busing and guarantee the right of each student to attend the appropriate public school nearest his home?

2. Do you favor providing an equal opportunity for quality education for *all* children, regardless of race, creed, color or *place of residence*, and do you oppose a return to a dual system of public schools?

3. Do you favor an amendment to the United States Constitution to allow prayer in the public schools?

I realize present expectations are that up to 90 per cent of those who vote on March 14 intend to vote "yes" on the amendment against busing.

I realize that *precisely* that many voted against busing right here in Orange County just last November.

I also realize that the people feel very strongly about this subject . . . and rightly so.

It is *because* of these realities . . . not in *spite* of them . . . that I feel I must share my views with the people of Florida in the weeks ahead as frequently as time permits . . . and as forcefully as I know how.

I don't take this decision lightly.

For it is *my* hope that the people will vote "no" on the anti-busing amendment, and "yes" on equal opportunity on March 14.

The third question, on school prayer, is an important one and I have made my feelings clear on it. But I would like to address my remarks this afternoon to the first two and touch briefly on the two State constitutional amendments also to be decided on March 14th.

I strongly oppose a constitutional amendment to outlaw busing . . . *not* because I particularly like it or think it's a panacea for our problems.

On the contrary . . . I recognize and regret the inconvenience, the disruption and the hardship it often creates for many of our parents and our children. I am not without feeling for them, and I don't think anyone is.

Busing is an artificial and inadequate instrument of change. It should be abandoned just as soon as we can afford to do so.

Yet by the use of busing and other methods, we've made real progress in dismantling a dual system of public schools in Florida.

And I submit that until we find alternative ways of providing an equal opportunity for quality education for all . . . regardless of race, creed, color or place of residence . . . and that last part is important. . . .

Until we can be sure that an end to busing won't lead to a return to segregated public schools. . . .

Until we have those assurances, we must not unduly limit ourselves . . . and certainly not constitutionally.

We must not take the risk of seriously undermining the spirit of the Constitution . . . one of the noblest documents ever produced by man.

And we must not take the risk of returning to the kind of segregation, fear and misunderstanding which produced the very problem that led to busing in the first place.

I would hope that instead, we can all work together to find ways other than busing to guarantee that no one in this country is denied an equal opportunity to grow and develop in a nonsegregated society.

That is what it's all about.

Nobody is really committed to busing as an end in itself.

But I certainly hope that the overwhelming majority of Floridians are committed to the goal which busing was designed to pursue.

That goal is to put this divisive and self-defeating issue of race behind us once and for all.

I think we're closer to doing that now than ever before. I think we're closer than any civilization in history to achieving a society in which all races, all creeds, and all religions not only can *live* with their differences, but *thrive* upon them . . . and *learn* from them as well.

I think we're well within reach of *understanding* one another, *caring* for one another, and affirming our commitment to the principles of justice and compassion which made this country what it is today.

How sad it will be if we turn back now . . . not only for minority children . . . but for *all* of us.

Of *course* we don't want our children to suffer unnecessary hardships. That goes without saying.

But neither do we want our children to grow up into a world of continuing racial discord, racial hatred and, finally, a world of racial violence.

And I submit that this is what we'll have if we don't work now to *solve* our problems.

This is surely what we'll have if we insist on thwarting any and all attempts to bring us together.

For if it is true that familiarity breeds contempt, it also is true that ignorance is the father of cruelty.

We're *beginning*, at last, to overcome the ignorance which has kept us divided for so long . . . the ignorance which has been responsible for so much cruelty between the races.

This is true especially of the South.

You know, much has been said in recent months to the effect that the South is "joining" the Union.

I think that's a short-sighted view.

For I believe the people of the South aren't merely going to join the union . . . they're going to be faced with the opportunity . . . perhaps even the responsibility . . . to lead it.

We've been run through the gamut of racial appeals in the South over and over again.

And we're tired . . . very tired.

And because of our persistent preoccupation with race related issues, we have all too frequently neglected the real economic and environmental problems of the people . . . both black and white.

In this way, we're not being fair to ourselves.

For if the people remain divided against themselves on the race issue, they'll have no time to demand a fair shake on taxes, on utility bills, on consumer protection, on Government services on environmental preservation, and other problems.

In this session of the Florida Legislature alone, we've seen our proposals for reform of education, environmental controls and utility regulation take a back seat to a straw vote on busing which, in the final analysis, doesn't really accomplish anything.

Believe me, you can be sure that while the legislature and the news media were focusing your attention on the busing debate, the lobbyists and special interests were hard at work undermining those programs which would put money into the pockets of the people, and which would help us protect the people and the other living things which make Florida a worthwhile place in which to live.

This is probably the greatest single reason why the south has been lagging behind virtually every other region, in such areas as wages, distribution of the tax burden, health, medical care and aid to the elderly and others in need.

It seems that so often, when someone has attempted to actually do something about the problems of the people, the race issue has been resurrected . . . in one form or another.

Interestingly enough, I asked the legislature to put those other kinds of issues on the ballot along with busing. The legislature refused.

It is my hope that we're moving beyond racial appeals here in Florida . . . and in the rest of the south as well.

I say it's time we told the rest of the nation that we aren't caught up in the mania to stop busing at any cost . . . that we're trying to mature politically down here . . . that we now know the real issues when we see them . . . and that we no longer will be fooled, frightened and divided against ourselves.

That is how the south can lead other regions to a better understanding of what this country's all about.

For many years now, the rest of the nation has been saying to the south that it's morally wrong to deprive any citizen of an equal opportunity in life because of his color.

I think most of us have come to agree with that.

But now the time has come for the rest of the nation to live up to its own stated principles. Only now are the other regions themselves beginning to feel the effects of the movement to eliminate segregation.

I say we should not let them get out of it just when the going gets tough. And I don't say this to be vindictive; I say it to be fair.

The rest of the Nation has tried to teach us justice in the South by mandate and court order.

Now perhaps it is up to us to try to teach them the same thing in a much more effective way—by example.

I certainly hope we will.

But regardless of how you feel about busing or segregation, a constitutional amendment to change things is neither necessary nor desirable.

It is very dangerous under emotional circumstances to tamper with the United States Constitution.

I was therefore heartened by reports last week that President Nixon and Vice President AGNEW have reservations about amending that document in this way, that the U.S. Senate leaders in both parties, MIKE MANSFIELD and HUGH SCOTT, are against any such constitutional amendment.

As one key member of the Nixon administration put it, these proposals "could have the effect of actually undercutting and rolling back the measures that have been taken to dismantle the dual school system."

There are other ways of effecting or slowing change under our system of government, including legislation and a change in the makeup of the Supreme Court, both of which the President seems to be pursuing.

If for no other reason, I hope the people of Florida will vote "no" on the antibusing amendment, recognizing that attempts are being made to achieve the same results without risking the dangers inherent in changing the Constitution.

But I hope we can do better than that.

I hope we can say to those who would keep us angry, confused and divided that we're more concerned about a problem of Justice . . . than about a problem of Transportation.

And that while we're determined to solve both . . . we're going to take justice first.

It never has been my feeling that the majority of the people who oppose busing are racially motivated.

On the contrary, I strongly believe that most people who are disturbed by the inconvenience, the disruption and the hard-

ship caused by busing, are nevertheless just as concerned that we put an end to segregation . . . and assure equal opportunity for all.

Busing is one way of doing that . . . perhaps the least desirable way, but effective nevertheless.

Floridians of good faith now must search for other effective ways.

One way, as I've said before, would be to work at the community level to overcome economic barriers and change our housing patterns . . . so that every neighborhood school is, in fact, a desegregated school . . . not necessarily one with an exact racial balance, but one in which the proper emphasis is on our real goal of quality education for all.

It is regrettable that education has had to shoulder a disproportionate share of the burdens of overcoming the effects of segregation.

We can and should put greater emphasis on employment opportunities and fair housing practices as well as education.

We also can and *should* see that no schools exist which are so lacking in adequate facilities, discipline and properly trained personnel that parents are *legitimately* fearful for their child's safety, health, development and well-being.

For if such schools are harmful to one child, they are harmful to *all* children. And they should not be tolerated.

There is much more we can do, I'm sure . . . and I hope we will.

Then we can put an end to busing without setting the stage for a racial discord such as we've never before imagined.

And then we can get on to those other problems which we've neglected for far too long.

A "no" vote on amending the Constitution, and a "yes" for equal opportunity . . .this is how we can set the tone for a better Florida of peace and compassion and harmony.

This is what I hope the people will deliver on March 14.

In addition to the candidates, there are two *other* issues on the March 14 ballot . . . two amendments to the *Florida* constitution . . . not the United States Constitution . . . but the *Florida* constitution . . . amendments which I hope you will support.

One of them would reform the court structure in this State, providing for a workable and realistic organization of the judiciary, upgrading our lower courts, and upgrading judicial qualifications.

This reform is long overdue.

The other is, in effect, a bond referendum for student loans.

It would move us still another step toward that day when no young man or woman in Florida is denied a chance to develop to his or her full potential, simply for lack of money.

In closing, let me say that we should be working together to free ourselves of the fears and divisions of yesterday . . . and to seek a better tomorrow.

And if I seem presumptuous in taking this opportunity to say so, I apologize.

It is not my intention to impose my will on anyone.

But it is my intention to give the people of Florida cause for sober reflection, so that they're sure . . . very sure . . . before they encourage an amendment to the United States Constitution, one which . . . for the very first time I believe . . . would seek to reverse our efforts to make that great document a living testimony . . . to the pursuit of freedom . . . equality, and justice . . . for all.

Thank you.

Mr. ALLEN. Mr. President, I yield 1 minute to the Senator from Oklahoma (Mr. HARRIS).

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 1 minute.

ADDITIONAL COSPONSOR

Mr. HARRIS. Mr. President, I ask unanimous consent that the names of the Senator from South Dakota (Mr. McGOVERN) and the Senator from Indiana (Mr. HARTKE) be added as cosponsors of amendment No. 953 to S. 659.

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

Mr. ALLEN. Mr. President, I yield myself 6 minutes.

The PRESIDING OFFICER (Mr. BENTSEN). The Senator from Alabama is recognized for 6 minutes.

Mr. ALLEN. Mr. President, the pending amendment, I am sure, will be withdrawn. The discussion that has been had in the Senate has not been directed toward the amendment. Instead, the debate has been centered on whether we should agree to the Griffin amendment withdrawing jurisdiction from the courts to order busing of students in order to create a racial balance, or whether we should agree to the Scott-Mansfield amendment which does practically nothing—which really is less than nothing. It does not address itself to the problem but merely, in the main, restates the law as it was announced by the Supreme Court. It will permit and in fact encourage the continued use of busing as the vehicle for desegregation of the public schools.

Mr. President, on August 31, 1971, Chief Justice Burger, commented in writing on his denial of an application for a stay order pending disposition of a petition for a writ of certiorari arising from a Winston-Salem, N.C., school case. He said:

In its present posture, this stay application, like that presented to Mr. Justice Black and acted on by him August 19, 1971, in Corpus-Christi Independent School District v. Cesneros is in an undesirable state of confusion . . .

Mr. President, I submit that the confusion is not limited to the cited cases. It is extensive. There is evidence of confusion among Federal court judges, in the executive branch of Federal Government, in Congress, State legislatures, among school board members, the media, and the public. The confusion pervades the Nation. A remedy is urgently needed.

The reasons for the current state of affairs can be traced to one primary cause. And before we consider the proposed legislative remedy, let us examine that cause. I will repeat in passing what I have frequently said before on the Senate floor. The problem originated in the second Brown decision—1955—in which the Supreme Court set out procedures for disestablishing State-imposed segregation in public schools.

It is near incredible but the U.S. Supreme Court dumped the fantastically complicated problem into the laps of local school boards—who, should they not have the power to disestablish state-imposed segregation, would then be subjected to plans dictated by U.S. district court judges.

Mr. President, on this point Mr. Walter Lippmann in an interview published in the Washington Post on October 17, 1971, had this to say. I quote:

Q. One of the major national anxieties continues to be the problem of integration. Do you think the 1954 Supreme Court decision was the proper way to go about this problem?

A. I think the decision was right. What I criticized at the time, and I still do, is that the President and the Congress then left the problem with the courts, whereas that was when the President and Congress should have brought in a national program headed by the President and ratified by Congress for integration according to a certain plan. The idea of throwing everybody together in integrated schools without anybody having any idea as to how it would work out, and who should do it except the courts, seemed to me a very crude and really irresponsible proceeding.

Mr. President, I think the crux of Mr. Lippmann's opinion lies in this sentence:

The idea of throwing everybody together in integrated schools without anybody having any idea as to how it would work out, and who should do it except the courts, seemed to me a very crude and irresponsible proceeding.

Mr. President, at this stage of the game, it may be fruitless to dwell on what Congress should have done after the 1954 Brown decision. However, it is not fruitless to consider what Congress should do today to help correct the horrendous mess resulting from procedures for implementation adopted by Federal courts. In considering alternatives we must return to a consideration of the cause of this mess.

It may be that Justices of the Supreme Court in 1954 believed, as some apparently believe today, that local school boards are actually vested with plenary powers. This idea is reflected in the opinion of the now celebrated Swann against Charlotte-Mecklenburg decision, where the term "plenary" is used to describe supposed powers of local school boards.

The facts are to the contrary. The powers of school boards are not plenary. They are derivative and limited. State constitutions and State school codes prescribe and proscribe for local boards in almost every area of public school administration. Such powers of discretion as are delegated to local school boards can be exercised only within well-defined limits. How can it be imagined that an agency has plenary powers when it is utterly dependent on State and local governments for revenues to implement its decisions?

The U.S. Supreme Court may, and in fact does, give play to individual predilections of its members in determining what the Constitution means. But, the Court cannot change facts. And one indisputable fact is that local school boards had neither the power nor the necessary funds to disestablish State-imposed segregation in public schools to the extent required by Federal courts.

But even were we to assume, for sake of argument, that local school boards did have the power to disestablish State-imposed segregation, they had no idea of what ultimately would be required of them.

For nearly 10 years the Supreme Court permitted freedom of choice plans as authorized by the first definitive decision by a lower Court of Appeals on the subject of implementation (*Briggs* v. *Elliot*, 132 F. Supp. 776 (1955)). Furthermore, it was almost 10 years after Brown I before Congress even undertook to define the

term "desegregation." The definition was provided in the Civil Rights Act of 1964 (section 2000c(b)):

"Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

Mr. President, we know too that the Department of HEW and the Department of Justice have flagrantly violated the above law of Congress and others of a similar nature in their persistent drive to impose a racial balance in all Southern schools. We know also of their reckless and wanton imposition of desegregation plans which could be achieved only by massive disruptions and busing and cross-busing of schoolchildren to achieve racial balance such as specifically prohibited by section 2000 c(6) of the Civil Rights Act of 1964, which reads as follows:

. . . nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance . . .

The purpose of calling attention to these violations of specific laws of Congress is to make clear that Congress neither required nor authorized the radical, racial balance proposals hatched up and pushed by the Department of HEW and the U.S. Department of Justice and implemented by Federal courts.

On what basis then did these agencies claim the power to flaunt the will of Congress? The answer is from the U.S. Supreme Court and this brings us back to a consideration of the 1955 Brown implementation decision. In that decision the Supreme Court relied on traditional equity powers of courts to accomplish a degree of desegregation which local boards had no power or funds to accomplish. In the language of the 1955 opinion—cited with approval by the Burger Court, it was said:

School authorities have the primary responsibility for solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.

* * * * *

In fashioning and effectuating the decrees, *the courts will be guided by equitable principles.* (Emphasis supplied) Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. . . . To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner.

Now let us consider some of the court ordered remedies which the U.S. Supreme Court has since approved as consistent with traditional principles of equity—U.S. district courts issued orders closing thousands of perfectly good schools without even a pretense of due process of law in the traditional sense of that phrase. In Alabama, at least, procedures for closing and consolidating schools are prescribed by State laws and local boards of education have no authority to disregard those laws.

Many of these closed school buildings were yet to be paid for by taxpayers who had voluntarily assumed bonded indebtedness to build them for the benefit of the children of their communities. Neither local boards of education nor even a State has the power to abrogate contracts and bonded indebtedness and it is ridiculous to assert that the Constitution requires it or that court orders which compel it are consistent with traditional equity principles.

Furthermore, teacher tenure rights of school teachers were ordered abrogated by U.S. district court judges. Teacher tenure rights are established by State laws and local boards have never had the authority to disregard State laws on the subject. Yet, this is also justified as an exercise of equity powers of Federal courts.

In rural areas children were ruthlessly uprooted from their home communities and environments and transported against their wills and the wills of their parents, under the authority of Federal court judges, to strange and distant schools. The same fate was in store for children in cities and urban areas who were compelled by the coercive power of Federal court judges to abandon their neighborhood schools and submit to involuntary busing to strange schools.

In some cases schools were ordered paired or clustered in such a manner that public school education would be available to many children only by means of massive busing, cross busing, and shuttling children by buses from school to school. Yet, funds for busing are provided by State legislatures and are strictly budgeted without funds for busing on the massive scale required, local boards simply could not comply. But Federal court judges were not and are not inhibited either by practicalities of State appropriations or by compassion for the children who were innocent victims of these decrees.

Children were ordered to attend grotesquely overcrowded schools and classrooms. They were ordered to attend schools in shifts and in classes held in auditoriums, libraries, cafeterias, and portable huts, and many of these without adequate sanitary facilities.

Frequently the time and distance of travel was so great that children had to leave home before daylight and return after dark.

Some children were ordered to attend four to five different schools in the course of 3 years. Families with three or four children were ordered scattered to different schools in the four corners of cities and counties.

Children living across the street from neighborhood schools were denied by Federal courts the right to attend that school only because of their race and because of court-imposed racial ratios.

Qualified teachers were denied employment only because of their color and the racial ratios prescribed by orders of Federal courts.

I could go on and on citing actual cases of injustices which occured in Alabama. I know that other Senators could add additional examples to illustrate destruction of schools and maximum inconvenience of parents and harm to children resulting from court-imposed plans for desegregating public schools.

Mr. President, let us keep in mind constantly that all these hideous, judicial remedies such as forced, massed busing and rearranging school district lines, and the merger of school districts as we have seen it in Richmond, in Chesterfield, and Henrico Counties, are supposed to be consistent with traditional principles of equity such as may properly be enforced by Federal courts sitting as courts of equity.

The big question is: Does the Congress have the power to limit the jurisdiction of the Federal court? That is what the Griffin amendment seeks to do.

Let us examine that question a little bit.

Mr. President, if these remedies are consistent with the current Supreme Court concepts of equity, then 1984 is not around the corner—it is with us now. How can anyone with the slightest understanding of traditional principles of equity twist those principles into premises that justify the reduction of human beings to abstract digits to fit the convenience of computers and barbaric racial theories?

But that is what Federal courts have done and that is why Congress should act and act now to limit the use of equity powers by Federal courts to shape remedial decrees in school desegregration cases.

But some few will contend that Congress does not have the power to enact legislation which may conflict with the revealed truth as expressed by the U.S. Supreme Court. With that, Mr. President, I disagree.

In the first place, it is a matter of fact and a matter of law that lower Federal courts are creatures of Congress and Congress alone can determine limits on the jurisdiction and powers of such courts.

Second, section 5 of the 14th amendment specifically empowers Congress to implement provisions of the 14th amendment by appropriate legislation.

Mr. President, if there is a lingering doubt about the power of Congress to limit remedies which can be prescribed by U.S. district courts, let us look to the Civil Rights Act of 1964, which Congress enacted pursuant to the 14th amendment. With reference to desegregation actions brought in a U.S. district court, the act provides:

Such Court shall have and shall exercise jurisdiction . . . provided that nothing herein shall empower any official or court of the U.S. to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve a racial balance, or otherwise enlarge the existing powers of the Court to assure compliance with constitutional standards.

Look how similar this is to the Griffin amendment. That section did not withdraw the power to handle these matters. What that said was that the act iself did not create any special additional powers in the Federal equity courts.

It will be seen that Congress not only conferred jurisdiction on U.S. District Courts in the desegregation cases but it also attempted to limit the scope of permissible remedies to exclude a remedy in the form of orders requiring racial balance in the schools. We all know how the court squirmed out of that limitation by pleading the equity powers of courts.

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

Mr. GAMBRELL. Mr. President, will the Senator yield me 3 minutes?

The PRESIDING OFFICER (Mr. BENTSEN). The Senator from Georgia is recognized for 3 minutes.

Mr. GAMBRELL. Mr. President, President Nixon recently held a meeting at the White House with several Members of Congress concerning the question of forced busing. After the meeting, President Nixon announced his opposition to forced busing, but offered no plan to put a stop to this outrageous practice. Instead, the President appointed a Cabinet committee to inquire into the matter.

Several days after this meeting, I was consulted by representatives of the Cabinet committee, and after a lengthy discussion, I proposed to them a four-point plan for dealing rapidly with the busing crisis.

As yet, President Nixon has not announced any plan on this subject. The issue is to be voted on today and the time for action has arrived.

For the third time, since September of last year, I call upon the President to act decisively. I repeat the four-point plan which I suggested to his representatives last week.

They are as follows:

First. That there be an immediate legislative roll-back moratorium on forced school busing for integration purposes. This means that until a permanent solution to the matter can be arrived at there would be no more busing required by Federal courts or the Department of HEW, that busing heretofore required would be terminated, and that this would be accomplished through legislation rather than by waiting for this to be done through executive or judicial action.

Second. That the President, through the Justice Department, seek a prompt and comprehensive judicial determination of the constitutional issues involved in the busing controversy.

Third. That immediate congressional consideration be given to a permanent constitutional and legislative solution which will preserve community public schools, free of racial discrimination.

Fourth. That any Federal desegregation remedies hereafter adopted shall be uniformly applied in all regions of the country.

Mr. President, the so-called Griffin amendment furnishes an opportunity to proceed in accordance with this 4-point plan. I, therefore, urge the President to give an endorsement to the Griffin amendment and that the Senate act favorably on that amendment when the opportunity for voting arises at 12 o'clock today.

Mr. JAVITS. Mr. President, I yield myself the remaining minute.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 additional minute.

Mr. JAVITS. Mr. President, I understand that some further debate is desirable. I therefore withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. JAVITS. I yield back the remainder of my time and send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 1, line 1, insert the following after the words "this Act": "and the Civil Rights Act of 1964."

Mr. JAVITS. Mr. President, I yield myself 1 minute. I have already expressed myself on the subject. I understand that the Senator from Alabama desires to utilize some time at this time. I simply reserve the remainder of my time and suggest that if other Senators wish to speak upon the matter that will be voted on soon by the Senate, I am prepared to yield time to Senators who wish to speak, regardless of which side of the question they wish to address.

Mr. ALLEN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. ALLEN. Mr. President, if any Senator desires any of our time, I will be glad to yield to him.

I want to continue further the discussion of the power of Congress to limit the jurisdiction of the Federal courts which are, except for the Supreme Court, creatures of Congress. The Congress has the power to confer jurisdiction or to withdraw jurisdiction.

The point is that Congress not only conferred jurisdiction, but it also limited the remedies and if the language is inadequate to have accomplished the purpose of Congress, the language can be changed. Of course, Congress has exercised this power on many occasions. For example, see 29 U.S.C. 101–115 where Congress defined and limited jurisdiction of Federal courts sitting in equity, with particular reference to the scope of remedies in certain labor cases.

There can be no reasonable doubt about the power of Congress to limit the scope of remedies which the Federal courts may impose in particular types of cases and on the Griffin amendment itself.

The vote comes at 11:45, which vote does not have anything to do with the busing amendment. As I understand it, the amendment of the distinguished Senator from Oklahoma (Mr. HARRIS) has to do with a sense of the Senate resolution that students should be placed on college boards. However, a little after 12 will come the vote on the Griffin amendment which seeks to limit jurisdiction of the Federal court to impose busing decrees for the enforcement of efforts to provide a racial balance in the public schools.

In fact, the Supreme Court recognizes its dilemma and almost pleads for Congress to give it help by way of suggesting remedies. In the Charlotte-Mecklenburg decision the Court said:

In short, there is nothing in the Act (Civil Rights Act of 1964) which provides us with material assistance in answering the question of remedy for state-imposed segregation in violation of Brown I.

The Court then implies that it has had to proceed alone in devising remedies—except for the assistance that Congress has sought to give it, and that assistance has not always been accepted—and has had to resort to use of equity powers of courts, and that—

There is no suggestion of an intention by Congress to restrict those powers or withdraw from courts their historic equitable remedial powers.

The Supreme Court has said that Congress has not attempted to restrict these powers. That indicates to the junior Senator from Alabama that had they attempted that action, it would have been honored by the Supreme Court.

So, Mr. President, I ask what are we waiting for? Let us give the Supreme Court the help it asks for on the subject of remedies in school desegregation cases. In doing so, let us make it unmistakably clear that we intend specifically to exclude any remedial order which contemplates the denial of enrollment in schools or denial of employment of teachers on the basis of their race and remedies which requires involuntary busing and involuntary abandonment of neighborhood schools.

Mr. President, it is worth repeating—the U.S. Supreme Court does not contend and could not logically contend that the U.S. Constitution outlaws neighborhood schools or that the Constitution requires racial balance in schools or that it requires closing of schools or grotesque gerrymandering of school attendance boundaries, or pairing of schools and grades, or massive uprooting and transportation of schoolchildren from their neighborhoods and communities. Neither has Congress prescribed such requirements. Instead, the Court has justified these actions as being consistent with "equitable principles" and within the discretionary power of Federal judges.

The Griffin amendment withdraws that discretionary power which the court seized in the absence of specific instructions by Congress.

The Constitution requires only that State-enforced segregation be disestablished—not how it is to be disestablished. That is what gives the Supreme Court the idea of reaching out and taking under its wing desegregating the public schools of the Nation.

Mr. President, you know, the Supreme Court has made a 180° change in course because under the Brown case I think everyone agrees to the principle laid down there that the State cannot impose a segregated system in its public schools. We have had amendments before the Senate and we will have other amendments which will deprive the Federal Government or any of its agencies or any of the courts from assigning any child with the school on the basis of race, color, creed, or economic class. That is the decision in the Brown case.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ALLEN. Mr. President, I yield myself 3 additional minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, the Supreme Court has changed the course 180°. They do not now say the State cannot maintain a segregated system. What they say now is that the State must maintain an integrated system. Where is the logic to that? They cannot have a segregated system—that is fine. But if they could not have a segregated system, how could that be required to provide an integrated system?

The Constitution requires, as I stated, only that State enforced segregation be disestablished—not how it is to be established.

This is a matter which the 14th amendment left for Congress to determine and not the judicial branch of Government. It is a problem not susceptible to solution by Federal courts and certainly not by means of dragging in and twisting and distorting traditional principles of equity. In fact, I believe that it can be demonstrated to the satisfaction of reasonable men that the Supreme Court is guilty of a grave mistake in having entangled concepts of equity in this mess.

Let us consider some of the traditional principles of equity which the Supreme Court has invoked and dragged through the mire. Traditionally, equity has been an agency for individualizing the application of law. As pointed out by Roscoe Pound, the discretion vested in judges in the exercise of equity powers is an outgrowth of the purely personal intervention by judges in extraordinary cases and on grounds that appealed to the conscience of a judge. Equity jurisdiction has its origin in such cases.

But see how the Supreme Court has distorted this principle. In the school cases, the courts are dealing with "class actions"—classes determined by the sole criterion of race. Theoretically, the court could solve by decree all problems relating to other classes identified by creeds, colors, and national origins and, more recently, socioeconomic status. Millions of citizens are in each category. How does this "class" application of equitable principles square with the historical concern of equity with reasonable and just solutions to individual controversies?

A judge cannot properly serve as a conscience for millions of persons. Equity is twisted and distorted beyond recognition when it is used to effect massive social, political, and economic reforms made on the basis of class actions and ideologies that may appeal to a judge's fancy. Such problems are political in nature and simply are not amenable to solution by nonelected judges.

Let us consider another traditional principle. Equity does not alter the law—it takes the law for granted. Equity is a remedial system alongside the law. Now see how this traditional principle of equity has been distorted by the U.S. Supreme Court.

The decree of a judge, in a class action involving the welfare of millions of citizens, creates and imposes absolute duties and responsibilities on elected public officials with respect to classes of people which duties cannot be implemented without legislative or Executive authority. Are we to believe that the traditional equity powers to shape remedies in individual controversies is in fact a legislative power to impose duties on elected public officials? The very idea staggers the imagination. One cannot but wonder what Marx and Engles would have done with the idea had it been available to them. We know with a fair degree of certainty what Lenin would have done with the idea. He would have vested the Communist Party with equity powers and proceeded with his revolution by means of decrees, enforced by the threat of confiscatory fines and imprisonment without benefit of trial by jury. This is done by our Federal courts—with blessings of the U.S. Supreme Court—and it is also done by the present Communist Party but under a different theory.

Surely, no reasonable person will seriously contend that traditional equity principles contemplate the role of nonelected judges acting as super-legislative bodies with power to rule by decree.

But again—after courts of equity have legislated new duties and responsibilities to be executed by elected public officials, it is still necessary for the courts to enforce the decrees. How does equity, as conceived by the Supreme Court, accomplish this feat?

The courts issue mandatory injunctions which, for all practical purposes, function as a writ of mandamus—a writ to compel public officials to perform clearly defined statutory duties of an administrative nature.

But see the distortion—a writ of mandamus is a common law writ with which courts of equity traditionally have had nothing to do. But that does not stop judges who are determined to do indirectly what they cannot do directly. Under the prevailing distortions of equity, Federal courts create laws and devise their own means of enforcement. This practice may be called "equity" by the Supreme Court—but it has the attributes of judicial tyranny.

Implicit in these distortions are affirmations of value judgments. Some of these are expressed in the following propositions:

> We are under a Constitution, but the Constitution is what the judges say it is.

This proposition is attributed to Charles Evans Hughes, but he said it before he became a Justice on the Supreme Court. This proposition refutes the idea that we live under a government of laws and not of men.

Too, if we accept the present distortions of equity, we are compelled to embrace the premise that the end justified the means.

Mr. President, I contend that these distortions violate the constitutional structure of our Government which is the highest duty of courts to protect.

Mr. Justice Harlan in his dissent in the 18-year-old voting rights case made this thoughtful observation:

> The federal judiciary, which by express constitutional provision is appointed for life, and therefore cannot be held responsible by the electorate, has no inherent general authority to establish the norms for the rest of society. It is limited to elaboration and application of the precepts ordained in the Constitution by the political representative of the people. When the Court disregards the express intent and understanding of the Framers, it has invaded the realm of the political process to which the amending power was committed, and it has violated the constitutional structure which it is its highest duty to protect.

Mr. President, if we are to redress this situation, we can do so by voting for the Griffin amendment. Such a vote will do more than clear up much of the Court-created confusion in the schools. It will also reassert the constitutionally recognized distinction between legislative and judicial functions of Federal Government.

Mr. President, the distinguished minority whip (Mr. GRIFFIN) has proposed a constitutional amendment to curb the powers of Federal courts which would prevent the use of "equity" power to order school children assigned to schools by race. The distinguished Senator from Tennessee (Mr. BROCK), has proposed a similar amendment. The distinguished majority whip, Mr. BYRD, has spoken eloquently on the subject in an address printed in the CONGRESSIONAL RECORD and reprinted in the October 15, 1971, issue of "Vital Speeches." Now, one of the most distinguished and respected constitutional lawyers in the Nation, the distinguished Senator from Michigan (Mr. GRIFFIN), has proposed an amendment to this bill to curb the power of Federal courts to prescribe remedies in school desegregation cases.

If this amendment is passed, a constitutional amendment may not be necessary.

Mr. President, I urge passage of the Griffin amendment.

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

Mr. ALLEN. Mr. President, I reserve the remainder of my time.

Mr. JAVITS. Mr. President, I yield 3 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, I rise at this time to speak briefly in connection with the talk just given by the Senator from South Dakota. I must say I have to admire his courage, even though I think his judgment is pretty abysmal. I say that because as far as I know he is the only Senator who has stood on the floor of the Senate and advocated forced busing. I do not know anyone in this country that wants forced busing, whether he be black, Spanish-speaking, Chinese, or Japanese.

The Chinese, as we know, have withdrawn their children from the public school system in San Francisco and they have set up their own schools in order to avoid having their children bused from one area to another.

In our State when this situation came up we had two Democratic school board members running in a Democratic city in favor of forced busing. We had two Republicans running against forced busing.

I do not believe a Republican has been elected to our school board in years. On that occasion they were both overwhelmingly elected. They received 4-to-1-majorities in the Spanish-speaking area.

They received more than 50 percent of the black vote. They received the Chinese-Japanese vote, as well as the white vote.

There is no group that I know of, whether it be a minority group or any other group, that believe that to solve the problems of quality education we must simply take children and bus them past the school they may live next to and into an area they know nothing about, and spending the funds for buses instead of educational quality.

It seems to me that the Senator from South Dakota, with all due respect to his courage, certainly has the wrong side of this wicket.

I thank the Senator from New York for yielding.

Mr. JAVITS. Mr. President, I am moved also to make some response to this outbreak of debate on this issue which has been signaled by the Senator from Colorado and the Senator from South Dakota.

The issue before the Senate is not forced busing. The issue before the Senate is whether the courts shall or shall not be permitted to utilize a particular remedy in given situations which require the use of that remedy. The reason I say that is that almost no one is contending for no amendment. We are contending for the Scott-Mansfield amendment. The opponents of that view are contending for the Griffin amendment.

As I pointed out when I began today, the Griffin amendment is completely regressive. It takes us back far beyond what the Senator from Michigan (Mr. GRIFFIN) himself, in my judgment, should seek. He would strike the jurisdiction of the courts to issue any order involving busing, even to correct segregation.

For years, there are cases in which black children are bused on long bus trips by white schools in order to get to black schools.

The important thing is that what we are contending for is really the determination of the courts in the Swann case, and asserting what is left open by the Swann case. I am not sure it is left open, but in any case it might be so construed.

In the Swann case the court said where it would interfere with the child's health or welfare to be bused the child will not be bused, even if there is a need to bus to help cure segregation. The court went further and said where it impinges on the educational process of the child, busing must be limited or not required at all. The court left rather unclear—although some think it is clear, I do not—whether the only impingement to be considered was impingement on the child being bused or impingement as well upon the school to which the child was being bused.

What the Scott-Mansfield amendment would do, and I think it is monumental because it goes to every single substantial complaint that has any validity, would be to state that impingement on the educational process should be double track.

It involves the child being bused and the children in the school to which he is being bused, and if the white child is going to be bused from a suburb to a city to aid desegregation or a black child is to be bused, the same standard would apply. Additionally a safeguard is provided in the provision that the use of Federal funds for busing is contingent upon the local educational agency's willingness voluntarily to seek such funds from the Federal Government.

So the argument is no longer about forced busing. The argument is, Which path shall we take? Shall we take the compromise path, accepting some busing for the higher constitutional good of the country, with very reasonable limitations, which are excellent limitations, because they can be adjusted case by case, or shall we tread the path of absolute prohibition? I think very strongly that elemental justice as well as the social good of the country dictate the course of the Scott-Mansfield amendment.

One other thing that is very revealing about the argument on constitutionality: I think the Griffin amendment may very well be unconstitutional notwithstanding the rather simplistic explanation that the lower courts having gotten jurisdiction under the Judiciary Act of 1789, we can take it away, and for this reason: This question was raised in Battaglia versus General Motors Corp. in 1938 where certiorari was denied, this being a case in the Second Circuit. There the court held that Congress cannot take away jurisdiction to enforce constitutional rights; that that is not included within the capability of Congress to take away jurisdiction.

The fact is that the school desegregation cases are based upon the fifth amendment as well as upon the 14th amendment, not only upon the equal protection of the laws clause, but also upon due process of law deprivation of life, liberty, or property without due process. So I would like to read for the RECORD an excerpt from that case.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. JAVITS. I yield myself 4 minutes out of those 5.

I should like to read this paragraph from the decision, which is very thought-provoking and worthy of the attention of every Senator, and especially that of every lawyer in this body.

The Court of Appeals in the Second Circuit said:

> We think . . . that the exercise by Congress of its control over court jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is, while Congress has the undoubted power to give, withhold and restrict the jurisdiction of courts other than the Supreme Court, it must not exercise that power so as to deprive any person of life, liberty or property without due process of law. . . .

And the corollary to that proposition is found in the decision of Bolling against Sharpe, decided in 1954, as the companion case to Brown against Board of Education. In that case, the Supreme Court found that racial segregation in the schools is not only prohibited by the 14th amendment, the equal protection clause, but is prohibited as well by the fifth amendment, to wit, the one I have just referred to, that is, the right not to be deprived of life, liberty, or property without due process of law.

As I have said, that raises very inherent constitutional questions about the first section of the proposal; the second section of the Griffin amendment absolutely strips the Civil Rights Act of 1964 of its application to most current school desegregation problems; the third section lowers the barrier of constitutional protection in any action on a decree for desegregation so long as any appeal or motion is pending, and encourages the whole panoply of frivolous appeals and delays for that purpose, into the picture, with our consent and approval. I think the Griffin amendment falls heavily of its own weight simply because it goes beyond what even reasonable people who do not like busing but still understand constitutional rights have to be safeguarded may logically advocate, if there is a scintilla of good faith in the proposition that they really do want families and their children to have the constitutional right of an equal break, which is what it comes down to, in respect of educational opportunity.

I reserve the remainder of my time.

Mr. ALLEN. Mr. President, I yield 4 minutes to the Senator from West Virginia (Mr. RANDOLPH).

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. I appreciate the courtesy and the cooperation of the Senator from Alabama (Mr. ALLEN).

Mr. President, I do wish to comment briefly on the amendment which is pending, offered by the Senator from Oklahoma (Mr. HARRIS) on behalf of himself and the Senator from Indiana (Mr. HARTKE).

As we talk about this subject of students participating on governing bodies in institutions of higher learning, perhaps it is not inappropriate for me to indicate that I had the opportunity as a junior at Salem College in West Virginia, to serve on the board of trustees. That was in 1923.

In those years no one thought of having a student member of a college board of trustees.

It was necessary for my father, Ernest Randolph, to retire from the college board, and the board of trustees in that instance elected me to fill the unexpired term of my father. I was subsequently re-elected and reelected, and in the year 1972 I am still a member of the Salem College Board of Trustees. My interest then as a student and my interest later has been a continuing one—to develop that college to the very best of our ability to serve young persons not only in West Virginia but those from other States as well.

Mr. President, it is my belief that student representation on governing boards of institutions of higher learning is a sound policy.

I shall support the amendment, and I ask the sponsors to allow me to join as a cosponsor.

Mr. HARRIS. Mr. President, will the Senator yield briefly?

Mr. RANDOLPH. I yield.

Mr. HARRIS. Mr. President, I ask unanimous consent that the distinguished Senator from West Virginia (Mr. RANDOLPH) and the distinguished Senator from Minnesota (Mr. MONDALE) be shown as cosponsors of the amendment.

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

Mr. ALLEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. JAVITS. Mr. President, will the Senator allow me to proceed for 1 minute?

Mr. ALLEN. Yes.

Mr. JAVITS. Mr. President, I have not spoken on the Harris amendment, and I was not present yesterday, because of duties in my State, but I wish to express myself as favorable to it, as has the manager of the bill, the Senator from Rhode Island (Mr. PELL).

I believe that we will work out in conference a particularization of the idea which is here contained, but I think it is important that students should have a place on the governing boards of their colleges and universities. I have so urged in my own State, including my own alma mater, and I shall vote for and support this amendment.

I thank my colleague.

Mr. ALLEN. Mr. President, I yield myself such time as I may consume.

The distinguished Senator from New York has pointed out and made a brief point of the fact that under the Scott-Mansfield amendment, which I oppose and I hope the majority of the Senate will oppose, the local educational institution or the local educational agency does not have to accept Federal funds for busing unless it wants to.

But, Mr. President, if the Federal court orders an educational agency to bus its students from one end of the county to another, from one school district to another, where is it going to get the money? It would be forced to call on the Federal Government. So that is no concession at all, to say that the school board does not have to ask for Federal funds for busing unless it wants to. If the long arm of the Federal Government is reaching out and saying to that agency that it has got to bus, it has to bus, and the only way it is going to get the funds for busing is to call on the Federal Government. So that section is absolutely worthless and meaningless.

Mr. President, the opponents of the Griffin amendment, which withdraws jurisdiction from the Federal courts, or any courts, to order busing for the purpose of creating racial balance, say it is unconstitutional. Mr. President, if they thought it was unconstitutional, do you think they would have put up the bruising battle that they have put up against this amendment, using all of the force and power of the joint leadership to muster the Scott-Mansfield amendment in ahead of the Griffin amendment, so as to get the first vote? They know, or have reason to believe, that this amendment is constitutional. If they though it was not constitutional, they would just sit back and say, "All right, go ahead and pass your amendment. It does not mean anything, and at the very first court test it will be held to be unconstitutional, null, and void, and no limitation on busing will have been enacted."

So, Mr. President, those two points made by the Senator from New York I wanted to answer on behalf of the proponents of the Griffin amendment. I yield the distinguished Senator from New York such time, within our limitation, as he may require to respond to my statement.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

I would suggest, since the time for the vote is almost upon us, that the amendment be withdrawn and that we suggest the absence of a quorum. Is that agreeable to the Senator from Alabama?

Mr. ALLEN. Well, the amendment is not mine. I have no objection.

Mr. JAVITS. No, I will withdraw it.

Mr. President, I withdraw the amendment and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The hour of 11:45 a.m. having arrived, under the previous order the Senate will proceed to vote on the question of agreeing to the amendment (No. 953) offered by the Senator from Oklahoma (Mr. HARRIS). The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Arkansas (Mr. FULBRIGHT) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Washington (Mr. JACKSON) would each vote "yea."

Mr. SCOTT. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Michigan (Mr. GRIFFIN) is detained on official business.

The result was announced—yeas 66, nays 28, as follows:

[No. 64 Leg.]

YEAS—66

Aiken	Harris	Nelson
Allott	Hart	Packwood
Bayh	Hatfield	Pastore
Bentsen	Hollings	Pearson
Bible	Hughes	Pell
Boggs	Inouye	Percy
Brooke	Javits	Proxmire
Burdick	Jordan, N.C.	Randolph
Byrd, Va.	Kennedy	Ribicoff
Byrd, W. Va.	Long	Roth
Cannon	Magnuson	Schweiker
Case	Mansfield	Sparkman
Church	Mathias	Spong
Cook	McClellan	Stennis
Cooper	McGovern	Stevens
Cranston	McIntyre	Stevenson
Dole	Metcalf	Symington
Eagleton	Miller	Talmadge
Eastland	Mondale	Thurmond
Ellender	Montoya	Tunney
Gambrell	Moss	Williams
Gravel	Muskie	Young

NAYS—28

Allen	Curtis	McGee
Anderson	Dominick	Saxbe
Baker	Ervin	Scott
Beall	Fannin	Smith
Bellmon	Fong	Stafford
Bennett	Goldwater	Taft
Brock	Gurney	Tower
Buckley	Hansen	Weicker
Chiles	Hruska	
Cotton	Jordan, Idaho	

NOT VOTING—6

Fulbright	Hartke	Jackson
Griffin	Humphrey	Mundt

So Mr. HARRIS' amendment was agreed to.

Mr. HARRIS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RANDOLPH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHILES. Mr. President, I voted against Senator HARRIS' amendment making it the sense of the Senate to urge at least one student to be a member of all college governing boards.

I am aware that student interest runs high in favor of representation and that experience with student trustees has been excellent; and I believe that local colleges and universities would be wise to make a structural change to provide for increased student-administration dialog. Student trustees would, undoubtedly, make the governing boards more responsive. However, I believe this is an area that Congress ought to leave up to the individual colleges and universities.

I think the idea of student representation on college governing boards is sound and that colleges would be wise to implement it. But I also believe that this is a matter which ought to be left up to the discretion of the colleges themselves.

Mr. SPARKMAN. Mr. President, as one who is opposed to the busing of children to achieve racial balance, I feel that much of the debate on this issue has not been directed to the heart of the matter. Those who favor the busing of children contend that they are doing so because of their opposition to segregated schools.

Mr. President, the issue is not segregated schools versus integrated schools. The simple truth is that busing, as it has been utilized and as it is threatened to be utilized, is destroying the neighborhood schools of America. That, and that alone, is the issue before us. Do we want to preserve neighborhood schools as meaningful social and educational institutions in our country? I feel that we must.

I believe that Senators know of the work that I have done during my years in Congress in the field of housing. My single goal in all these years has been to make it possible for every American, regardless of his economic or social status, regardless of his race, religion, or national origin, to have a decent home in which to live. This goal was born of a steadfast conviction, which endures with increasingly greater strength as time goes by, that the home is a meaningful institution in our society, and that people who have a decent place in which to live are better citizens in every way. Pride in one's home gives him a sense of belonging to the community, and this is especially true of children.

Mr. President, so it is with neighbor-

hood schools. My files are filled with letters from parents and children, both black and white, pleading with me to make it possible for the children to attend their neighborhood school. I need not go into greater detail about this because I know that the files of every Senator are similarly filled.

Community pride, Mr. President, is a rather complicated thing. It emanates from quite a variety of things. A little girl looks forward with unbounded thrill to playing a part in the school play, because she knows, not only that her parents will be bursting with pride as they sit in the audience, but their neighborhood friends are also there. She wants so badly to impress the people she knows and she fully expects that, as she makes her way around the neighborhood the following week, she will receive the praise that she deserves. A high school boy goes into the Friday night football game confident that the male adult leadership of his community is looking on, and that he is in no small way the community's standard bearer. A school band is presented with the opportunity to participate in a parade or band festival, and a sense of belonging springs to life when the community joins together in a fund drive to pay the expenses. I could go on and on.

The point, Mr. President, is that the neighborhood school in America is more than just a tradition, it is a strong, vibrant, meaningful institution, which contributes greatly to the social well-being of communities throughout our land. If there are problems of malappropriation of school funds or of unequal educational opportunities, other solutions must be found which do not bring on the demise of neighborhood schools.

I need not remind Senators of the urban problems that beset us. In my view, the neighborhood school in an urban community is the single most effective core around which the community can build a sense of responsibility and pride. It seems to me that we shall do no more than compound our problems by destroying neighborhood schools.

Mr. President, the proponents of busing seem willing to overlook the effect that busing has upon the children involved. These children are made to feel that they are simply pawns to be shifted from pillar to post without regard for their and their parents wishes. They are herded into a strange school where few of the students feel any sense of pride or belonging toward the school. Discipline problems are greatly increased, and it becomes virtually impossible to maintain the kind of student attitude and school atmosphere that is necessary to the learning process. After all, Mr. President, education is the name of this game. Are we not to be concerned about the quality of education our children will receive?

Mr. President, the responsibilities of citizenship are learned. They are learned from one's experiences in his community and from what he is taught at home, at church and at school. A person can learn these responsibilities easily enough, but for them to become meaningful to him and for him to want to practice good citizenship, he must feel that he has a stake in the community where he lives. Just as he gets this feeling from having a decent home in the community, he also gets it from having a good school in the community to which he can send his children. But more importantly, his children get this feeling from a neighborhood school at a time in their lives when their social attitudes are being molded. Doing away with neighborhood schools will deprive communities throughout America with their most effective tool in teaching their children the responsibilities of good citizenship. I hope that the Senate will not let this happen.

Mr. President, the Senate will face up to its responsibility on this issue today. In my view, we should do so by providing clearly in the bill that the Federal courts do not have jurisdiction to order that schoolchildren shall be transported to school on the basis of race, color, religion, or national origin. In other words, we should limit the jurisdiction of the courts to order forced busing for the purpose of achieving racial balance. As I have said, we should deny the courts the power to destroy neighborhood schools in America.

Those who favor busing have grasped at every straw during the course of this debate. They have attempted to make it appear that the adoption of the amendment which I support—the Griffin amendment—would make it impossible for Federal courts to enforce the Supreme Court decision against segregated schools. Nothing could be further from the truth. In his statement to the Senate yesterday, Senator GRIFFIN set out in detail the powers that would remain vested in Federal courts to deal with segregation cases.

Busing proponents have said that the Griffin amendment is unconstitutional. I think not. The power of Congress to limit the jurisdiction of Federal courts is clearly established in article III of the Constitution. Article III provides.

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.*

Not only is it clear that the power to establish or abolish lower Federal courts carries with it the power to prescribe and limit their jurisdiction, but there is ample precedent supporting the power of Congress to so prescribe and limit. As the Senator from Michigan (Mr. GRIFFIN) stated yesterday, Congress withdrew from the Federal courts the power to issue antiunion injunctions with the passage of the Norris-LaGuardia Act in 1932.

The Griffin amendment does not take away from the Federal courts the power to enforce the law as set forth by the Supreme Court in the Brown case. The only thing it does is to withdraw from the courts the authority to so enforce the law through the issuance of orders that schoolchildren must be bused to or from school solely on the basis of their color, race, religion, or national origin. Such orders have proved to be totally unreasonable. They have placed terrible burdens upon school systems throughout America. They have placed unconscionable burdens upon parents and schoolchildren. They have destroyed a time-honored and meaningful social force for community wellbeing—the neighborhood school. And they have created schools where quality education simply cannot exist. In the face of all of this, the Congress—exercising the powers granted to it in our great Constitution—has not only the power, but a clear and present duty, to take action to forbid these totally disruptive court orders.

Mr. PELL. Mr. President, during this past week's debate on busing, we have all too often heard from those with emotional commitments pro or con. However, thinking about the debate, I find it hard to remember hearing the views of educators on this question. Therefore, I was particularly struck by a statement, released today, signed by certain Chief State School Officers, which opposes amendments which would prohibit the Federal courts from exercising jurisdiction over transportation to achieve school desegregation. The Chief State School Officers, in a November 17 meeting, endorsed transportation of students as a "viable means of achieving equal educational opportunity." I ask that the signed release of certain Chief State School Officers be made part of the RECORD at this point.

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

At the November 17, 1971 meeting of the Council of Chief State School Officers in Louisville, Kentucky, resolutions were adopted supporting the principle of desegregation of our nation's schools and endorsing the method of transporting students to attain this end as one viable means of achieving equal educational opportunity.

We, the undersigned Chief State School Officers, have made the commitment to resist all efforts which impede or prohibit school desegregation. We view with alarm the recent attempt to amend the Higher Education Act so as to prohibit the Federal courts from exercising any jurisdiction over transportation of pupils to achieve desegregation. We view this as a limitation of the options of school officials to achieve the desired end of the provision of equal educational opportunities through desegregated schooling.

[Statement signed by the following Chief State School Officers, Tuesday, February 29, 1972: Floyd Christian (Fla.), Caroll McGary (Maine), Neil Sullivan (Mass.), Ewald Nyquist (N.Y.), Fred Burke (R.I.), Joe Oakey (Vt.), Daniel Taylor (W.Va.)]

Mr. PELL. Mr. President, reaction to the Senate's adoption of the Griffin amendment is starting to be heard. The Senate by its action last Friday took a step backwards—in attempting to deal with busing, all efforts taken to segregate the schools have been arrested.

A most interesting and meaningful editorial appeared in the Providence Journal of February 29, 1971. It speaks clearly of just what is at stake in today's vote. I ask unanimous consent that that editorial be placed in the RECORD at this point.

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

BUSING COMPROMISE

When the United States Senate convenes today, it will face a critical issue—a decision on how best to handle the welter of bills

and amendments on school busing. The country will be best served by a decision to support the compromise sponsored by Sen. Mike Mansfield, Democrat of Montana, and Sen. Hugh Scott, Republican of Pennsylvania, and supported by the Senate last Thursday.

For a while as the week drew to a close, it appeared that the Mansfield-Scott proposal would prevail. But late last Friday, in the absence of many senators, including five Democratic candidates for the presidency, a tough anti-busing amendment, sponsored by Sen. Robert P. Griffin, Republican of Michigan, passed by the narrow vote of 43-to-40.

The candidates were not the only missing senators. At least 12 others were out of Washington, apparently secure in the belief that the support given the Mansfield-Scott bill would stand. Now, Senator Mansfield has summoned the senators back from the campaign trail and from whatever other pressing items of business drew them from attendance last Friday.

The Mansfield-Scott proposal would permit limited busing of children but not to schools of inferior quality and not across existing school district lines unless the Supreme Court orders it. It also would bar federal subsidies for busing unless a school district requests help. Like all compromises, the proposal did not please diehard supporters or opponents of busing.

The Griffin proposal also is an amendment to the federal aid-to-education bill which carriers funds to help local school districts finance desegregation. It is very tough; it would eliminate federal authority to order children bused to achieve racial balance in the schools. It does not go as far as proposed and unreasonable constitutional amendments, but it is hardnosed.

The great virtue of the Mansfield-Scott proposal is that it leaves the door open to local option. By its nature, it keeps the issue in the area of statutory law and avoids the risk of trying to resolve an administrative problem by writing an amendment to the Constitution. Its purpose is to defuse a divisive issue with reason.

Senators John O. Pastore and Claiborne Pell supported the Mansfield-Scott legislation last week and presumably can be expected to stand firm with the two leaders today. Perhaps their best immediate contribution would be to help Senators Mansfield and Scott steer the compromise through the shoals of rough parliamentary seas today.

WILL CONGRESS REALLY ACT ON BUSING?

Mr. STENNIS. Mr. President, many pages of the RECORD of this great body are now filled with debate on the issue of busing schoolchildren out of their own neighborhoods. After all these hours of Senate time have been spent and many thousands of words have been spoken, the dust has finally cleared and the question before us is simple: Will Congress act on busing or will it refuse to act? It is, I say, now a simple question on which every Senator is thoroughly informed. The Griffin amendment forbids Federal courts to order busing and thus puts an end to many of the abuses which have been visited upon our young children. The Scott-Mansfield amendment, on the other hand, does absolutely nothing positive to halt this outrage. The only real antibusing element of the Scott-Mansfield amendment is its title.

While I have the greatest respect for the cosponsors of that amendment, as they well know, I truly believe that the only effect of their amendment is to simply put off any real action on the busing issue until after the fall elections. I also believe very strongly that they are in error in trying to delay such action. Just because the busing issue stirs up strong emotion in this country is no reason to run away from it, which is what the Scott-Mansfield amendment does. Since that amendment is only effective until June of next year, it merely puts off urgently needed congressional action. Avoiding the issue in that way would be be a grave error, in my opinion. Every candidate for President and for the Senate or House should be called on to state his position before the election on the issue of busing, and the Griffin amendment is the only one before the Senate with any real meaning. The people demand action now, and as their elected representatives, we are duty bound to heed their wishes.

Let us consider more closely, by way of contrast, the Scott-Mansfield amendment, which is in three sections. The first section forbids the use of Federal funds for busing if it risks the health or impinges on the educational opportunities of children.

Mr. President, it is almost incredible that we have reached a point in this country where we need such a law, but it is true. This provision admits that Federal court orders in many districts are now so severe as to actually risk the health and impinge upon the education of our children. Under present law, however, the persons to decide whether a child's health or education would be damaged by a busing order are the same authorities and Federal bureaucrats who have already required such abusive busing plans in the past. This part of the amendment is clearly insufficient.

Section (b) of the Scott-Mansfield amendment forbids any agency of the Federal Government to expend money for busing unless constitutionally required. This language, as well as the language about racial imbalance in section (a), deftly destroys the effect of both the Mondale and Stennis-Ribicoff amendments requiring uniform nationwide application of school desegregation policies in this country because it freezes in by implication the old de jure-de facto distinction between school segregation in the South and elsewhere.

This amendment once again attempts to create a distinction between northern and southern school districts long after all objective observers in the public press, Congress, and even HEW, have agreed that the old de jure-de facto distinction is totally invalid.

The latter part of section (b) forbids Federal agencies to bus any child to an inferior school. This provision, in practice, would mean that Federal money could be used to bus black children into white schools but not to bus white children into black schools. If we are to abolish busing, we should do it fairly, and our action should apply equally, across the board, to all children. In effect, this provision which would allow the busing of black children but not of white is a flagrant violation of the equal protection clause and would not last 2 minutes before the Supreme Court.

Section (c), which appears to stay busing orders pending appeal, in reality does no such thing, since it is limited to busing across district lines. Only one case in this entire country would be affected by such a stay and that is the Richmond, Va., case. While a stay in that case is a very fine and commendable thing, I must ask: What about the children in Detroit, Mich.; Denver, Colo.; Charlotte, N.C.; and Jackson, Miss.? This section affords them no protection whatsoever since they are all bused many miles within their own districts.

In summary, then, the Scott-Mansfield amendment does virtually nothing to stop busing, but is a mere political trick to make voters think Congress has acted to stop busing. The fair thing to do would be to strike the title of this so-called anti-busing amendment, and retitle it "Amendment To Avoid Action on Busing Until After the Election." Under that title, citizens would know the proposal for what it really is.

Compare to the empty shell which is the Scott-Mansfield amendment the effective and substantial provisions of the Griffin amendment.

First, it takes away all Federal court jurisdiction to order busing of any child, anywhere, just because of his race. Second, it forbids any Federal agent from threatening to withhold funds in order to force a school district to bus its children against its will.

Third, it stays indefinitely—and not just until next June—all court orders requiring any student to attend a school other than his own neighborhood school. It does not apply just to one school district as the Scott-Mansfield version does, but to all school districts of this country equally, and I urge my fellow Senators to show their opposition to busing and to take positive action to stop it by supporting the Griffin amendment.

Mr. BENNETT. Mr. President, today the Senate will again decide the fate of the Griffin amendment dealing with schoolbusing. Last week I voted in favor of that amendment and intend to do so again today. I should like to outline the reasons why I will take this position. I believe the Griffin amendment is constitutional. Certainly the Congress of the United States has the power to limit the jurisdictional authority of Federal courts other than the Supreme Court. In the Griffin amendment the Congress is merely delineating a congressional intent and policy which I do not believe violates the rights of any American or is contrary to the spirit or the letter of the Constitution.

I firmly believe that every American, black and white, has the right to attend schools of equal quality. I believe the courts of the United States starting with the historic 1954 decision have been saying that with complete justification. I believe this can and should be accomplished without resorting to the extremes and the foolishness of busing children away from their neighborhood schools. I believe also that the large majority of the American people, both blacks and whites, are opposed to this concept.

I question the wisdom of spending so much money for buses and salaries to transport children when that money could be spent more wisely to improve

the actual educational experience and the physical plant of schools that do not measure up to the quality to which all Americans are entitled. I think the school busing practice is a false hope. I question the wisdom of busing children from good schools to inferior schools. Because by so doing you have damaged the educational experience of those who are in top quality schools. I believe the answer lies in improving and upgrading the schools where quality education does not exist. In other words, I think we should address ourselves to the immediate problem and stop the foolishness of dancing around the periphery by busing children long distances across town and in some cases into other counties.

I also question whether in this whole process anybody has looked at the impact of busing upon the children. What have we gained if we require a child to ride a schoolbus for an additional 1 or 2 hours a day? To achieve the equality that some people think can be obtained through busing will require in some cases that children arise much earlier in the morning to ride a cold schoolbus many miles across town or into another county. They spend the day in a new school and a strange neighborhood only to have to ride the bus back, returning home much later than normal. I think there are enough pressures now tearing away at the American family and the American home that we do not have to absent our children even longer from this environment. It is not uncommon in some school systems for children to return home and find themselves with from 1 to 3 hours of homework. If you add to this an additional hour or two to ride a schoolbus I think you have added additional pressures to the child; you have imposed additional outside interference upon the family and I think you have solved none of the problems which the school busing was designed to resolve. For these reasons I think it is mandatory that the U.S. Senate retain the Griffin amendment. I think it is time that we return to reason in this area and not only reflect the wishes of all Americans but see the fallacy of the concept involved. I believe it is time that we attacked the problem itself and that is inadequate schools where they now exist. Because of these factors I will support the Griffin amendment.

OPPOSITION TO SCOTT-MANSFIELD SUBSTITUTE

Mr. ALLEN. Mr. President, if the Senate passes the Scott-Mansfield proposal, a constitutional amendment will become necessary and, in my judgment, inevitable. The reason is that the proposal simply does not address itself to the substantive problems which have given rise to the school busing controversy.

The proposal will not stop a single U.S. district court judge from entering racial-balance decrees. It will not stop massive forced busing and cross-busing to achieve racial balance. It does not repudiate the hideous racist doctrine of racial balance in schools. It will not put an end to consolidation of schools involving separate political subdivisions of a State to achieve racial balance in schools.

It will not save a single community school. It will not save a single neighborhood school, and it simply will not put an end to the massive school closings and pairings which require busing and cross-busing across cities and counties. In short, it will not stop forced uprooting of schoolchildren, and their transportation from home communities and neighborhoods to strange and distant schools.

To the contrary, the Scott-Mansfield proposal specifically condones, and would write into the law, congressional approval of U.S. district court orders which require, and I quote:

> The transfer and transportation of any student or students from one local educational agency to another or which requires the consolidation of two or more educational agencies for the purpose of achieving racial balance among students with respect to race, sex, religion or socioeconomic status.

Mr. President, I have quoted from the third section of the Scott-Mansfield proposal. The only concession in this section is the requirement that the effectiveness of such court orders shall be postponed until appeals have been exhausted or until the time for such appeals have expired. This provision is substantially the Broomfield amendment, adopted by the House in specific recognition of the U.S. district court order in the Detroit, Mich., school case. That order contemplates massive consolidation of separate school districts in the Detroit area for the purpose of achieving racial balance. The provision provides for a delay but nothing else. It merely recognizes the power in U.S. district courts to enter such orders.

Mr. President, the question is, What does the Scott-Mansfield proposal offer in regard to U.S. district court orders other than to delay the effectiveness of such orders? The answer is: Nothing!

Let us turn now to the first section of the proposal. Here, too, the provision contemplates that U.S. district court judges will continue to order racial balance in all schools.

However, it appears that a bit of hand washing is in order, so it is provided that Federal funds may not be used for the purpose of providing transportation unless specifically requested by local school officials. At first glance, this seems to be a reasonable proposition. However, it becomes meaningless once we realize that U.S. district court judges continue empowered to close schools and pair schools in order to achieve racial balance. Under the circumstances, in many cases there would be no way for children to get to such racially balanced schools to which they have been ordered without transportation. So, naturally if local school officials ask for funds for busing, it is there for them and Federal judges know it.

Mr. President, there is something cynical about this pretended disallowance of funds for busing. The cynicism comes through loud and clear when we realize that the bill to which the Scott-Mansfield amendment is to be added provides funds to be used to encourage construction of fantastic school conglomerates and school complexes referred to as "school parks." Few pupils can reach such schools without transportation. Naturally, the money is available for busing to such experimental laboratories.

In fact, under the bill, grants are made contingent on the establishment in each school district of at least one racially balanced school which is also integrated by socioeconomic status of the families of pupils. How will the pupils get to such school? By busing—paid for from funds authorized by the act.

In short, while this Scott-Mansfield proposal purports to prevent the use of Federal funds for busing, the bill itself authorizes funds for establishment of schools which would be useless without some means of mass transportation of students. Furthermore, this bill authorizes funds for every busing order and decree which may be issued by every U.S. district court judge in the United States.

Mr. President, I suggest that we realistically recognize this proposal for what it is. It is a massive busing proposal. Make no mistake about it.

Turning now to the second section of the Scott-Mansfield proposal, we read all the things which Federal agents and agencies may not do by way of rule, regulation, and guidelines unless, and here is the catch, "unless required by the Constitution." What this means, of course, is that Federal agents will not do this and not do that unless it has been required by a U.S. district court judge.

Mr. President, this is the same old, time-worn dodge, which has been so successfully used in the past to scuttle any legislation intended to curb the destructive effects of racial balance decrees.

Mr. President, let us take another look at this phrase, "except as required by the Constitution."

The Supreme Court has said that racial balance is not required by the Constitution. Congress has excluded racial balance as a requirement under two provisions of the Civil Rights Act of 1964. Yet, U.S. district court judges continue to issue racial balance decrees and continue to compel whatever is necessary to achieve racial balance including the closing of perfectly good neighborhood and community schools. And, the U.S. Supreme Court continues to give its blessings to such decrees, not as required by the Constitution or by act of Congress but as a proper exercise of discretionary equity powers of U.S. district court judges. So what does the term mean—it means nothing but what may be required by a Federal judge and that is the problem and the source of the trouble.

Mr. President, the provisions of section 2 which limit the power of certain Federal officers and employees to require transportation where the time and distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process is redundant. The U.S. Supreme Court has already recognized such a limitation so why put it in this proposal except to mislead the people? Federal Courts alone are empowered to decide what impinges on the educational process. In short, repetition of this language is pure eye wash. What is said is that if such

courts rule that time and distance involved in busing impinges on the educational process, the Federal officers and agents would not require it. Some deal.

There is another provision in this section which is most likely to mislead. It too is a limitation on busing and prohibits Federal officers and employees from requiring busing,

Where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the schools 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, color or national origin.

Mr. President, I am certain that the language I have quoted is intended to calm the fears of people in Michigan, New York, California, and other States where the people are under the threat of a court ordered school consolidations and resultant massive busing. However, let us bear in mind that this provision is a limitation on the discretion of certain Federal employees and that it is not a limitation on so-called equity powers of U.S. district court judges who alone will determine what schools are "substantially inferior." Once a court has decided on consolidation of schools, it matters not to the judge how the students get to the school to which assigned. The judge knows—thanks to the Scott-Mansfield proposal—that Federal funds will be available to bus the children there.

However, if we were to indulge the assumption that this "inferior school" provision would save anybody from the fate visited on schools and schoolchildren in Southern States, then the provision would clearly contradict section 702 of the main bill which provides that the Civil Rights Act and other laws on the subject of school segregation shall be applied uniformly throughout the United States.

Mr. President, they cannot have it both ways—they cannot provide an out for school systems outside the South and at the same time keep faith with the uniformity policy in the bill itself.

Mr. President, it is obvious even if it were not admitted that this proposal is the result of a concerted effort to defuse the busing issue. It won't work—the people will not be fooled again by hemming and hawing and slick parliamentary tricks and slippery language inserted in bills and amendments.

The fact is that the Scott-Mansfield proposal is a busing bill, purely and simply. It finances every busing scheme that any and all U.S. district court judges in the United States may dream up as well as some concocted by the U.S. Department of Education. The judges will thank you—the bleary-eyed radicals in the Department of Health, Education and Welfare will thank you—but the American people will thank you for nothing!

Mr. President, it is my judgment that the rug has been yanked from under President Nixon. His promise to study the problem extended hope of relief from ruinous busing. All that is empty rhetoric now unless—and this is important—unless he gets behind a constitutional amendment or a bill to effectively limit the power of U.S. district court judges to enter orders which directly require or have the necessary effect of requiring the transportation of pupils to achieve racial balance in public schools now under the iron heels of their jurisdictions.

Mr. MANSFIELD. Mr. President, if I could have the attention of the Senate on behalf of the distinguished minority leader——

Mr. RANDOLPH. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will please come to order.

Mr. MANSFIELD. And the Senator from Montana, I ask unanimous consent to have only 10 minutes allotted on each of the next four or five amendments because they will come in rapid succession.

If there is no objection on the part of the Senate, it is now on notice that there will be 10 minutes time on each vote.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. JAVITS. Mr. President, without objecting—and I shall not—I should like to call the attention of the distinguished majority leader to something. Before one of the votes, there will be a half hour's debate, is that not correct?

Mr. MANSFIELD. That is right.

Mr. JAVITS. Would the distinguished majority leader consider leaving that one out?

Mr. MANSFIELD. That one is already out. That is taken care of in a previous unanimous-consent agreement.

Mr. JAVITS. I thank the Senator from Montana.

The PRESIDING OFFICER Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MONDALE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. TUNNEY). The Senator from Minnesota will state it.

Mr. MONDALE. Is my understanding correct that the next vote will be on the pending Mondale amendment?

The PRESIDING OFFICER. That is correct.

Mr. MONDALE. Under the present parliamentary situation, am I further correct that if one opposes the Griffin amendment, he will vote "nay" on the pending Mondale amendment because it contains the Griffin amendment?

The PRESIDING OFFICER. That is an interpretation of the Senator which the Chair cannot consider. [Laughter.]

(At this point the Vice President assumed the Chair.)

The VICE PRESIDENT. The Senate will be in order, please.

The hour of 12 o'clock having arrived, the Senate will now proceed to vote on the pending amendments in the following order.

Please, gentlemen, may we have order in the Senate?

The first vote will occur on the Mondale amendment as amended, on which the yeas and nays have been ordered.

The second vote will occur on the Griffin amendment as a perfecting amendment to the language of the Allen amendment proposed to be stricken out by the Scott-Mansfield amendment, on which the yeas and nays have been ordered.

The next vote will occur on the Scott-Mansfield amendment as a substitute for language proposed to be inserted by the Allen amendment, on which the yeas have also been ordered.

The next vote will occur on the Allen amendment as amended, if amended. There will be 30 minutes debate, to be equally divided and controlled before the vote on the Allen amendment as amended, if amended.

The question now recurs on agreeing to the Mondale amendment as amended.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

Mr. ERVIN. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from North Carolina will state it.

Mr. ERVIN. Where is the Griffin amendment? Is it not voted on in this?

The VICE PRESIDENT. The second vote will come on the Griffin amendment.

Mr. ERVIN. I thank the distinguished Presiding Officer.

Mr. MONDALE. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Minnesota will state it.

Mr. MONDALE. Is my understanding correct——

Mr. PASTORE. Mr. President, may we have order? We cannot hear anything. This is a very important vote.

The VICE PRESIDENT. Please, gentlemen, will Senators please take their seats?

Mr. MONDALE. Mr. President, is my understanding correct that the present Mondale amendment as——

The VICE PRESIDENT. Will the Senator please withhold for just a moment? The Chair will have to stop the proceedings until we have a sufficient degree of order in the Senate so we can hear the proceedings.

The Senator from Minnesota may proceed.

Mr. MONDALE. Mr. President, is my understanding correct that the present amendment as amended includes the Griffin amendment?

The VICE PRESIDENT. That is correct.

Mr. MONDALE. So that adoption of the amendment offered by the Senator from Minnesota, as amended, would, if adopted, include the adoption of the Griffin amendment; is that not correct?

The VICE PRESIDENT. And the adoption of the Griffin amendment and the Scott-Mansfield amendment also.

Mr. MONDALE. I thank the Chair.

The VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from Minnesota (Mr. MONDALE) as amended.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. HARTKE) and the Senator from

Washington (Mr. JACKSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 48, nays 49, as follows:

[No. 65 Leg.]

YEAS—48

Allen	Curtis	Jordan, Idaho
Allott	Dole	Long
Baker	Dominick	Mathias
Beall	Eastland	McClellan
Bellmon	Ellender	Proxmire
Bennett	Ervin	Randolph
Bentsen	Fannin	Roth
Bible	Fong	Smith
Brock	Gambrell	Sparkman
Buckley	Goldwater	Spong
Byrd, Va.	Griffin	Stennis
Byrd, W. Va.	Gurney	Taft
Cannon	Hansen	Talmadge
Chiles	Hollings	Thurmond
Cook	Hruska	Tower
Cotton	Jordan, N.C.	Young

NAYS—49

Aiken	Humphrey	Pastore
Anderson	Inouye	Pearson
Bayh	Javits	Pell
Boggs	Kennedy	Percy
Brooke	Magnuson	Ribicoff
Burdick	Mansfield	Saxbe
Case	McGee	Schweiker
Church	McGovern	Scott
Cooper	McIntyre	Stafford
Cranston	Metcalf	Stevens
Eagleton	Miller	Stevenson
Fulbright	Mondale	Symington
Gravel	Montoya	Tunney
Harris	Moss	Weicker
Hart	Muskie	Williams
Hatfield	Nelson	
Hughes	Packwood	

NOT VOTING—3

Hartke	Jackson	Mundt

So the amendment was rejected.

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate? May we have order in the galleries?

The VICE PRESIDENT. The Senate will be in order. The occupants of the galleries are cautioned that the rules do not permit demonstrations.

The question is on agreeing to the amendment of the Senator from Michigan. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. GRIFFIN. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. GRIFFIN. Mr. President, is the vote now before the Senate the vote on the so-called Griffin amendment to the Allen amendment?

The VICE PRESIDENT. The Senator is correct. The vote is on the Griffin amendment as a perfecting amendment to the language of the Allen amendment proposed to be stricken by the Scott-Mansfield amendment.

Mr. GRIFFIN. Mr. President, I thank the Chair.

The VICE PRESIDENT. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. HARTKE) and the Senator from Washington (Mr. JACKSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. HARTKE) and the Senator from Washington (Mr. JACKSON) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 47, nays 50, as follows:

[No. 66 Leg.]

YEAS—47

Allen	Dole	Jordan, Idaho
Allott	Dominick	Long
Baker	Eastland	McClellan
Beall	Ellender	Proxmire
Bennett	Ervin	Randolph
Bentsen	Fannin	Roth
Bible	Fong	Smith
Brock	Fulbright	Sparkman
Buckley	Gambrell	Spong
Byrd, Va.	Goldwater	Stennis
Byrd, W. Va.	Griffin	Taft
Cannon	Gurney	Talmadge
Chiles	Hansen	Thurmond
Cook	Hollings	Tower
Cotton	Hruska	Young
Curtis	Jordan, N.C.	

NAYS—50

Aiken	Humphrey	Packwood
Anderson	Inouye	Pastore
Bayh	Javits	Pearson
Bellmon	Kennedy	Pell
Boggs	Magnuson	Percy
Brooke	Mansfield	Ribicoff
Burdick	Mathias	Saxbe
Case	McGee	Schweiker
Church	McGovern	Scott
Cooper	McIntyre	Stafford
Cranston	Metcalf	Stevens
Eagleton	Miller	Stevenson
Gravel	Mondale	Symington
Harris	Montoya	Tunney
Hart	Moss	Weicker
Hatfield	Muskie	Williams
Hughes	Nelson	

NOT VOTING—3

Hartke	Jackson	Mundt

So Mr. GRIFFIN's amendment (No. 935) to Mr. ALLEN's amendment was rejected.

The PRESIDING OFFICER (Mr. TUNNEY). The question now recurs on the Scott-Mansfield amendment as a substitute for the language proposed to be inserted by the Allen amendment, on which question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. HARTKE), and the Senator from Washington (Mr. JACKSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. HARTKE) would vote "yea."

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 63, nays 34, as follows:

[No. 67 Leg.]

YEAS—63

Aiken	Bennett	Cannon
Allott	Bible	Case
Anderson	Boggs	Church
Bayh	Brooke	Cook
Beall	Burdick	Cooper
Bellmon	Byrd, W. Va.	Cranston
Dole	Magnuson	Pearson
Dominick	Mansfield	Pell
Eagleton	Mathias	Percy
Fong	McGee	Randolph
Fulbright	McGovern	Roth
Gravel	McIntyre	Saxbe
Harris	Metcalf	Schweiker
Hart	Miller	Scott
Hatfield	Mondale	Stafford
Hughes	Montoya	Stevens
Humphrey	Moss	Stevenson
Inouye	Muskie	Symington
Javits	Nelson	Tunney
Jordan, Idaho	Packwood	Weicker
Kennedy	Pastore	Williams

NAYS—34

Allen	Fannin	Ribicoff
Baker	Gambrell	Smith
Bentsen	Goldwater	Sparkman
Brock	Griffin	Spong
Buckley	Gurney	Stennis
Byrd, Va.	Hansen	Taft
Chiles	Hollings	Talmadge
Cotton	Hruska	Thurmond
Curtis	Jordan, N.C.	Tower
Eastland	Long	Young
Ellender	McClellan	
Ervin	Proxmire	

NOT VOTING—3

Hartke	Jackson	Mundt

So the Scott-Mansfield amendment in the nature of a substitute for the Allen amendment was agreed to.

Mr. SCOTT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. TUNNEY). The question now recurs on agreeing to the amendment of the Senator from Alabama (Mr. ALLEN), as amended.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. The text of the Allen amendment is now the so-called Scott-Mansfield substitute, is it not?

The PRESIDING OFFICER. The Senator is correct.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. ALLEN. Mr. President, is there not time for debate?

The PRESIDING OFFICER. The Senator is correct; 30 minutes, to be equally divided.

Mr. ALLEN. I yield myself 7 minutes.

Mr. President, we have come full circle with regard to this amendment. We started off with a simple amendment to title IX, section 901——

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Staff members will be seated, or leave the Chamber.

Mr. BYRD of West Virginia. Mr. President, I hope the Sergeant at Arms will keep staff personnel seated.

The PRESIDING OFFICER. The Sergeant at Arms will see that order is maintained. The Senator from Alabama may proceed.

Mr. ALLEN. Mr. President, we have come full circle in the consideration of amendments to title IX, section 901, which started some days ago when the junior Senator from Alabama sought to

amend section 901. That section provides that no provision of this act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance. I pointed out that the phrase "overcome racial imbalance" means to overcome de facto segregation, so that the prohibition against busing was only against busing to overcome de facto segregation.

The amendment as offered by the junior Senator from Alabama would have provided that nothing in this act or any other act should be construed as requiring the assignment or transportation of students or teachers in order to establish a racial balance in any school. That amendment has been supplanted, so that we now have before us the Scott-Mansfield amendment as an amendment to section 901. Actually, there is nothing left to be decided. Section 901, as it appears in the bill, is absolutely worthless. The Scott-Mansfield amendment is absolutely worthless, and very probably, in my judgment, worse than worthless, because it creates a false impression that something is being done about the mass forced busing of schoolchildren in order to establish a racial balance.

Mr. President, the Scott-Mansfield amendment does not make any change of substance in the present law. In the first place, it would provide that no school district is required to accept Federal funds for transportation of students without its consent, and it is not required to use any State funds without its consent. Mr. President, that is absolutely worthless. That is not the point, whose funds they use. If the Federal district court requires a school board to bus students from one end of the county to the other end of the county, they are going to have to use somebody's funds, and naturally they are going to have to use either State funds or Federal funds. To say that Federal funds do not have to be used without their permission certainly is no concession at all, because they are going to have to call on the Federal Government for the money to provide hundreds of buses, to provide school bus drivers, and to maintain the buses. So those two sections provide absolutely nothing.

In the third section, provision is made for the Richmond and Henrico and Chesterfield Counties situation by providing that any order in a situation such as that, where school districts have been consolidated for the purpose of creating a racial balance should be stayed, until June 30, 1973.

That order has already been stayed by the higher court, the circuit court of appeals. So absolutely nothing is accomplished in this regard. It is the opinion of the junior Senator from Alabama that it would be much better to turn down the Scott-Mansfield amendment, which we are going to vote on again. It is like a cat with nine lives; we are having to vote on it at every turn. Unfortunately, we have not been able to kill it a single time except when it was tied in with the Griffin amendment, and then the very people who put the Scott-Mansfield amendment on the Mondale amendment voted against it, so that, by a very close vote, we were deprived of going to conference with the Mondale amendment, which is a revision and restatement of the Stennis amendment, and also the Scott-Mansfield amendment which was added to it, and then the Griffin amendment. So, with the sheer power of numbers, the Senate has been denied the right to go to conference with all three of these measures in the bill.

We would be much better off without the Scott-Mansfield amendment. We still have the House amendments that will be before the conference, which are much better than Scott-Mansfield, which is absolutely worthless and, in the judgment of the junior Senator from Alabama, is a smokescreen to make it appear that something is being done to stop busing when actually something is being done to permit busing.

If it were possible to offer another amendment to the pending amendment—we have agreed that no more amendments will be adopted—I would offer an amendment to the Scott-Mansfield amendment, naming it "the busing authorization amendment," because that is exactly what it does. It is a pro-busing amendment.

So let there be no mistake about it. Do not let any Senator be in doubt about what the issue is; because the Scott-Mansfield amendment, which is now the amendment before the Senate, it having supplanted or taken over the little amendment which I offered, provides absolutely no relief. So if we hold out to the country the assurance that something has been done in this regard and then the country has to operate under the Scott-Mansfield amendment, it is going to be very disappointed; because the amendment does not provide any measure of relief whatever from the forced, massive busing of little children.

Mr. President, we should not be surprised at this situation. The distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT), in an interview with U.S. News & World Report, just last week, predicted that Congress was not going to take any action clarifying the mess with regard to forced busing. He made that prediction. Thus far, that prediction has come true, based on the Senate action, because no clarification has been made. All that has been done is to restate some of the opinions of the Supreme Court. That is already the law. What is the use of going through the motions of restating what is already the decision law of this country?

Mr. President, where action is needed is not only in limitations on the executive department, because the Scott-Mansfield amendment does not provide any limitation whatever on the courts, except the one situation—so far as I know, it is only one—that would roll back to June 30, 1973, the decision or order in a case such as the Richmond case. What we need is a limitation on the power of the court, and this amendment does not even seek to reach the real need.

So the country is demanding an end to the pernicious practice of forced busing of litle schoolchildren to create a racial balance. But the Senate, in its wisdom, by a very close vote—49 to 48—has decided that it wants instead the busing authorization amendment; and that should be the citation of this amendment. It should be known by that term—the Scott-Mansfield busing authorization amendment.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. I yield myself 2 minutes.

Mr. President, I believe that the Senate is thoroughly apprised of the issues as voted, with considered judgment, on three phases of the issues. I will be prepared to yield back my time after these 2 minutes, when the other side is ready to do the same, so that we may wind up this phase of the debate.

Mr. President, I wish to make this statement, however, which I think is important, notwithstanding that not many Senators are in the Chamber. As a Senate conferee, I would feel it my duty to do everything I could to sustain the position of the Senate. I wish to make that very clear.

The Scott-Mansfield amendment, in my judgment, makes material suggestions for the exercise of the authority or power of the courts to deal with desegregation through any form of busing. The most important suggestion, aside from a stay for 16 months where more than one educational district is involved, comes in the proposal that courts and HEW should take into account the impingement upon the educational opportunity of the receiving school or receiving students, as well as impingement upon the educational process of the bused student, in fashioning desegregation plans. This, I think, is critical; and as the days go on and we see this work out in practice, we will find that it is critical and that this was a real compromise.

I wish to assure the Senate that, as a conferee, I shall take that most seriously and exercise my duties with fidelity to the expression of the will of the Senate.

Second, I hope that, having settled this questions as we have, with a very gifted unanimous-consent agreement as worked out by Senator MANSFIELD with a great many of us last Friday afternoon, we may now go on to consider the other educational issues. This is an enormous bill—$22 billion in 3 years. It has the capacity for materially changing, in a very constructive direction, the higher educational system of America. It relates, also, to very important aspects of the elementary and secondary education system. It is almost a bill of rights for the vocational education system which is so critical to the country.

I hope very much that, having cast our votes and having given our decision on this controversial busing question, we may now go on to give consideration to this toweringly important bill in the field in which it really is mainly operative—to wit, the higher education field.

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

Mr. JAVITS. I yield.

Mr. MONDALE. In a remarkable speech the other day, the Governor of Florida, in the course of discussing this

explosive issue, commented upon the cost of these racial disputes in terms of diverting American attention from the real issues which face American life. I think this debate underscores the cost of this kind of racial tension in America.

Here we have a bill which covers 754 pages. It affects profound questions of higher education, of vocational education. It establishes a long overdue National Foundation for Postsecondary Education, and a National Institute of Education. It deals with Indian education. As the Senator from New York knows, for 4 or 5 years now, those of us who once served on the Kennedy Special Subcommittee on Indian Education have tried desperately to implement the recommendations which we agreed upon unanimously in its report. In many other ways we have labored here to adopt perhaps the most sweeping, important changes in education that Congress has dealt with in many, many years. Yet, practically all the debate surrounds the question of whether the courts shall continue to have jurisdiction to eliminate discrimination.

I would suggest that when this debate is over we will find it has been a prime example of the cost of racism in America in terms of displacing rational discussions of our real problems. Would the Senator from New York agree?

Mr. JAVITS. I thoroughly agree with the Senator. That was the reason why I said what I did, and I certainly associate myself with the Senator's remarks.

I would issue this word of caution. As we have seen, this is a complex issue, whether we wished it on ourselves or not, and it involves a very serious element of social stability in our country.

Therefore, while I deplore efforts to impede desegregation, and while I feel we should be spending our time on matters far more pertinent to the issue than the one we have decided and redecided, I am perfectly prepared to meet it with the same spirit and the same conviction and the same vigor that those on the other side have displayed and that we must display if we are to be successful.

I said what I did—I explain to my colleague, as he also will be a conferee—because I feel that the Scott-Mansfield amendment is really a genuine compromise; and I was simply committing myself, as is my duty as a Senator, in good faith seeking to see that it prevails in conference so that no one will think this is a facade, a way to get rid of the busing issue and adopt an unrestrained advocacy of busing. I pledge to do my utmost to win with the Mansfield-Scott compromise, assuming, as seems to be the case, that that will be the will of the Senate.

Mr. ALLEN. Mr. President, I yield the remainder of my time to the distinguished Senator from North Carolina (Mr. ERVIN).

The PRESIDING OFFICER (Mr. TUNNEY). The Senator from North Carolina is recognized.

Mr. COOPER. Mr. President, will the Senator yield me 2 minutes?

Mr. JAVITS. Mr. President, I will be glad to yield 2 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Chair has already recognized the Senator from North Carolina.

Mr. ALLEN. Mr. President, I yielded the remainder of my time to the Senator from North Carolina and he has just been recognized.

Mr. ERVIN. Mr. President, the Scott-Mansfield amendment reminds me of a story about a cemetery in my home county. The habit was, each year, to call the people who had relatives, or friends, buried in the cemetery, to meet there on a certain day in order to remove the weeds and the briars from the graves.

On one occasion, a man like myself, who was opposed to physical labor, hired a boy named George to go along with him to do his part of the work in the cemetery.

George was pulling weeds and briars from a grave when he suddenly burst into laughter. His employer asked, "George, what are you laughing at?" George said, "I am laughing at them funny words writ on this here tombstone."

George's employer said, "I don't see anything funny about those words on that tombstone."

George said, "Just read it. It says, 'Not dead, but sleeping.' "

His employer said, "Well, what's funny about that, George?"

George said, "He ain't fooling nobody but himself." [Laughter.]

Mr. President, the proponents of the Scott-Mansfield amendment, or the Mansfield-Scott amendment, whatever its nomenclature, "ain't fooling nobody but themselves."

The people of the United States have enough intelligence to know that the first section of the amendment, which merely provides that we cannot use Federal funds to desegregate schools without those funds being accepted by local authorities, has always been the law and it will always be the law as long as the Federal Government and the State governments constitute separate governmental entities.

The first portion of the second section merely reaffirms the fact that the Federal court can order desegregation whenever it is adjudged there has been discrimination under the 14th amendment as now interpreted.

The second portion of the second section merely takes out some indefinite and vague language used in the Swann case and uses it as a limitation on the power to bus. The language is about as nebulous as the supposed stars in the Milky Way.

The third section of the Scott-Mansfield amendment merely applies to the case involving the city of Richmond, and the counties of Chesterfield and Henrico in Virginia. It stays the judgment until the 30th of June 1973. That judgment has already been stayed by the circuit court of appeals. The 30th of June 1973 will pass into history before that case can possibly reach the Supreme Court.

So I say to the proponents of the Scott-Mansfield amendment, or the Mansfield-Scott amendment, who actually think it does something, that they "ain't fooling nobody but themselves."

If they will just stop and read the amendment, they will no longer even be fooling themselves.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired.

Mr. JAVITS. Mr. President, I yield 3 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 3 minutes.

Mr. COOPER. Mr. President, I thank the Senator from New York for yielding me this time.

Mr. President, I voted against the amendment offered by the distinguished Senator from Michigan; first, because I doubt very much that we can by statute limit the constitutional authority of the courts. Second, because I view it as an amendment which is retrograde in the field of school desegregation.

I know that the Senator from Montana (Mr. MANSFIELD) and the Senator from Pennsylvania (Mr. SCOTT) can be relied on for their conscientious purpose in this matter, as can my friend the Senator from New York (Mr. JAVITS). They propose to reach a compromise in the Scott-Mansfield amendment. But the amendment has to be something. It must either favor busing or be antibusing, or slightly inhibit busing.

I do not think, whether it is intended or not, that we can have it both ways.

I shall vote against the amendment. I do not think in any way that it affects the de facto segregation of schools. Clause 2, section (a), refers to actions brought for school desegregation, which are based on the action of the State termed "de jure" segregation. I do not think that either clause of section (a) has any effect. I do not think the amendment as a whole has any effect except to inhibit school desegregation, which I explained earlier in this debate. While there is much talk of compromise, it has been analyzed effectively and fairly by the Senator from New York (Mr. JAVITS). I am rather surprised that both the Washington Post and the New York Times refer to it as a great compromise while denouncing, and I think correctly, the Griffin amendment as retrogressive in school desegregation. This amendment is also retrogressive if it means anything at all.

I shall vote against the amendment.

Mr. RIBICOFF. Mr. President, I am in complete agreement with the comments of my distinguished colleague from Kentucky. I shall join him in voting "nay."

Mr. JAVITS. Mr. President, I am prepared to yield back my time if the Senator from Alabama is.

Mr. ERVIN. All time has expired on our time.

Mr. JAVITS. Mr. President, if there are no other requests to speak, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. TUNNEY). All time on this amendment has now been yielded back.

The question recurs on agreeing to the Allen amendment as amended.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. COTTON (after having voted in

the negative). On this vote I have a pair with my colleague, the Senator from New Hampshire (Mr. McINTYRE). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), and the Senator from New Hampshire (Mr. McINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 66, nays 29, as follows:

[No. 68 Leg.]

YEAS—66

Aiken	Fulbright	Muskie
Allott	Gravel	Nelson
Anderson	Harris	Packwood
Bayh	Hart	Pastore
Beall	Hatfield	Pearson
Bellmon	Hruska	Pell
Bible	Hughes	Percy
Boggs	Humphrey	Proxmire
Brooke	Inouye	Randolph
Buckley	Javits	Roth
Burdick	Jordan, Idaho	Saxbe
Byrd, W. Va.	Kennedy	Schweiker
Cannon	Magnuson	Scott
Case	Mansfield	Stafford
Church	Mathias	Stevens
Cook	McGee	Stevenson
Cranston	McGovern	Symington
Curtis	Metcalf	Taft
Dole	Miller	Tunney
Dominick	Mondale	Weicker
Eagleton	Montoya	Williams
Fong	Moss	Young

NAYS—29

Allen	Ervin	McClellan
Baker	Fannin	Ribicoff
Bennett	Gambrell	Smith
Bentsen	Goldwater	Sparkman
Brock	Griffin	Spong
Byrd, Va.	Gurney	Stennis
Chiles	Hansen	Talmadge
Cooper	Hollings	Thurmond
Eastland	Jordan, N.C.	Tower
Ellender	Long	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Cotton, against.

NOT VOTING—4

Hartke	McIntyre	Mundt
Jackson		

So Mr. ALLEN's amendment, as amended, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GAMBRELL. Mr. President, I supported the Bayh amendment No. 874 adopted by the Senate yesterday to the higher education bill which calls for an end to sex discrimination in education.

In my study of the proposed equal rights amendment to the Constitution, I have become aware that women are often subjected to discrimination in employment and remuneration in the field of education. This is intolerable, and I welcome adoption of the Bayh amendment which attempts to rectify this problem. I also welcome the opportunity to support legislation which will assure women equal access to all levels of education, undergraduate, graduate, professional, and vocational.

Direct legislation such as this amendment seems to me to be the most effective way to deal with the problems of sex discrimination. Most of the discrimination against women which has brought about the equal rights movement can be eliminated by application of the 14th amendment, coupled with such specific legislation as this amendment to the higher education bill.

I cannot foresee all of the consequences of adopting the proposed equal rights amendment to the Constitution, and I am concerned that such a constitutional amendment may prohibit recognition of differences between men and women which elevate the status of women. This problem may be avoided by attacking discrimination with specific legislation aimed at specific problems.

Discrimination against women should be ended, and I will certainly support appropriate legislation. I am pleased, therefore, that amendment No. 874 was adopted by the Senate yesterday.

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 1824. An act for the relief of Clinton M. Hoose;

H.R. 2828. An act for the relief of Mrs. Rose Scanio;

H.R. 2846. An act for the relief of Roy E. Carroll;

H.R. 4497. An act for the relief of Lloyd B. Earle;

H.R. 4779. An act for the relief of Nina Daniel;

H.R. 6291. An act to provide for the disposition of funds arising from judgments in Indian Claims Commission dockets numbered 178 and 179, in favor of the Confederated Tribes of the Colville Reservation, and for other purposes;

H.R. 6998. An act for the relief of Salman M. Hilmy; and

H.R. 7871. An act for the relief of Robert J. Beas.

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. CHILES. Mr. President, I send to the desk an amendment and ask that it be immediately considered.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and that the amendment be printed in the RECORD.

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

The amendment, ordered to be printed in the RECORD, is as follows:

On page 707, between lines 18 and 19, insert the following new paragraph (4), and renumber succeeding paragraphs:

"(4) Applications for waiver shall be granted by the Secretary upon determination that any practice, policy, procedure or other activity resulting in ineligibility has ceased to exist, and that the applicant has given satisfactory assurance that such activities will not reoccur".

On page 707, line 22 strike out all after the period through line 25.

On page 704, line 13, strike out the word "nonpublic" and insert in lieu thereof: "transferee which it knew or reasonably should have known to be a nonpublic".

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

Mr. CHILES. I yield.

Mr. MANSFIELD. Mr. President, it is my understanding that this amendment may well be accepted by the committee. If it is, it will not take long. After that the Senator from Connecticut (Mr. RIBICOFF) will offer an amendment. When that is done it is the anticipation of the leadership that a request will be made that the Senate stand in recess until 2 o'clock for the purpose of allowing the Republican Members of the Senate to conclude their policy meeting.

Mr. CHILES. Mr. President, there is very harsh language in the act which provides that if any school district makes a sale of any equipment of whatever value, and that equipment finds its way into the hands of what turns out to be a segregated school, the district that made that sale cannot obtain additional funds for desegregation and, in fact, could be required to pay back any moneys they have received.

Obviously, the intent of Congress was not to apply this kind of harsh treatment. The intent was to prevent a school district from doing through the back door what it could not do through the front door, and that is to set up segregated schools and get rid of all their equipment and property and give it to a segregated school system.

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

Mr. CHILES. I yield.

Mr. JAVITS. Mr. President, I have read the amendment. I appreciate the particular problem which the Senator has outlined.

I would like to make this suggestion to the Senator, which I ask that he consider. I suggest that he substitute for the words "such activities" the words "the activities prohibited in subsection (d)."

If he would do that it would result in encompassing all the various precautions which were taken in the bill directed toward the same problem, including the particular kind of transfer in question.

If that would be satisfactory, although I have some doubt about using the word "shall" and making it mandatory, I will go along with the amendment.

This has been rather hastily considered by us and if it is necessary to define the amendment in conference we will do so but first consult with the Senator from Florida.

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

Mr. CHILES. I yield.

Mr. MONDALE. Mr. President, I support the amendment of the Senator from Florida. The provision which the Senator seeks to modify is one which the Senator from New York (Mr. JAVITS) and I introduced in the original bill and it is designed to deal with the transfer or lease of public school property to racially discriminatory private schools. The provision prohibits funding—except where a waiver is granted by the Secretary of Health, Education, and Welfare—of school systems which engage in this practice. I think there is strong support for the provision. But a public school might sell surplus property without knowing its property is ending up in a segregated academy, and under circumstances when it could not know that would happen. The amendment of the Senator from Florida will assure that a harsher remedy than any of us intended is not included in these cases.

First, the amendment would modify the provision of the bill prohibiting aid to public school districts which give aid to segregated private schools except where waiver is granted, to make clear that the provision applies only where the school district knew or reasonably should have known that the transferee was a private school.

Second, the amendment would modify the civil rights safeguards section of the bill to require that waiver of violations be granted when the Secretary of Health, Education, and Welfare determines that the discriminatory activity resulting in ineligibility has ceased to exist and that the applicant school district did not engage in discriminatory activities in the future.

I believe these modifications will strengthen the Senate bill and I thank the junior Senator from Florida for calling them to our attention.

Mr. President, I think the amendment of the Senator from Florida is an excellent amendment and I hope that the committee accepts it.

Mr. CHILES. I have no problems concerning the modification requested by the Senator from New York and I request that my amendment be so modified to state in the last line of the amendment the language suggested: any of the provisions of subsection (d).

I think the Senator from Minnesota placed his hand on the problem that, one, presently there is provision for a special waiver, by the Commissioner of Education in case he finds the transfer was inadvertently made, that there really was no prima facie intent on the part of the school board, and, two, it makes a provision for which there is no method or way of correcting. However, my amendment would loosen up this provision, and authorize the Secretary to grant a waiver upon determining that any practice resulting in ineligibility has ceased to exist. This amendment would allow a correction to be made, as is made under title VI of the act.

Further, it would provide that it has to be knowingly made or made with some kind of intent, because that was the purpose of Congress originally. I think this would take care of instances where the school board is doing a valuable job in trying to accomplish desegregation but because they sell some property at public auction or through clerical assistance a sale is inadvertently made by the school district, they find they are in danger of losing all funds and have to pay back funds under the program. That is not what Congress intended.

Mr. President, integration is working in Broward County Schools. A nationwide survey conducted by the U.S. Department of Health, Education, and Welfare shows that there is a significant lack of "white flight" in Broward County's public school system—a strong indication, I feel, that Broward has made great achievements in school integration. Ironically, however, HEW's Office of Education has suspended Broward's Emergency School Assistance program grant for 1971–72 and asked that the grant be terminated. The suspension of this grant is so outrageous an action, I feel I must recount here today the circumstances leading to it, the unusual procedures surrounding it, and the grossly unfair charges from which it stems.

On December 6, 1971, the superintendent of the Broward County Schools, Mr. Benjamin C. Willis, received a letter from Associate Commissioner for Equal Educational Opportunity, Herman R. Goldberg. In his letter Mr. Goldberg explained that the Broward school board had been awarded a grant of $1,737,000 on September 1, 1971 and in its application for the ESAP grant, the district had assured the Commissioner that it would comply with the regulations governing the program. Mr. Goldberg went on to cite two instances where the district failed to comply with the assurances required.

The first regulation assurance was the following:

> That in order to facilitate the administration of § 181.3(a)(4) such agency has fully disclosed in such application any transfer after May 27, 1968 of property or services to or for the benefit of a nonpublic school or school system (or a person intending to establish or operate a nonpublic school or school system), in which transfer it has engaged directly or indirectly; . . .

Mr. Goldberg stated that no transactions with nonpublic schools were listed in Broward's ESAP application. However, according to information the district made available during the recent review of the program, Broward was found to have transferred property in the amount of at least $50,174.69.

The second assurance made by Broward in applying for the 1971–72 grant was the following:

> That the local educational agency has assigned its full-time classroom teachers so that the ratio of minority to nonminority group classroom teachers in each school is substantially the same as the ratio that exists in the faculty of the system as a whole.

Further information submitted by the district indicated that it had failed to meet this requirement in its current faculty assignments.

Mr. Goldberg went on to state that during the 1970–71 year the district, under a $772,551 grant, transferred property to at least four nonpublic schools, which discriminate on the basis of race, color, or national origin. The specifics of these transactions are as follows:

1. Lakeview Christian School, 4200 North Australian Avenue, West Palm Beach, Florida; purchased desks for $108 on May 12, 1971.

2. Gold Coast Christian School, 2800 West Prospect Road, Fort Lauderdale, Florida; purchased desks, chairs, lockers, and other items in the total amount of $834.15 on November 20, 1970, May 12, 1971, and June 22, 1971.

3. Dade Christian School, 6601 Northwest 167th Street, Hialeah, Florida; purchased desks, chairs, science tables, drafting tables, record players, and other equipment in the total amount of $3,670.65 on October 20, 1970, November 9, 1970, and June 2, 1971.

4. Central Baptist Church, 1101 Southwest Second Court, Fort Lauderdale, Florida; purchased a bus for $800 on January 26, 1971.

Mr. Goldberg explained that the law requires that an ESAP applicant not engage in the type of transactions described in the letter. Each transaction cited, according to Mr. Goldberg rendered the district ineligible for ESAP assistance. Therefore, at a scheduled hearing, in addition to seeking an order of termination, Mr. Goldberg added he would ask the hearing examiner to determine that at the time the district applied for and received its 1971–72 ESAP grant, it was not eligible for such assistance, and that it is not now so eligible; to declare that 1971–72 grant to be void ab initio; and to order the district to repay all funds received under this grant to the Office of Education.

The Emergency School Assistance program (Public Law 91–380) was established to assist in the desegregation of local educational agencies. Broward, as a grant recipient, has done that, and is, in fact, doing it extraordinarily well. I have personally spoken with members of the Bi-Racial Committee and find they believe the Broward School Board is making progress toward desegregation—is not attempting to subvert the law or promote segregated schools and they further feel the loss of the grant will materially affect the progress of desegregation.

I ask for unanimous consent to insert a copy of the December 6, 1971, letter to Superintendent Willis from Mr. Goldberg; a copy of Mr. Willis' January 21, 1972, letter to me, and two statements: Implementation of unitary school system in Broward County, Fla., January 1970, to January 1972 and statement of enrollment by years.

The charges made by the Office of Education were "material misrepresentation" on applications for the grant. But I wonder where the real misrepresentation is. When the facts are presented, I believe it is strikingly evident that Broward's alleged violations are relatively minor and technical. And yet they are the sole grounds for suspension of a grant the termination of which would result in serious consequences for the children under the board of Broward County's supervision.

The transfer of property in the amount of $50,174.69 occurred between May 14, 1970, and July 26, 1971, to at least 25

nonpublic schools or churches which operated such schools. While it is true that none of these transactions with nonpublic schools were listed in the district's ESAP application, it is also true that the district was working under extreme time pressure. There were extremely brief time periods allotted to the district for preparation of the application, notification of regional meetings, time pressure for obtaining State approval, as well as board and citizens' group approval.

The second violation charge, concerning faculty ratios, can easily be explained. Due to a reduction of economic growth in Broward County, the school population growth decreased from an average of 6,000 per year to approximately 1,800 for the present school year of 1971–72. Subsequently, the Broward school system had to reduce the teacher allocation by 250 teachers. During this reduction, it had to reduce as much as possible where vacancies occurred, and these vacancies did not always occur in places where staff ratios needed to be maintained. The school board examined its ratios very carefully and found that with the transfer of 30-some teachers, it would be well above the Singleton case, which gives direction for staff integration. The board checked with the school board attorney, who, in turn, asked the presiding judge of the circuit court if he were interested in looking over its transfers and changes to meet the legal requirements. After hearing nothing from the court, the board assumed that what it is doing would be judiciously approved. At the preliminary hearing in Washington, it was indicated by the Office of Civil Rights that this particular item was curable. Since the board has taken steps to eliminate this complaint, it assumes this will no longer be an issue.

As to the specific transfers of property cited under the 1970–71 grant, two of these were to schools operating under IRS tax exemptions, a status which requires that participating schools not discriminate in their admissions policy. The third instance was to a church that purchased a school bus for church use only and the fourth sale and alleged violation occurred when a minister bought $108 worth of surplus desks and used an address which was later determined to be for a Baptist day school.

I think it is clear from these examples that in a school program the size of Broward's the alleged violations were of a technical and completely inadvertent nature or occurred so far down the administrative level that it went completely undetected by the board or its administrators until a party or parties made a point of bringing it to the Office of Education's attention.

I want to point out that when these "violations" were brought to the attention of the Office of Education and when program auditors were sent to Broward to look into this matter, the board and its administration were completely cooperative and earnestly asked these people, their regional and national administrators and other appropriate parties, to help the board correct any errors. I know Broward officials handed over records, completely opened up their files to HEW officials. Broward was obviously not trying to hide anything, but was being completely open, sharing their records and fully cooperating. It is understandable that the result has been one of nearly complete frustration for the Broward board.

Application requirements for an ESAP grant are extraordinarily vague. Just how far should any agency charged with education and not investigation check into the sale or resale of surplus property when any third party or straw man can buy equipment and ultimately dispose of it as he chooses? This is a problem many school districts are grappling with presently.

It seems to me the suspension of the grant is punitive in nature and does not get at the intent and purpose for which Congress authorized and appropriated the ESAP. There have been no major problems in school integration and its application in Broward. The board has been a frontrunner among the school systems in the country in cooperating with the courts. It has, in my opinion, literally leaned over backward to correct the wrongdoing, where and if there was wrongdoing, and has actively requested assistance in amending the Broward application of the ESAP grant—an effort which has been met with indifference by HEW officials who I believe ought to be cooperating in helping Broward to maintain their grant.

Mr. Goldberg in the same letter of December 6, 1971, stated:

> In your district's 1971–72 ESAP application, you listed no transactions with nonpublic schools and subscribed to the assurance set out in Section I of this letter, *knowing* (not underlined in the letter) as indicated by your own official records, that transactions with schools required to be listed in your district's application were not so listed.

Any omissions Broward made on its application were completely inadvertent and unintentional.

The hearing was held on this problem in Miami, on January 12, 1972. I attended the hearing because I wanted to determine if Broward County was in fact subverting the intent of Congress by obtaining Federal funds for the purpose of accelerating their desegregation programs and then trying to thwart desegregation by promoting the sale of school equipment to segregated schools. I found from the hearing and from all other information I could obtain that nothing could be further from the truth.

Broward County's problem may be one where the local school officials are guilty of a technical violation of an unreasonable rule. But the circumstances surrounding that violation must be considered, especially the fact that the county made a serious, concentrated effort to desegregate its schools; and that fact that the termination of a $1,700,000 HEW grant is a grossly disproportionate penalty for the minor infringements of the law Broward has been charged with. The penalty is simply not commensurate with the seriousness of the violation. I think the Office of Education is hitting a fly with a sledge hammer here. One of the reasons I feel the penalty is unduly harsh is because this program only began for 1970–71, and certainly there were many school districts which were in violation the first year just because the guidelines were not clearly established and explained. However, to punish the school district for the next year, 1971–72, for a minor violation or infraction seems to be going too far.

I believe the law was written to encourage local school districts to desegregate and at the same time to prevent abuses such as turning over public school buildings and other property to nonpublic schools practicing discrimination. It was presumed that reasonable regulations would follow this policy mandate, but the agency seems to be using an extremely broad interpretation of the congressional mandate.

In a March 1971 GAO report, the General Accounting Office criticized HEW for lax procedures in approving grants. It said in many cases under last year's grants, 1970–71, local school districts did not submit proper applications and HEW regional offices did not make accurate and proper determinations that grant applications were accurate, and that they were in line with the law.

GAO recommended that: First, regional officials should make a more thorough review of each application; second, information in applications be made a matter of record; and, third, that an effective monitoring system be provided for, to insure that grand funds made available to the school districts be used for the purposes specified in their applications, and the school districts comply with HEW regulations on nondiscrimination as well as with the other assurances given in their applications.

In a follow-up report by GAO entitled, "Weaknesses in School Districts' Implementation of the Emergency School Assistance" program, GAO concluded that:

> In many cases school districts were not complying with the HEW regulations and the assurances given in their applications. Although some of these cases did not affect the conduct of the school districts' program activities adversely, GAO's review indicates a need for HEW to strengthen its monitoring of projects under the program (p. 1.).
>
> One school district had leased a school building for $500 a year to a private school for white students only, without reporting the transaction to HEW as required (p. 2).

The report further stated:

> Most of the school districts did not fully comply with one or more of the assurances given in their ESAP applications or with certain ESAP regulation requirements pertaining to (1) formation and functioning of biracial and student advisory committees, (2) transfers of property to nonpublic schools practicing racial discrimination, and (3) publication of ESAP project terms and provisions (p. 26).

It goes on to say:

> At the time of our visits, none of the 13 school districts had fully complied with one or more of the assurances given in their ESAP applications or with certain ESAP regulations requirements pertaining to (1) assignment of teachers and staff, (2) transfer of property to nonpublic schools practicing racial discrimination, (3) supplanting of non-federal funds, (4) formation and use of biracial and student advisory committees, and (5) publi-

cation of ESAP project terms and provisions (p. 50).

I am citing these statements made by GAO to illustrate the fact that violations of the type ascribed to Broward are not attributable to Broward County alone. As the GAO report points out:

The weaknesses in project implementation were attributable, to a high degree, to the emergency nature of the program and to its need for expeditous planning, funding, and implementation. The lack of an effective HEW regional office monitoring system also contributed to the weaknesses in project implementation. (P. 2–3).

To that I might also add the lack of effective cooperation on the part of HEW officials with the local school district officials who extend every possible effort to correct the errors and cure the ills is also cause for weakness in project implementation.

CONCLUSION

HEW itself said last January that, by some yardsticks at least, the South's schools had become less segregated than the rest of the country's. And yet, in the case of Boston, it was a full 16 months after Senator MCCLELLAN'S comment during hearings before the Select Committee on Equal Educational Opportunity had caused an HEW investigation of that city's schools, that the Department finally "issued a warning," charging the city of Boston, December 1, 1971, with deliberately segregating black and white children in its schools and telling it to desegregate or forfeit its Federal funds. In the Berkeley system another violation of title VI of the Civil Rights Act of 1964 seems evident. As of today, the Federal Government has taken no action against a school system receiving a large amount of Federal money to run a Black house—a totally black school—in the district and a Brown house—for chicanos. Though the Berkeley school system has been touted as an integration model for the Nation, the Office of Education at the same time, through a multimillion dollar experimental school program, is actually funding programs which will decrease the amount of integration in the city. This may be described as bringing "research into the classroom" in some sections of the country—or as "resegregation" in other parts of the country.

In the case of Broward County we have a system that has made consistent, deliberate attempts to integrate. And because of alleged minor violations of the law it has had its grant suspended. While in the city of Boston, whose own State Board of Education has withheld $14 million of the city's State school funds because the city has failed to comply with the State's racial imbalance law, the Federal Government weakly issues a "warning." And in Berkeley, schools which have the effect of really "resegregating" an area held up for all the Nation to see as the pinnacle of integration success, are sanctioned by the Federal Government, recipients of grants from the U.S. Office of Education.

I think the Department of Health, Education, and Welfare would be much wiser to spend public tax money correcting gross abuses and flagrant violations of the law. Is the Office of Education making congressional policy work? Under their interpretation of the law, they would disqualify Broward County for the entire amount of their 1971–72 grant and require repayment based on relatively minor infractions—withholding badly needed funds for carrying out desegregation which is working well. The community and the school board are obviously trying hard to obey the law of the land, admittedly with a few minor misunderstandings. But any violations they are guilty of are obviously inadvertent, minor, technical, and brought upon because of strict time limitations for submission of applications and various approvals, and vagueness in the language of grant requirements. The Office of Education is using a broad interpretation of the law and narrowly applying its interpretation to gut the entire desegregation program in Broward.

President Nixon has said many times that he is in favor of local control of public schools, but while he speaks, his agency, HEW, through the narrowest interpretation of the law is acting contrary to the intent of the Congress.

I believe this interpretation to be unfair, the penalty unjust, and the Office of Education guilty of thwarting the congressional intent of Public Law 91–380 to assist local educational agencies to desegregate.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Superintendent of Schools of Broward County, Fla., together with the enclosures therein referred to.

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

THE SCHOOL BOARD OF
BROWARD COUNTY, FLA.,
January 21, 1972.

HON. LAWTON CHILES,
U.S. Senate, Senate Office Building, Washington, D.C.

Attention: Mr. George Patton.

DEAR MR. PATTON: It was good of you to telephone me this morning.

I am sending you, herewith, two statements:

1. Implementation of Unitary School System in Broward County, Florida, January, 1970, to January, 1972. (39 pages) Please note table of contents.

2. Statement of enrollment by years, using the 80th day of each of the years, that is, the end of the 4th month. Please note the information at the bottom of the page.

You will note we were advised on July 26, 1971, of the eligibility of this school system for Priority I consideration of ESAP funds. This was also the notification of a meeting to be held in Atlanta July 28, 1971, to discuss important concerns with respect to applications. The applicants were advised at this meeting that in order to be considered with the first group, an application must be received in Atlanta by August 13, 1971. Between July 28, 1971, and August 13, 1971, this school system was involved in the following:

1. Preparing application.

2. Securing the biracial committee approval, done August 3, 1971.

3. Securing Board approval, done August 10, 1971.

4. Securing approval of the State Commissioner of Education and Governor, done August 11, 1971. (On this date we were advised by the Office of Education officials that we could or should carry forward the program from the preceding year, and that it should be included with this new project instead of being handled as a separate project.)

5. Project reviewed, revised, rewritten and delivered in Atlanta August 13, 1971.

6. Broward County was advised $1,737,000 of our application in the amount of $7.9 million had been approved on August 30, 1971.

We proceeded, with all dispatch, to implement the program as planned. We received notice a Review Team consisting of officials from Atlanta and the Washington Office of Health, Education and Welfare would be here on November 8, 1971. Accompanying the group was an observer from the State Superintendent of Schools' Office. Their mission was to make an audit of the ESAP grant.

On December 6, 1971, Broward County was notified that ESAP funds were being suspended because of violations of assurances.

Two important items had influenced this. One the percentage of teachers, black and white, in relation to estimates given in the application. In the period of time from July 1, 1971, to August 31, 1971, staff members were constantly on leave, schools were closed, principals available only a very limited part of this time. This made it very difficult to keep to the tough schedule.

The second point about which considerable statements were made related to the sale of surplus school property. These were trivial, to say the least, whether looking at them from the standpoint of dollars involved, the relationship of these items to the objective of the school system in carrying forward an integration program which began in earnest in the School Year 1970–71. It has continued this year.

I challenge anyone to find a more effective, a more complete, program of integration for senior high and/or middle schools in any school district in America that has a similar percentage of black and white as are in this school district; referring, of course, to the large school districts.

No one can understand how such action, including the arrogant language used by Associate Commissioner of Education, Herman Goldberg, in announcing the suspension. It is unbelieveable that any officials of the United States Government, or through any staff members, would tolerate such procedure in such manner as has this school district been exposed.

Additional materials will be sent you. Will you please advise what would be most helpful? We are interested and determined that the situation in Broward County will be understood by any and all people throughout this country. We are determined to make it known exactly, make it known through the record established at the Administrative Hearing, exactly what has happened.

This school system has not endeavored, permitted, or thought about assistance to any private school, at any time, for any purpose whatsoever, except as was provided for by the law of the land. I refer to Title II, Library Materials.

Again, may I thank you, as I have already done the Senator in a note to him, for the courtesies extended Dr. McFatter and me. We stand ready to visit with you, to visit with anyone, appear before any committee, to challenge the Office of Education, the Department of Health, Education, and Welfare, any and all others with respect to this unrealistic procedure.

Sincerely yours,

BENJAMIN C. WILLIS,
Superintendent of Schools.

THE SCHOOL BOARD OF BROWARD COUNTY, FLA.

TOTAL ENROLLMENT, KINDERGARTEN, ELEMENTARY, MIDDLE SCHOOL, SENIOR HIGH SCHOOL, SPECIAL EDUCATION—1971-72

[By years, using 80th day to end of 4th month]

	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69	1969-70	1970-71	1971-72
Grades:[1]														
Kindergarten											0	504	1,839	5,000
1 to 6	31,376	34,795	37,854	39,469	41,423	43,507	45,767	48,130	50,104	53,202	55,728	58,559	53,460	51,469
6 to 8											1,918	5,706	28,340	30,307
7 to 9	11,917	14,024	15,963	17,365	18,061	19,258	20,742	21,991	23,076	24,545	25,106	24,681		
9 to 12													33,083	35,778
10 to 12	7,924	8,990	9,853	10,949	12,875	14,490	15,641	16,385	17,579	18,929	20,311	21,876		
Special education	243	327	332	373	395	446	320	314	428	505	985	1,252		
Special school													864	9792
Total	51,460	58,136	64,002	68,156	72,754	77,721	82,470	86,820	91,187	97,181	104,048	112,578	117,586	123.53

[1] Grade groupings were different.

Notes: In the past 2 years, the enrollment has increased 10,955. In the past 5 years, the enrollment has increased 32,346. In the past 10 years, the enrollment has increased 55,377. The enrollment has literally doubled in 10 years, an average growth exceeding 5,500 per year.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., December 6, 1971.

Mr. BENJAMIN C. WILLIS,
Superintendent of Schools, School Board of Broward County, Fla., Fort Lauderdale, Fla.

DEAR MR. WILLIS: On September 1, 1971, the School Board of Broward County, Florida, was awarded a grant of $1,737,000 under the Emergency School Assistance Program (Grant No. OEG-4-72-1101).

I.

In its application for ESAP assistance, dated August 10, 1971, your district assured the Commissioner of Education that it would comply with the regulations governing the program. Included in the assurances made by your district was the following:

"That in order to facilitate the administration of § 181.3(a)(4) such agency has fully disclosed in such application any transfer after May 27, 1968 of property or services to or for the benefit of a nonpublic school or school system (or a person intended to establish or operate a nonpublic school or school system), in which transfer it has engaged directly or indirectly; . . ."

This assurance is required by 45 CFR § 181.6(a)(4)(iv)(a) of the ESAP regulations and by Public Law 91-380, which contained the original appropriation for ESAP.

No transactions with nonpublic schools were listed in your district's ESAP application. However, according to information made available during the recent review of your district's ESAP program, your district transferred property in the amount of at least $50,174.69 between May 14, 1970, and July 26, 1971, to at least 25 nonpublic schools or churches which operated such schools. Therefore, your district has failed to comply with the above assurance.

II.

In its application for ESAP assistance for 1971-72, your district also made the following assurance:

"That the local educational agency has assigned its full-time classroom teachers so that the ratio of minority to nonminority group classroom teachers in each school is substantially the same as the ratio that exists in the faculty of the system as a whole."

This assurance is required by 45 CFR § 181.6(a)(4)(vi) of the ESAP regulations.

Information your district has submitted to this Department on your district's School Summary Report (Form OS/CR 101-1) and Individual Campus Report (Form OS/CR 102-1), as well as information provided during an on-site review of your district's ESAP program, indicates that the district has failed to meet the above requirement in its current faculty assignments.

III.

In view of the failure of your district to comply with the assurances as to listing property transferred to nonpublic schools or school systems (45 CFR § 181.6(a)(4)(iv)) and assignment of faculty (45 CFR § 181.6(a)(4)(vi)), I am required to inform you, pursuant to 45 CFR § 181.15, that the above described grant is subject to termination, upon completion of the hearings procedure outlined below.

IV.

With regard to eligibility for ESAP assistance, the ESAP regulations, in 45 CFR § 181.3(a)(4), provide:

"A local educational agency shall be ineligible for such assistance if it has engaged directly or indirectly in a transfer of property or services to or for the benefit of a nonpublic school or school system which practices discrimination on the basis of race, color, or national origin (or a person intending to establish or operate such a school or school system) . . . (ii) where such transfer was by a local educational agency which had applied for and received assistance under the program prior to July 1, 1971."

This regulation is required by Public Law 91-380, which contained the original appropriation for ESAP.

Your district was awarded a 1970-71 ESAP grant on October 6, 1970, in the amount of $772,551 (Grant No. OEG-4-71-0604). Information provided by your district indicates that since October 6, 1970, your district has transferred property to at least four nonpublic schools which discriminate on the basis of race, color, or national origin. The names and addresses of these schools, the property transferred and the compensation received therefor, and the dates of these transactions are as follows:

1. Lakeview Christian School, 4200 North Australian Avenue, West Palm Beach, Florida; purchased desks for $108 on May 12, 1971.

2. Gold Coast Christian School, 2800 West Prospect Road, Fort Lauderdale, Florida; purchased desks, chairs, lockers, and other items in the total amount of $834.15 on November 20, 1970, May 12, 1971, and June 22, 1971.

3. Dade Christian School, 6601 Northwest 167th Street, Hialeah, Florida; purchased desks, chairs, science tables, drafting tables, record players, and other equipment in the total amount of $3,670.65 on October 20, 1970, November 9, 1970, and June 2, 1971.

4. Central Baptist Church, 1101 Southwest Second Court, Fort Lauderdale, Florida; purchased a bus for $800 on January 26, 1971.

The above transactions, and each of them, render your district ineligible for ESAP assistance under the current program.

V.

Public Law 91-380, the statute governing the ESAP program, provides that no ESAP funds may be used to assist a local educational agency which engages, or has unlawfully engaged in, the gift, lease or sale of real or personal property or services to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin. . . .

Under this statute and 45 CFR § 181.3(a)(4), above, the requirement that an ESAP applicant not engage in the type of transactions described above is a basic condition of eligibility, the breach of which makes the applicant ineligible for any assistance under the program. Therefore, at the hearing described below, in addition to seeking an order of termination, we will ask the Hearing Examiner to determine that at the time your district applied for and received its 1971-72 ESAP grant, it was not eligible for such assistance, and that it is not now so eligible; to declare said grant to be void ab initio; and to order your district to repay all funds received under said grant to the Office of Education.

VI.

In considering an application for ESAP assistance, the Commissioner must rely upon the information submitted by an applicant school district in order to make a determination as to the district's eligibility for assistance. In your district's 1971-72 ESAP application, you listed no transactions with nonpublic schools and subscribed to the assurance set out in Section I of this letter, knowing, as indicated by your own official records, that transactions with schools required to be listed in your district's application were not so listed. The Commissioner relied upon this assurance, and the representations (or absence of same) made in connection therewith, in approving your district's ESAP application. Therefore, at the hearing described below, we will also ask the Hearing Examiner to determine that your district's 1971-72 ESAP grant was obtained by a material misrepresentation of fact upon which the Commissioner relied; to declare said grant to be void *ab initio*; and to order your district to repay all funds received under said grant to the Office of Education.

VII.

Under 45 CFR § 181.15 of the ESAP regulations, you are entitled to an opportunity for a hearing on the matters set out in Sections I through VI, above. This hearing will be scheduled at 10 a.m., Tuesday, January 4, 1972, in Miami, Florida. You will be advised shortly of the exact location.

If you intend to appear at this hearing, please so inform me in writing within ten days of the date of this letter, by indicating such intention to: Dr. Herman R. Goldberg, Associate Commissioner, Equal Educational Opportunity, Room 4153, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

The hearing on this matter will be conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. Sections 554-557). Proposed findings of fact, conclusions of law, and briefs will be submitted to the presiding officer within 20 days of the conclusion of the hearing. The initial decision of the Hearing Examiner will become the final decision of the Commissioner of Education without further proceedings, unless a request for review of the initial deci-

sion, together with briefs and any other supporting materials, is received by the Commissioner within 15 days after receipt of the initial decision. Your district, of course, has the right to be represented by counsel in these proceedings.

VIII.

In view of the serious and substantial questions concerning your district's compliance with the ESAP assurances and its eligibility for assistance under the ESAP program, I have determined, pursuant to 45 CFR § 181.15(a)(1) and (2), that your district's 1971–72 ESAP grant should be suspended during the pendency of the termination proceeding described above, and it is hereby suspended, effective three days from the date of this letter.

Any new expenditures or obligations made or incurred in connection with your district's ESAP program during the period of this suspension will not be recognized by the Government in the event assistance is ultimately terminated. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with your approved program or project, and not in anticipation of suspension or termination, shall not be considered new expenditures. (If your district's ESAP grant is declared void *ab initio*, no obligations incurred in connection with the grant will be recognized.)

Under 45 CFR § 181.15(b)(1), you may request an opportunity to show cause why this suspension of assistance should not be imposed. An informal meeting will be held for such purpose within seven days of receipt of such a request. Such request must be submitted to me in writing within ten days of the date of this letter.

Sincerely,

HERMAN R. GOLDBERG,
Associate Commissioner,
Equal Educational Opportunity.

EMERGENCY SCHOOL ASSISTANCE PROGRAM AND THE IMPLEMENTATION OF A UNITARY SCHOOL SYSTEM IN BROWARD COUNTY, FLA.

The evolvement of a unitary school system in Broward County, Florida has been an orderly and planned process for many years.

ASSIGNMENT AND REASSIGNMENT PLAN

Between September 1962, and September 1970, Broward County operated on an assignment-reassignment plan under the Federal District Court in Miami. A pupil had the right to request transfer to a school outside his boundary, and to have that request considered without regard to race. Under this plan many black children were reassigned to predominately white schools; however, because most schools are annually projected beyond capacity, other black children could not be reassigned to formerly white schools. In some cases reassignments were made to schools beyond capacity solely in order to grant a majority of minority requests.

"CITIZENS' REPORT TO THE BOARD OF PUBLIC INSTRUCTION"

The report had its inception in the appointment of a Steering Committee to make preliminary plans for selecting a lay citizen committee to help develop a quality education program for Broward County. In his communication to the Committee dated November 25, 1964, Superintendent Dr. Myron L. Ashmore, called special attention to the following items that should be agreed upon:

1. Develop objectives for the Committee.
2. Establish guidelines for operating.
3. Determine methods of selection and areas of representation.
4. Establish a time schedule.

After full discussion of these items by the Committee on December 14, 1964, they presented their findings as follows:

1. Develop objectives for the lay citizen committee.

a. Indicate the true feelings of the community towards the current education program being offered by the Broward County Public School System.

b. Determine the Committees' impressions of what the community wants and expects from its education program.

c. Study the quality education factors developed by the quality education committee, and to react to those factors.

d. Report to the Broward County Board of Public Instruction and Superintendent their recommendations as to a quality education program of which they believe the community should be aware and should support. Such report should contain a close look at what the quality educations factors will do not only for the children of the community, but for the business and industry of the community, and for the total Broward County population as a whole.

2. Establish operating guidelines for the lay citizen committee.

a. It was the consensus of the committee that the first guideline for the lay citizen committee should be that it be appointed officially by the Broward County Board of Public Instruction and the Superintendent in January in order to give it an official status which could be publicized to the community.

b. The lay citizen committee should organize itself into a workable group and subgroups for the purposes of studying the various factors which make up a quality education program.

c. The lay citizen committee should then collect data from the school system and from the community as needed for the study. Data from the school system should be made available and coordinated through one office rather than have each committee or subcommittee going from one office to another to collect its data.

d. The lay citizen committee in conjunction with the school officials should establish a calendar for its work and study.

e. A deadline should be placed upon its work schedule and for its report to the Broward County Board of Public Instruction and Superintendent.

3. Determine methods of selection and areas of representation.

The consensus was that the following should be considered for representation on the lay citizen committee:

a. There should be representation from all major geographic areas of Broward County.

b. There should be representation from various ethnic groups within the County.

c. The major chambers of commerce should have representation on this committee.

d. Other groups which should be represented should be from the following groups: Business and Industry, Banking and Investments.

Professional Groups: Broward County Medical Association, Broward County Bar Association.

Civic Groups: Church Representation, DAR, Broward County League of Women Voters, Fort Lauderdale Junior League, Broward County PTA Council.

To facilitate the work of the 77 member committee, it was agreed that a sub-committee for each of seven areas of interest should be formed. They were:

1. Administration and Supervision Committee
2. Auxiliary Services Committee
3. Finance Committee
4. Instructional Personnel Committee
5. Philosophy Committee
6. Plant Facilities Committee
7. Program of Instruction Committee

It was felt desirable to secure the services of a number of consultants, one in each of the seven fields that had been selected for study. After the work of the sub-committees had been under way for some time, one consultant was secured for each sub-committee. The consultants were to serve as resource persons and in an advisory relationship to the chairmen of the sub-committees.

PROCEDURE FOR CONDUCTING THE STUDY

The committees studied various printed materials, including school faculty "self-study" reports, manuals, system-wide reports and bulletins, and various texts on education which present statements of goals and objectives. Conferences and/or interviews were held with members of the central office staff, representative elementary and secondary school principals, teachers, and a limited number of junior and senior high school students.

A questionnaire was mailed to 6,104 tax paying citizens of the county in an effort to secure their opinions about various aspects of education in the county. The sample of citizens to whom the questionnaire was mailed was determined by taking every twenty-first name on the official tax roll (excluding corporations, churches, businesses, etc.). The Data Processing Division of the county school system assisted the Committee in designing the questionnaire and tabulating the response.

Early in 1966 most of the sub-committees had completed much of their study and had prepared progress reports. After thorough review by the Steering Committee, it was deemed desirable to request competent assistance to review all reports and to make suggestions regarding the preparation of a comprehensive report of the entire Study. This course of action was agreed upon and the Board of Education contracted with Associated Consultants in Education, Tallahassee, Florida, to provide assistance to the Steering Committee in the preparation of the final report for presentation on June 13, 1967.

SURVEY OF SCHOOL PLANTS

The Florida Statutes, 1967 Edition, require that school boards base school plant construction programs upon the findings and recommendations of a Survey of School Plants conducted cooperatively by the State Department of Education and the requesting school board.

Thus in November of 1967, the State and County School Boards conducted a cooperative school plant survey to update a 1965 survey.

The State Department of Education requested the educational staff of the county to assemble the following information for the survey staff:

1. Spot maps showing the residence of all elementary, middle, and high school students; the school attended by each pupil and the location of each school.
2. School membership trends of each school center for the past ten years.
3. An inventory and description of the facilities at each school center, including a floor plan of each building.
4. A list of the building projects under contract.
5. A statement of the policies of the board with respect to the types of sizes of facilities to be provided for new elementary; junior high, senior high, exceptional child and vocational schools. The State Department of Education assisted the county staff in developing the exceptional child program needs, and in developing the vocational education needs.
6. Information bearing on building costs, population trends, and similar matters.
7. A written description for each school center that provided for new construction and/or alterations since 1965, kindergarten rooms, a reduction in pupil capacity for elementary classroom and the utilization factor for secondary schools.

8. A distribution of the county-wide projection of pupil population (discussed on the following pages) among the various school centers on the basis of past trends and the best judgment as to where growth is most likely to occur.

9. Tentative recommendations for existing schools to meet level three accreditation standards and for proposed new school centers.

The survey was accepted by the Board as the school construction plan for the period from 1968 through 1973.

BIENNIAL DISTRICT MILLAGE PROGRAM

As a direct result of the favorable acceptance by the people of Broward County of the recommendations of the Citizens Committee for Quality Education, in November, 1967, the people of Broward County authorized the following district millage for the 1967–69 biennium:

	Mills
Operation	3.78
Building and Bus Reserve	1.22

This program provided the following:

1. A reduction of the pupil-teacher allocation formula in the secondary schools from one teacher per 28.6 students to one teacher per 27.6 students.

2. A reduction of the pupil-teacher allocation formula in the secondary schools from 158 students per teacher to 150 students per teacher.

3. An increased instructional salary base from $5,650 in 1967–68 to $6,000 in 1968–69 and to $6,200 in 1969–70.

4. A increased noninstructional salary base of 5.7 percent.

5. An allocation of teacher aides in the elementary schools of one per twelve teachers.

6. Expansion of the guidance program in the secondary schools.

7. Additional professional services in the elementary school by supplementing one teacher's salary per school to assist in curriculum development.

8. Provide capital improvements for the biennium.

THE SCHOOL CONSTRUCTION BOND

In March, 1968, just four months after the people had approved the biennial millage, they approved a $108 million school construction bond issue. The bond issue was twice as large as any bond issue ever proposed by any school system in Florida and three times as large as the largest bond issue ever passed in Florida. Passed by a 3 to 1 vote, it serves as the primary funding source for a $155 million five-year qualitative improvement program that runs through the 1972–73 school year.

The construction program was designed to provide the following:

1. Forty-five new schools.

2. Modernize and air-condition current schools.

3. Facilities for kindergarten.

4. Facilities for the exceptional child program.

5. Vocational-technical facilities.

6. Sufficient facilities to accommodate a pupil-teacher ratio of one teacher per 25 students in the elementary schools.

7. Reorganize the grade grouping of the school system into an elementary school (K to 5), middle school (6 to 8), and high school (9–12).

These two programs, the millage and the school construction programs, were planned to complement each other. That is, the millage program was designed as the first step in providing the increased operational costs built into the five-year qualitative improvement program. Full implementation of these plans would have made Broward County one of the top school systems in the Nation. Action by the 1968 Legislature that in effect nullified the voted millage and the 1969 Legislature in continuing the gap, aborted this possibility.

A UNITARY SCHOOL SYSTEM

The county's efforts to promote desegregation of all its schools and insure the elimination of a dual school system had resulted in a partially rather than a fully desegregated school system according to the U.S. Department of Health, Education and Welfare. On September 18, 1969, a letter to the Superintendent of Broward County Public Schools, indicated that the school system was not in full compliance with Title VI of the Civil Rights Act of 1964 and requested that a plan for complete elimination of the dual school structure be submitted by February 1, 1970.

In developing plans to comply with the above directive, the school system requested the help of the Department of Education through its Technical Assistance Program. Additional assistance was the subject of discussion in a November 3, 1969 meeting with representatives from the Florida School Desegregation Consulting Center of the University of Miami.

A plan for a fully desegregated school system was prepared and approved by the Board on December 16, 1969. Subsequent revision of the plan by Atlanta office of the U.S. Department of Health, Education, and Welfare was not approved by the Board.

COURT ORDER, APRIL 30, 1970

On January 22, 1970, the United States District Court for the Southern District of Florida, Miami Division, ordered the School Board of Broward County to file with the Court plans for a unitary school system. A plan was presented to the Court on February 16, 1970.

On April 3, 1970, the District Court issued a court order containing revisions in pupil counts, boundary changes, and other amendments. The School Board of Broward County complied with the order. In the late afternoon of April 30, 1970, the United States District Court ordered the implementation of the Unitary System as defined in the order.

The next day the School Board of Broward County, Florida appointed its fifth Superintendent within a three year period.

The tasks facing the new superintendent and the school system were tremendous. Though the court order specified that transfers of teachers, students, and equipment were not to be accomplished until after school was out in June, there was still uncertainty in the system, due to the reorganization of the county into five areas. The role of the area assistant superintendent and his staff were still being formulated.

The district was in its second year of transition from a junior high (7–9) to a middle school (6–8), and the associated trauma of the elementary being K–5, and the high school (9–12).

STUDENT REASSIGNMENTS

The student transfer and the reorganization into a middle school grade structure which put four grades (9–12) in each high school, caused every high school to have two grades new to each high school. The tenth grade students, and the ninth grade students would both be new to the high school facility.

Then the reassignment of an estimated 23,000 students in accordance with the court orders further complicated the problems faced by student bodies. In other words nearly 20% of the students in the county would be facing the problem of adjusting to another school environment.

TEACHER REASSIGNMENT

A plan for teacher reassignment was devised by a group selected by the Superintendent and under this plan 1,127 teachers were reassigned to new school centers. Principals cooperated with the Personnel Division in the selection of those persons reassigned so they would best fit the educational needs of the schools. For example, combinations were reassigned, insofar as possible, to other self-contained type centers.

Teachers with experience in individualized instructional programs were assigned to schools with similar programs wherever possible.

ADMINISTRATIVE STAFFING

The addition of a black administrator to the staff of each secondary school made an important contribution to smooth operation of the secondary schools. With the black authority figure in the front office, the black students could and did relate, and their problems did not become incidents.

SPECIAL PROGRAMS, MAY 7–SEPTEMBER 1, 1970

Desegregation orientation plan

Suggestions for the desegregation orientation program as a series of on going activities from May 1, to September 1, 1970 were obtained from the following:

1. The Civil Rights project conducted in Broward County in 1966–67.

2. The Ethnic Relations Committee appointed by the Superintendent.

3. The Area Assistant Superintendents.

4. Interested personnel chosen because of their experience in desegregated schools in Broward County.

5. Individuals who are interested and would like to be of assistance as needed.

The plan was based on the following assumptions:

1. As many school personnel as possible will be involved in the general orientation for desegregation; however, only those schools and facilities which are not currently desegregated, but are scheduled for desegregation in the plan, will be involved in the schedule to pair schools in areas and meet with experienced consultants from schools currently integrated.

The number of schools and teachers participating in the orientation program is shown below:

Level:	Schools	Teachers
Elementary	14	424
Middle and Junior High	12	617
Senior High	4	338
Volunteers	--	100
Total	30	1,479

The orientatiton was begun with a county-wide television program conducted by the Superintendent and his staff. It was telecast into all schools. All members of the profession were given the opportunity to phone in their questions so that each person would understand the impact of the integration order on his particular situation.

Seminar-workshops

Inservice programs in the form of workshops were held for teachers who were transferred from familiar programs into others with which they had no familiarity, e.g., a teacher with self-contained classroom experience transferred to an individualized program was given the opportunity to learn some of the techniques to be expected of him in 1970–71.

Human relations specialists conducted special programs and prepared personnel for some of the problems of integration which they might encounter. Other human relations workshops were conductd for principals, assistant administrators, and guidance personnel to prepare them for the special problems they may have to deal with in the desegregation process.

Intervisitation

A program of school intervisitation based on a system of faculty exchange was conducted to allow teachers with little experi-

ence in integrated school settings to see, first hand, the operation of fully integrated schools.

Instructional materials

Textbooks appropriate for the changed student body in newly integrated schools were supplied where possible by the Textbook Department and the supervisory staff working with school building principals.

The supervisor of Instructional Materials has conducted an analysis of school libraries to insure that adequate and appropriate materials were available for students in newly integrated schools.

Facilities and equipment

Buildings and programs originally designed to accommodate one age group of students were made to accommodate new groupings of students. Furniture, equipment, library books and textbooks, materials and supplies were shifted from school to school in order to accommodate these new grade groupings and ages of students.

Maintain program

Broward County has a totally accredited school system in grades 1–12. This accreditation is based on adequate program and building design, adequate equipment and materials, and adequate training of teachers. Implementation of the order required that standards be kept in mind at all times in order not to jeopardize the accreditation of the Broward County School System. Large student enrollments in the senior high schools and the result of double sessioning of these schools has required the addition of 30 school administrators to absorb the administrative load with this size program.

Student records

The large number of students shifted and the tracking problem to insure their records followed them and required that administrators, guidance personnel, and secretaries be employed for an additional time during June and July of 1970.

Student health and safety

A primary concern of school and community leaders alike, as they planned to implement District Court orders, was the health and safety of the thousands of children who would be required to travel greater distances or over new routes to get to school. Many special provisions have been made to guarantee their welfare: new streets and sidewalks were built, many walkways were extended, new signal lights were installed, adults were hired as crossing guards, needed school zones and markings were made, traffic control devices were obtained, security officers were assigned to some schools.

County and municipal concerns

Civic leaders and school personnel worked diligently to build healthy attitudes within the school communities most severely affected by the new school attendance regulations. These efforts were aimed at several specific goals:

Allaying the fears of parents whose children would have to move from a familiar school to a new one.

Studying access routes to all schools to assure safety for children.

Building positive relationships between parents and new school faculty members.

Familiarizing students with the new schools they would be attending.

Student transportation

School bus routes in Broward County which normally cover a total of 16,000 miles per day were substantially changed to accommodate new school boundaries included in the court order. An additional 5,500 miles per day and an increase of 4,000 transported students were a part of the implementation plans. In order to meet this new demand, the School System required 40 additional drivers. These drivers had to go through a minimum training program of 40 hours.

THE FIFTH CIRCUIT COURT OF APPEAL ORDER

All of the community time, and all the preparation time which the school system spent in implementing the April order was decreed by the Fifth Circuit Court of Appeals in New Orleans as only the beginning of the effort to implement a unitary school system. On August 18, 1970, less than ten days before 110,000 children would be returning to Broward County schools, the Fifth Circuit Court issued an order of its own which eliminated the 14 all black schools remaining in the original court order. The Fifth Circuit Court in New Orleans used the technique of pairing and clustering the 14 black schools with 26 white schools, and further required the redistricting of one all black high school.

To many parents and citizens, this order was completely devastating. It was impossibly timed. It completely disregarded neighborhood schools, instructional programs, physical facilities, special exemplary Migrant Education programs, and finally, no concern for the logistics of moving the students, instructional equipment, and material.

The Broward County School System was instructed to present, on September 2, 1970 at the U.S. District Court in Miami, plans for implementing the Fifth Circuit Court Order.

In order to accomplish this the superintendent and county staff, assisted by four consultants from the State Department of Education worked long hours, Sunday and evenings. The implementation plan was presented to the court as scheduled on September 2, 1970, and the School System was ordered to implement the plan by November, 1970.

CHARLOTTE-MECKLENBURG CASE

The School Board of Broward County, Fla., sought relief from the Fifth Circuit Court order by joining with the Charlotte-Mecklenburg Board of Education in presenting the problem to the Supreme Court. Subsequently, the Supreme Court issued a stay order on implementing the Fifth Circuit order on the pairing and clustering of the 40 elementary schools and the redistricting of the all black high school.

EMERGENCY SCHOOL ASSISTANCE PROGRAM 1970–71

On October 6, 1970, the School Board applied for funds under the original Emergency School Assistance Program. These funds, which amounted to $772,551, were used to employ personnel in the secondary schools and the five school districts with the capability of dealing with human relations problems. Other programs funded by the original ESAP program included special reading teachers, teacher aides, a student personnel project, computer file, and a county-wide security office.

THE SUPREME COURT DECISION ON APRIL 20, 1971

Not to interfere with the Circuit Court order included in the Charlotte-Mecklenburg case, resulted in a second court order for Broward County from the U.S. District Court in Miami. After additional presentations to the court in Miami by Broward school personnel on June 21, 1971, the court ordered the pairing and clustering and the redistricting of the black high school to be implemented for the school year 1971–72. The order included the pairing and clustering of only 39 elementary schools. The 40th elementary school, Markham Elementary School, was to remain as a model migrant elementary school.

For a second time within one year the community and school system worked to solve the many problems associated with the pairing and clustering order. Though the problems of implementation and costs had been outlined in the September 2, 1970 presentation to the U.S. District Court in Miami, the activities required for implementation were begun, and funds were found partially through the approved large loan.

ESAP GUIDELINES, ATLANTA JULY 28, 1971

With D day as August 30, 1971, when the mix-master assignment of approximately 27,000 elementary students was to be accomplished, a letter from H.E.W. was received by the Superintendent on July 26, 1971, announcing a meeting in Atlanta on July 28 to disseminate information on the guidelines for preparing and submitting proposals for funding under the Emergency School Assistance Program for 1971–72.

In order to present clearly the activities between July 28 and the receipt of the December 6 letter from Dr. Herman Goldberg, Associate Commissioner, Equal Educational Opportunity in Washington, and to emphasize the urgency of time and last minute decision-making required, the presentation will be chronological.

At the July 28th Atlanta meeting, the Broward County participants learned that the school system was a Priority I district because our court order was subsequent to the April 20, 1971 Supreme Court decision. Our court order was dated June 21 1971.

Guidelines were distributed and discussed by a panel of H.E.W. officials from Washington and Atlanta. The major discussion centered around how the proposal would be selected for funding. To be considered in the first group of applicants the district must have the proposal in Atlanta by August 13th.

Returning from Atlanta on July 29, the Broward participants decided that the implementation plan for the Fifth Circuit Court order would be the basis of the contents of our proposal. Thus, the involvement in contribution to the proposal was extensive.

ORIGINAL $4.3 MILLION ESAP TO BOARD AUGUST 5

The original $4.3 million ESAP program was presented to the Biracial Committee on Tuesday, August 3rd, and they recommended it for submission to the School Board on August 5th. Additional input to the proposal, after the approval of the Biracial Committee, caused the School Board to postpone action on it to permit the Biracial Committee to review the revised component. This they did, and the School Board approved the submission of the project on August 10th.

THE $4.3 MILLION ESAP TO TALLAHASSEE

An August 11th, the $4.3 million project was taken to Tallahassee. Both the Atlanta H.E.W. official and the State Department of Education representative advised that the Priority I project should include a total proposal, not just one for the paired-and-clustered court order.

The project, however, was walked through the procedure for obtaining the signature of the representative of the Governor and the Commissioner of Education. Both representatives were advised of our intent to expand the proposal for delivery to Atlanta on August 13th. They agreed.

REVISED ESAP $7.9 MILLION

August 12th was spent in making a total county proposal in accordance with suggestions. The revised ESAP proposal was now $7.9 million and included county-wide concerns, as well as a carry forward of appropriate ongoing ESAP programs for '70–71. On August 13th, the $7.9 million ESAP program was flown to Atlanta, and submitted to the H.E.W. office. During the same Atlanta visit the criteria for submitting a Priority III ESAP program was explained. Special forms and instruction were handed out and discussed.

From the Atlanta Priority III discussions, it was still possible that by the written definition appearing in the guidelines Broward

County may be considered as a Priority III district also.

During the week of August 16–19, the revised $7.9 million program was discussed with the Bi-racial Committee and approved by the School Board on August 19th.

MEMO TO SCHOOL BOARD—ESAP PROGRAM, AUGUST 19

At the School Board meeting on August 19th, Dr. Willis issued the following statement:

"As explained in the material in front of you on the revised ESAP program, the Federal and State official in Tallahassee indicated to us that our Priority I submission should also include all '70–71 ESAP programs which we wanted to carry forward into 1971–1972. This we did, and met the August 13th deadline in Atlanta.

Last night the Biracial Committee reviewed the revised project and recommended that the changes as submitted be accepted.

This morning at 9:00 A.M. we had a call from Atlanta advising us that the Educational Review Committee in Atlanta had completed its review of our project, and had made recommendations to H.E.W. in Washington on each component in the total project. These recommendations were not subject to rebuttal by us. We were asked by the Atlanta office whether we wanted to submit the project to Washington with the present recommendations of the Educational Review Committee, or whether we wanted to withdraw the project for resubmission with the second group. Formal announcement of funding for the second group applications would not be until September 10th. I advised the staff to call Atlanta and tell them to submit our proposal, as is, to H.E.W. in Washington.

I further advised the staff to prepare a full and complete analysis of the effect the recommendations would have on effective implementation of the court order, and in particular to develop additional details in support of all the components which the Educational Review Committee in Atlanta did not believe were appropriate for inclusion in the project.

At this point we are in the negotiation stage of the project, and we intend to do everything we can to make the final decision a non-bureaucratic one; that is, one in which the real concerns of Broward County are in fact a major part of the final decision on our Emergency School Assistance Program for 1971–72."

PRIORITY III ESAP PROGRAM

With funds cut so drastically, a decision was made to submit a Priority III ESAP program. Thus, on August 24th, the School Board approved the Priority II program for submission with a favorable review by the Biracial Committee the night before.

On August 25th, the Priority III program was delivered to Tallahassee for processing to arrive in Atlanta by the deadline date of August 27th.

FINAL NEGOTIATION, PRIORITY I ESAP, $1.7 MILLION, SEPTEMBER 1

A call from Atlanta on August 30 indicated that our ESAP proposal was approved by H.E.W. in Washington for $1,737,000, and they were prepared to discuss final negotiations with us at our convenience. Arrangements were made to discuss final details of the project in Atlanta on September 1st.

There was in Atlanta, on September 1st, an official from H.E.W. in Washington with authority to finalize our $1,737,000 ESAP program. This was done, and the grant's award notice was prepared and issued.

At the School Board meeting on September 2, 1971, Dr. Willis presented the following memorandum to the School Board members:

"We have been advised by the U.S. Office of Education in Atlanta to proceed with the implementation of our Emergency School Assistance Program which has been funded in the amount of $1,737,000.

The implementation of this program requires the employment of the following personnel:

Certified and instructional personnel	96
Aides and community workers	83
Secretary/typist	2

Mr. Jackson has been advised to proceed immediately to define the duties of these people, and to advertise the positions available. In partcular, the director of the project should be employed as soon as possible.

In all cases, the salary will be paid in accordance with the approved existing salary schedule.

All applicants will be advised of the terminal date of the project, and how such termination may affect their employment status in the county. In some cases, it may be necessary for the applicant to be granted a leave of absence in order to participate in the program.

Each one of the human relation specialists assigned to a secondary school will be responsible to the principal of that school and will be assisted in the performance of his duties by the Director of Human Relations, Mr. Allen Orr, and by one of the five district human relations specialists.

The educational services coordinator assigned to each of the paired/clustered schools for after-regular-hour use of the facility, will be directly responsible to the principal of the school, and then to the Area Assistant Superintendent. Each coordinator will be assisted by the county supervisory staff with special assistance from the county guidance supervisors.

Each of the part-time librarian aides will be responsible to the center coordinator and then to the principal of the school. The aide will be assisted by the school librarian and by the county media staff.

There are seven educational psychologists to be employed to conduct activities in the area of parent education, classroom learning management, and school faculty human relations programs.

All of the seven educational psychologists will be responsible directly to Dr. Robert Wieland, through Dr. James Fisher, Supervisor of the Diagnostic Center. The programs which these seven psychologists will be conducting will be described in detail by Drs. Wieland and Fisher in close cooperation with Dr. McComb and the staff of the Division of Curriculum and Teaching.

The two inservice reading instructors will work with Dr. Jarecke, and through her, will be responsible to Mr. Wilbur Marshall and then to Dr. McComb. The inservice reading program planned, and conducted, will be a program of the Division of Curriculum and Teaching and may vary as the principal and his staff identify their needs in reading instruction.

The school-community workers will assist the principals in helping parents, students, and the community to see that these are our schools. These people will be responsible to the principal, to the Area Assistant Superintendent, and then to Mr. Jackson.

Finally the secretary/typist will be assigned as needed".

H.E.W. review committee

In a telephone conversation on November 4, 1971, Mr. Lamon Clements, H.E.W., Atlanta, explained the needs of the H.E.W. Review Committee, whose visit from November 8–12 had been the subject of a letter from Mr. Dewey Dodds, Compliance Division, H.E.W., Atlanta.

OFFICE OF THE SUPERINTENDENT,
November 2, 1971.

To: Dr. Daniel Lee.
From: Dr. Benjamin C. Willis.
Re: Emergency School Assistance Program (ESAP) Review.

Please note the attached statement, under dates of November 8 through 12th.

We were not given much warning.

I would like for Dr. Lee and Mr. Orr to be available, waiting to receive the team on the morning of November 8th, to be of help to all that come.

STATE OF FLORIDA,
DEPARTMENT OF EDUCATION,
October 28, 1971.

MEMORANDUM

From: Shelley S. Boone.
Subject: Emergency School Assistance Program (ESAP) Review.

The Atlanta Regional Office, U.S. Office of Education has informed the Department of Education that a schedule has been arranged to review ESAP projects in certain counties. USOE has requested that we make the schedule known to you.

The review teams will be comprised of representatives from USOE, as well as the Office for Civil Rights and ESAP Community Group officials.

The schedule is as follows:

November 1 through 5—Hillsborough County (USOE representatives—John Lovegrove and Charlie Trussell).

November 8 through 12—Broward County (USOE representative—Richard McBeth).

November 29 through December 3—Palm Beach County (USOE representative—Richard McBeth).

December 6 through 10—Duval County (USOE representative—Charlie Trussell).

December 13 through 17—Pinellas County (USOE representative—Richard McBeth).

We trust that this method of having review teams comprised of the various federal agencies, rather than separate reviews, will meet with your satisfaction. It should eliminate duplication of effort and allow for a less complicated arrangement.

In the event the above-mentioned schedule conflicts with your schedule, you should phone Dr. John Lovegrove in Atlanta, Georgia, at 404/526–3076.

In the meanwhile, please let us know if we can be of my further assistance.

GUESTS

1. Lloyd R. Henderson, Office for Civil Rights, Washington.
2. Charles Snow, Office for Civil Rights, Washington.
3. Miss Rosa Marie King, Office for Civil Rights, Atlanta, Ga.
4. Lamar Clements, Office for Civil Rights, Atlanta, Ga.
5. Thomas Fagan, Office of Education, Washington.
6. David Lerch, Office of Education, Washington.
7. John H. Martin, Office of Education, Washington.
8. Richard MacBeth, Office of Education, Atlanta.
9. C. B. McDonald, Office of the General Counsel, Washington, D.C.
10. Art Jones, Department of Education, Florida.

Mr. Lamar Clements, Office of Civil Rights, Atlanta, Georgia, phone 404–526–3307, called to verify the appointment Miss Frye made with you for November 8, 1971, for HEW Review Team to come here at 2 p.m.

This is the meeting you have sent notes to Mr. Gardener, Dr. McFatter, Dr. Lee, and Mr. Orr to be available that day.

Mr. Clements said he would hope to see you that date—but that they would be here for the rest of the week.

Mr. Clements said Mr. Richard McBeth, USOE representative, Miss Rosa King, Mr. Charles Snow, and himself will be here along with others. Three or Four from Atlanta and Washington will be here from ESAP and three or four from Office of Education to review assurances of Civil Rights. (Also evaluating ESAP Programs).

Mr. Clements would like to have three people available on Tuesday, November 9, 1971, at 9 a.m., to meet with three of their people (not together) and then have three meet with their people at 1 p.m. in the afternoon with three of them (not together). He would like arrangements made with some specific interviews with personnel about some of the following: Assurances—needs copy of ESAP:

1. Transfers used regarding races.
2. Hiring, firing, recruiting.
3. Promotions, demotions (non-discriminatory treatment of personnel).

Personnel needed: (Two hours needed for each person).

1. Director of Personnel.
2. Person in charge of disposition and documents—sale of various properties. Person in charge of Surplus properties.

(System has not disposed of properties to private segregated schools). Person who has access of records—delineate to whom property has been sold.

3. Supervisor of Instruction.

Person who handles whole range of policy relating to schools, classes, curriculum, etc.

Assurances agreed to districts that pupils are not assigned properly. So as to relate to racial isolation—50 percent of the day is the area they are concerned with.

People involved in testing.

Curriculum of junior and senior high students.

4. Pupil Placement Director—Person in charge who would be related specifically to matters of discipline, extra curricular activities, etc.

Evaluate the whole extra curricular activities in the schools to assure that the schools operation is operating without discrimination.

5. Person in charge of bus transportation—knows routes—work with maps, some of the data in planning routes, familiar with all phases of bussing.

6. Director of ESAP Program.

This person will meet with Dr. McBeth, Office of Education. We will want to meet with him and coordinate with him. (Your director)

On Tuesday morning we would like to deal with Supervisor of Instruction—that area and the property transfer, business and ESAP man on Tuesday morning. (9 a.m.)

Tuesday afternoon—1 p.m.

1. Personnel Director
2. Transportation
3. Area Pupil Personnel in relation to discipline, etc.

Dr. Willis—we would like to meet with you on Monday at 2 p.m. and if needed again on Tuesday morning.

We would like the following materials available when we get there.

1. Forms 101 and 102 (These are the forms filled out—federal forms sent to HEW delineating racial number of pupils and teachers in all schools.)

These go to computer center and get delayed before they are sent to us. We would like a copy of those forms.

Mr. Wrinkle filled out these forms last year.

2. If you have district-wide policy statement on number of assurances.

Need copies of following:

1. Student Discipline policy
2. Dress or Behaviorial Codes
3. Extra Curricular Activities

(System-wide policy relative to participation):

3. Teacher Assignments Policy. If you have teachers transferred from one school to another is there a system policy relative to salaries, positions, etc.

For instance: Department head is transferred from one school to another do you comply with requirements?

Area of Pupil Assignment Policies:

a. Policy relating to achievement or variety of tests (If school has policy that does not allow grouping—but in form we got to know that)

How district arrives at positions—where children are placed—criteria for.

4. What is policy regarding inter- intra-districts—students transfers what basis are they transferred?

Couple of other things we would like is following data:

1. Listing by number, category and race of the para-professional personnel assignments in districts.

a. Teacher aides.
b. Cafeteria personnel.
c. Bus drivers.
d. Other non-professional persons who deal directly with children in the schools.

Illustration: If you have teacher aides employed in the system, how many are in each school by race?

Same for Cafeteria personnel, etc.

2. Racial Breakdown of each class in number of secondary schools—black and white is sufficient.

On master schedule on given school with number of blanket white students and other minorities for each class for each day for entire curriculum for the following schools:

1. Lauderdale Lakes Middle School.
2. Hallandale Junior High School.
3. Boyd Anderson High School.
4. Deerfield Beach High School.
5. Dillard High School.
6. Pompano Beach High School.
7. Stranahan High School.

(We try to get differences of size and location and racial composition.)

This would entail getting count from each teacher and that person's teacher in the school for that class day. . . . and putting it on master schedule.

If any of them wish to call me back to discuss the data requested for clarification, please tell them to do so.

DIARY OF HEW VISIT

(By Daniel P. Lee)

Monday, November 8, 1971, 2:00 p.m.

General Meeting
H.E.W. Team
Superintendent's Staff

Provided them with copies of the following. 1. E.S.A.P. Part IV with budget $1,737,000.

They provided us with the following: 1. Survey check list to be used by H.E.W. team.

The difficulty with the 41 secondary human relations specialists was discussed as regard the Biracial Committee's concern. 7:30 p.m.

H.E.W. Group meet with Biracial Committee:

H.E.W. wanted to know how the committee had been involved in the planning. Mr. Adams explained that there were many meetings. Mrs. Pate indicated that every component of the plan had been explained to them. H.E.W. asked if they had been supplied with the rules and regulations governing the ESAP Program. They claimed they had not been furnished any rules and regulations, as the H.E.W. team gave them a newspaper type copy of the printout.

Note: At the first meeting of the committee they were given a copy of the following:

1. General Terms and Conditions ESAP
2. Compilation of Amended Regulations for Continuing Resolutions for ESAP.

Tuesday, November 9, 1971, 9:00 a.m.

General Meeting H.E.W. and Staff:

Met with Mr. Lerch on Budget Staff Development Activities, Instructional Material. Provided him with a copy of the instructional material order for:

1. Hortt Elementary.
2. Others.

Arranged for him to visit:

1. The Inservice Reading Teachers.
2. Diagnostic Center (Physiologists).

Wednesday, November 10, 1971, 10:00 a.m. 3:30 p.m.

Transported Rosa King to the following schools for interviews with the principal, student advisory committees, and the human relation person in the secondary school.

Stranahan High School, talked to: Harold Mosser, Mrs. Overmeyer.

Plantation Middle School, Mrs. Berry was not present. Mrs. Holmes, Dean of Girls, and the human relations person escorted us through the facility.

Riverland Elementary School. Mr. Nelson Moore was not present. He was attending a special called meeting of the Central Area Elementary Principals.

Called Nathan Hankerson and had him hold for our visit.

Sabal Palm Elementary School. Talked with Nat Hankerson and he walked us through the facility and through the all black migrant program for pre-kindergarten.

Called Mrs. Grisham at Lincoln Park Elementary. She was at the meeting of the Central Area Elementary Principals.

Returned to the county and left Mrs. King with Ellen Parker.

Thursday, November 11, 1971, 9:00 a.m.

Met Miss Rosa King at the county office and took her back to the following schools:

Plantation Middle School. Talked with Mrs. Jean Berry and the student advisory committee.

Lincoln Park Elementary. Talked with Mrs. Grisham and she escorted us around the facility. We saw an all black exceptional child class.

Riverland Elementary. Talked with Mr. Nelson Moore and he showed us around the facility.

I sat in on all interviews with the principals.

I did not sit in on the interview with the Student Advisory Committee.

Interviews with the Principals consisted of facts concerning teacher and students reports as to black and white. The questions concerning the methods of assigning students to classes, and whether any classes in the school were all black or all white.

Possible assurance exceptions noted were:

1. The use of tests to assign students to advanced classes and to elective classes at Stranahan.

2. The all black exceptional child class at Lincoln Park.

3. The secondary human relation specialists have other assigned duties—they may be viewed as part time human relations personnel.

DADE COUNTY PUBLIC SCHOOLS,
ADMINISTRATION OFFICES,
Miami, Fla., January 31, 1972.

The Honorable LAWTON CHILES,
United States Senator,
Senate Office Building,
Washington, D.C.

DEAR MR. CHILES: Your assistance is requested to alleviate unreasonable restrictions imposed by PL 91-380 or its improper application.

The withholding of Federal funds to the Charlotte-Mecklenburg School District of North Carolina and the Broward County Schools of Florida has caused us to carefully review both our past and present practices. While we were gratified to find that the law has not been violated in our school system, an analysis of the Office of Education Form 5279, August, 1971, leaves no doubt that the law could be inadvertently violated, resulting in the imposition of severe penalties without just cause.

The restrictions imposed by law or its interpretation are too strict and are unnecessarily limiting the day-to-day operations of the Dade County Schools. The attached three forms have been developed by our attorneys. Their use, however, does not provide the necessary protection in that actions by persons or agencies not under the control of the

Board are apparently the full responsibility of the Board.

The limitations that we felt impelled to impose upon community agencies using school properties as shown in Attachment No. 1, provide little protection in that it is impossible to control what may be discussed in a meeting. Attachment No. 2 likely precludes the transfer of used equipment by trade in or sale. Attachment No. 3 serves no purpose other than to demonstrate the Board's intent which has been well established by the Board on numerous occasions.

It is felt that our concern is justified under the circumstances, and would appreciate your assistance.

Sincerely yours,

E. L. WHIGHAM,
Suprerintendent of Schools.

RENTER'S REPRESENTATION

In order to induce the School Board of Dade County, Florida, to enter into a rental agreement for the Board-owned or leased property located at ———, the undersigned Renter hereby represents that none of the property herein contracted for is being rented by or for any non-public educational facility or institution which discriminates, or may or will discriminate, against any student or person or class of students or other persons on the basis of race, color, creed or national origin, and that none of the property rented to the Renter, pursuant to this agreement, will be transferred or conveyed by him or any agent, employee or other person acting on his behalf, to any non-public educational facility or institution which discriminates, or which the Renter has reason to believe may or will discriminate against any student or person or class of students or other persons on the basis of race, color, creed or national origin.

BUYER'S REPRESENTATION

In order to induce the School Board of Dade County, Florida, to enter into the transaction as set forth in Bid ——— or Purchase Order Agreement ———, the undersigned Buyer hereby represents that none of the property herein contracted for is being purchased by or for any non-public educational facility or institution which discriminates or may or will discriminate, against any student or person or class of students or other persons on the basis of race, color, creed or national origin, and that none of the property sold to the Buyer, pursuant to this agreement, will be sold, transferred or conveyed by him or any agent, employee or other person acting on his behalf, to any non-public educational facility or institution which discriminates, or which the Buyer has reason to believe may or will discriminate against any student or person or class of students or other persons on the basis of race, color, creed or national origin.

SERVICE AGREEMENT

In order to induce the School Board of Dade County, Florida, to enter into an agreement to provide educational cooperatives services in conjunction with ———, the undersigned hereby represents that none of the services herein contracted for will benefit any non-public educational facility or institution which discriminates, or may or will discriminate, against any student or person or class of students or other persons on the basis of race, creed, color or national origin, and that none of the services, pursuant to this agreement, will be of benefit to any agent, employee or other person acting on his behalf, to any non-public educational facility or institution which discriminates, or which the undersigned has reason to believe may or will discriminate, against any student or person or class of students or other persons on the basis of race, color, creed or national origin.

The PRESIDING OFFICER (Mr. STEVENSON). The amendment will be modified as requested.

Mr. PELL. Mr. President, I have listened to the colloquy. I believe that, with the modification, the amendment improves the act by making it less harsh. I recommend that it be adopted, and yield back my time.

Mr. CHILES. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment, as modified.

The amendment was agreed to.

AMENDMENT NO. 912

Mr. RIBICOFF. Mr. President, I call up my amendment No. 912 and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

Mr. MANSFIELD. Mr. President, first, I am going to ask unanimous consent that the Senate go into recess until 2 o'clock, and then I would like to ask unanimous consent that at that time the amendment be read.

PRIVILEGE OF THE FLOOR

Mr. RIBICOFF. Mr. President, I ask unanimous consent that during the consideration of this amendment Mr. John Koskinen and Ted Leary of my staff be allowed the privilege of the floor.

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

RECESS UNTIL 2 P.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess until 2 p.m. and that at that time the Senator from Connecticut (Mr. RIBICOFF) be recognized and that then the amendment be read if desired.

There being no objection, at 1:31 p.m. the Senate took a recess until 2 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. BUCKLEY).

AMENDMENT NO. 912

The PRESIDING OFFICER (Mr. BUCKLEY). Under the previous order, the clerk will now report the amendment No. 912 of the Senator from Connecticut (Mr. RIBICOFF).

The assistant legislative clerk proceeded to read the amendment.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD at this point.

The text of the amendment is as follows:

On page 754, after line 2, insert the following:

TITLE X

SEC. 101. (a) There are authorized to be appropriated to the Commissioner, for the purpose of carrying out title VII of this Act, $1,000,000,000 for the fiscal year ending June 30, 1974, and the same amount for the fiscal year ending June 30, 1975.

(b) None of the funds authorized under section 101(a) shall be available for expenditure under the provisions of section 8(a)(2) of title VII.

SEC. 202. It is the purpose of this title—

(a) to require State and local educational agencies in metropolitan areas throughout this country to develop and implement plans which will reduce and eliminate minority group isolation in our public schools, whatever the cause of such isolation; and

(b) to provide financial assistance to assist State and local educational agencies to develop and implement such plans.

DEFINITIONS

SEC. 301. As used in this title, except when otherwise specified—

(a) The term "minority group isolation" means a condition in which minority group children in a school constitute more than 50 per centum of the average daily enrollment of that school. The term "minority group isolated" refers to a school in which such condition of minority group isolation exists.

(b) The term "school" means those elementary and secondary public schools of a State which are located within a standard metropolitan statistical area (SMSA).

(c) The term "noncooperating local educational agency" means any local educational agency which refuses or has refused to participate in the preparation, submission, revision, or implementation of an acceptable plan as required by this title.

(d) The term "cooperating local educational agency" means any local educational agency that has participated in the preparation, submission, revision, and implementation of an acceptable plan as required by this title.

(e) The term "State" means any State in which there is an area defined as a standard metropolitan statistical area, and the District of Columbia.

(f) The terms "Standard Metropolitan Statistical Area" or "SMSA" means the area in and around cities of fifty thousand inhabitants or more as defined by the Office of Management and Budget: *Provided*, That the term shall mean only that portion of any standard metropolitan statistical area which lies wholly within the boundaries of one State. Each portion of an SMSA in a different State shall be considered an independent SMSA for purposes of this title.

(g) The term "Federal educational funds" means Federal funds appropriated for grants, loans, contracts, or other financial assistance to a State educational agency, a local educational agency, an individual school, or to an individual in compensation for services rendered such organizations. This term shall not mean funds which go to individuals in the form of scholarships, fellowships, loans, cost-of-education payments, or other such assistance which is designed to further that individual's education, nor shall it mean funds which are to assist private, nonprofit organizations in the provision of education in preelementary and elementary situations.

THE PLAN

SEC. 401. Each State shall prepare and file with the Secretary for his approval, in accordance with regulations issued by him, a plan under which it will establish and supervise the operation in each SMSA of an SMSA agency to develop with the local educational agencies within the SMSA a plan to reduce minority group isolation in their schools: *Provided*, That, should any State refuse to comply with the provisions of this title, the local educational agencies within an SMSA may then independently create or assume control of such an SMSA agency.

SEC. 402. The plan developed by each such SMSA agency shall—

(a) contain the proposals by which the local educational agencies within an SMSA agree to reduce minority group isolation in their schools;

(b) provide that by a date approved by the Secretary, but in no event later than July 1, 1985, the percentage of minority group children enrolled in each school of the SMSA shall be at least 50 per centum of the percentage of minority group children enrolled in all the schools of that SMSA;

(c) include the use of techniques, as ap-

propriate in local circumstances, such as redrawing school boundaries, creating unified school districts, pairing schools or school districts, establishing educational parks and magnet schools as well as other techniques designed to end as soon as possible minority group isolation in all schools within the SMSA;

(d) provide for the establishment of committees composed of local parents, teachers, and students, the members of such committees to be representative of the minority and majority population groups of the SMSA as a whole and the geographical areas within the SMSA, to advise the local education agencies and the SMSA agency, in open consultation including public hearings at which such persons have had a full opportunity to explore and discuss the program for which assistance is being sought and to offer recommendations thereon, regarding the development of the plan required by this title and to report periodically to the Secretary on the extent of compliance with the requirements of this title;

(e) set forth such policies and procedures as will insure that the program for which assistance is sought will be operated in consultation with, and the involvement of, parents of the children and representatives of the area to be served, including the committees established for the purposes of section 402(d);

(f) provide that in each year of operation of the plan, substantial progress toward fulfilling the requirements of this title shall be made; and

(g) provide that State financial assistance to local educational agencies within each SMSA shall not be so calculated, based, rated, or fixed in any manner as to result in the condition that the per pupil contribution of the State to any minority group isolated school within the SMSA shall be less than per pupil contribution of the State to any nonminority group isolated school within the SMSA.

SEC. 403. (a) The plan required by section 402 must be submitted to and approved by the Secretary no later than July 1, 1975.

(b) The Secretary is authorized to promulgate and issue regulations regarding the time and manner of submission of such plans for his approval.

SEC. 404. In extreme and unusual cases should the Secretary determine that the size, shape, or population distribution of an SMSA would make inclusion of some parts of that SMSA in a plan unnecessary for fulfillment of the purposes of this title or excessively disruptive of the educational process, he may exempt such parts from participation in the plan. Such exemptions shall be in writing, fully explained and justified, and freely available to the public and the committees established for the purposes of section 402(d).

SEC. 405. Each SMSA agency shall annually prepare and file in accordance with regulations issued by the Secretary a report setting forth the results achieved under the plan and any necessary amendments to the plan to correct any deficiency of the plan. The Secretary shall assure that the plan and any reports filed with the Secretary in accordance with this section shall be made readily available to the public and to the committees established for the purposes of section 402(d).

SEC. 406. The Secretary is directed to review annually the plan and the reports of each SMSA agency. If the Secretary finds that for any reason the purposes of this title are not being effectuated by the plan and any amendments thereto he shall, after giving appropriate notice to all concerned parties, withdraw his approval of the plan and each local educational agency in question will be treated as a noncooperating local educational agency: *Provided*, That if within a period prescribed by the Secretary, but in no event exceeding one hundred and eighty days following the Secretary's withdrawal of approval, the local educational agencies through their SMSA agency submit a revised plan approved by the Secretary, the local educational agencies within the SMSA shall be entitled to receive all funds withheld during the period.

SEC. 407. (a) Because of its unique circumstances, the SMSA for the District of Columbia shall include for purposes of this title Montgomery and Prince Georges Counties in Maryland, Arlington, Fairfax, and Prince William Counties in Virginia, and the cities of Fall Church and Alexandria in Virginia, notwithstanding the provisions of section 301(f) of this title.

(b) A single plan shall be designed and submitted by all local educational agencies included in the District of Columbia SMSA: *Provided*, That the existence of noncooperating local educational agencies within this SMSA shall not affect the status of cooperating local educational agencies.

SEC. 40. No State or local educational agency shall formulate or administer its plan in a manner that will result in the separation of minority group children within a school or classroom.

FINANCIAL ASSISTANCE

SEC. 501. PLANNING FUNDS.—

(a) Within six months of the date of enactment of this title, the Secretary shall notify each State and local educational agency within an SMSA of the requirements of this title.

(b) The Secretary shall issue regulations establishing procedures and a timetable according to which SMSA agencies required to file a plan under this title may apply for funds authorized to be appropriated by this title.

(c) Upon application meeting the standards established by the Secretary, the Secretary shall grant to each SMSA agency funds for the development of a plan to reduce minority group isolation pursuant to the requirements of this title, the amount of such funds being determined by the number of minority group students and the number of all students enrolled in schools in the SMSA.

SEC. 502. (a) Each year following the implementation of an approved plan, cooperating local educational agencies, through their SMSA agency, may submit to the Secretary applications for financial assistance.

(b) An application for assistance under this title may be approved by the Secretary only if he determines that—

(1) such application—

(A) sets forth a plan which is sufficiently comprehensive to offer reasonable assurance that it will achieve one or more purposes for which grants may be made under this title; and

(B) contains such other information, terms, conditions, and assurances as the Secretary may require to carry out the purposes of this title;

(2) the applicant has adopted effective procedures for the continuing evaluation of programs or projects under this title;

(3) the programs or projects for which assistance is sought will not result, and in the case of an ongoing program or project has not resulted in an increase in the percentage of racial separation in any school.

(4) no part of the assistance provided under this title shall be used to supplant funds, equipment, or services which are used to assist any private school. Should any funds provided under this title be used for this purpose, or for any other purpose that the Secretary finds to be inconsistent with the purposes of this title, the Secretary shall file suit in the United States District Court for the District of Columbia against either the school which received such funds or the State educational agency, or both, for restitution of the funds.

(c) Upon the submission and approval of such an application, the Secretary is authorized to provide a cooperating local educational agency with sufficient funds to meet its obligations under its approved plan.

(d) Funds provided under this section may be used for the following purposes or any other purposes the Secretary finds will promote an end to minority group isolation:

(1) establishing and constructing magnet schools or educational parks in locations chosen to reduce the degree of minority group isolation in the schools of the SMSA;

(2) providing additional staff members including paraprofessionals to provide guidance, counseling, and training to assist minority group children in adjusting to a nonminority group isolated school environment;

(3) providing counseling, retraining, and guidance for professional and other staff members who will be working with minority group children;

(4) developing and implementing interracial educational programs and projects involving the joint participation of minority group and nonminority group children attending different schools, including extracurricular activities and cooperative exchanges or other arrangements between schools within the same or different school districts;

(5) providing such additional transportation for children as may be necessitated by the plan developed pursuant to this title: *Provided*, That in the review and approval of SMSA plans under this title, the Secretary shall assure that any burden of transportation shall fall equitably on both minority and majority children;

(6) expanding or altering facilities to accommodate students transferred under the plan;

(7) community activities, including public education efforts, in support of the plans, programs, projects, or other activities developed pursuant to this title;

(8) planning and evaluation activities and expenses of administration;

(9) work study programs to provide the financial assistance necessary for minority group children to complete their education; and

(10) other specially designed programs or projects which meet the purposes of this title.

(e) No funds granted under this title may be used to supplant State or local educational funds presently being expended by State and local educational agencies.

(f) The Secretary shall issue regulations establishing procedures and a timetable according to which State and local educational agencies entitled to apply for financial assistance under this title may apply to the Secretary for funds authorized to be appropriated by this section.

RESTRICTIONS ON FEDERAL FINANCIAL ASSISTANCE

SEC. 601. (a) No noncooperating local educational agency shall be entitled to receive any Federal educational funds: *Provided*, That the presence within an SMSA of a noncooperating local educational agency shall not affect the eligibility of cooperating local educational agencies in the SMSA to receive Federal educational funds.

(b) No State that fails to participate in the preparation, submission, revision, and implementation of any plan or plans required by this title, and no State that continues to provide State funds or assistance after July 1, 1975, to any non-cooperating local educational agency under section 401 shall be entitled to receive any Federal educational funds.

APPROPRIATIONS

SEC. 701. (a) For the fiscal years beginning July 1, 1973, and July 1, 1974, respectively,

there is authorized to be appropriated $25,000,000 each year to be used by SMSA agencies to develop and promulgate the plan herein required to be filed.

SEC. 702. For the fiscal years beginning July 1, 1975, and for each of the nine fiscal years following, there is authorized to be appropriated $2,000,000,000 each year for purposes of carrying out this title.

SEC. 703. Funds so appropriated shall remain available for obligation for one fiscal year beyond that for which they are appropriated.

JUDICIAL REVIEW

SEC. 801. (a) Any person affected by the enforcement or nonenforcement in the SMSA in which he resides of any provision of this title may petition the Secretary for an expedited hearing of his complaint.

(b) Within sixty days of receiving such petition the Secretary shall hold a formal hearing to determine whether the provisions and purposes of this title are being carried out in the cause raised by the petitioner. A transcript shall be kept of the proceedings of the hearing.

(c) Within thirty days after the date of the hearing, the Secretary shall issue a decision in writing which sets forth his findings and appropriate orders.

(d) The Secretary's decision shall be reviewable, upon petition, by the United States Court of Appeals for the District of Columbia circuit. The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(e) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

LAWS REPEALED

SEC. 901. The following provisions of law are hereby repealed:

(a) Section 181 of the Elementary and Secondary Education Act Amendments of 1966.

(b) Section 422 of the Elementary and Secondary Education Act Amendments of 1970.

(c) Section 2 of the Elementary and Secondary Education Act Amendments of 1970.

(d) Sections 102(d) and 205(f) of the Demonstration Cities and Metropolitan Development Act of 1966.

(e) Section 401(b) of the Civil Rights Act of 1964.

A 10-YEAR PROGRAM FOR SCHOOL INTEGRATION

Mr. RIBICOFF. Mr. President, no problem is more troubling or discouraging than developing a program to insure racial equality in this country. Every day, while we think we are marching forward, victory seems to move farther away. Schools are becoming more integrated in the South and our society seems more divided than ever. Public opinion polls show the public willing to accept integrated schooling at about the same time we exaggerate out of all reasonable proportion the so-called problem of busing.

The time for casting blame for our plight is gone as is the time for searching for simple and painless answers. Passing antibusing amendments—or defeating them—without more does nothing to deal with the problem we confront.

Nor does yielding to public hysteria. The fight for integration in this country has never been an easy one. But that is no reason to despair of success.

For years, massive opposition to the concept of school integration existed throughout the South. In 1963, 61 percent of parents surveyed opposed school integration, even when there were only a few blacks involved. But no one quit fighting for equal rights because the odds against winning were great. Thousands of dedicated men and women worked and struggled and took the time and effort to explain that discrimination could not be allowed to exist if our country was to avoid rotting from within. In May 1970, the Gallup poll reported that the percentage of parents in the South objecting to school integration with some blacks had dropped from 61 to 10.

Today, as we begin to address ourselves to the problem of integration as a nation, we again meet massive opposition, much of it hiding behind the acceptable code word busing. Some have already yielded to the pressure rather than standing firm as we have before.

The irony in the North is not just that so many schoolchildren already ride buses—400,000 of the 650,000 students in Connecticut do—but that you can count the court orders involving any busing at all in the North on one hand. No one is forced to ride a bus anywhere today in most States of the North and West.

I would hope that before we end this debate, we would go beyond the myth of forced busing to tackle the very real problem we confront of massive segregated education.

Nothing would be more inspiring for this country in these days of devisiveness, petty bickering and halting leadership than to have the U.S. Senate and all its Members from North, South, East and West, thoughtfully and constructively debate the future course of our society without rancor, bitterness or vindictiveness. We must face the crisis before us as a single body, free of regional prejudice and willing to provide this Nation with the leadership it seeks and has despaired of finding.

I have therefore called up my amendment which was introduced last week, designed to deal with the problem of racial isolation on a national basis. Time is short, but we debated this amendment almost 1 year ago at some length. In addition, the distinguished Senator from Minnesota (Mr. MONDALE) has held almost 2 years of hearings on this problem and has cosponsored my bill as the best way to proceed.

Until now, we have focused our attempts at integration on a district by district basis. However, in numerous areas of this country, the minority-group school population of the metropolitan area as a whole is less than 20 percent, while the percentage in the central city, separately, is above 50 percent and increasing rapidly.

Unfortunately, the specter of a transformation to majority black schools tends to drive whites out of school districts as soon as the minority-group population begins to increase. We will end this cycle only when we begin to integrate on a metropolitanwide basis. Only then can we destroy the stereotype of an integrated school as a predominantly minority school.

My amendment recognizes that we cannot afford to ignore the lessons of the past 18 years. We now know that massive social changes cannot be required overnight, nor can they be deferred until some indefinite time in the future. My amendment therefore envisions a 2-year pilot program, already provided by the committee bill, followed by 2 full years for planning at the local level on the basis of the experiences of this pilot program. Up to 10 years would then be allowed for implementation of the plans developed.

Substantial progress would have to be made during each year of the plan, but the 10-year implementation period would allow local leaders and parents the time needed to insure that integration was a positive program implemented with the necessary planning and public education.

At the end of the 10 years, every school throughout each metropolitan area would have to have a percentage of minority group students equal to at least one-half the percentage of minority group students in the metropolitan area as a whole. In most metropolitan areas, the percentage of minority students is less than 20 percent. This means that minority group students would have to make up at least 10 percent of each school in the area no later than 10 years after the plan began. This is only three or four students per class. I cannot believe that many Americans would object to this. All the public opinion polls show they would support it.

Even in the most heavily minority group areas such as Baltimore, where the minority group percentage is about 32 percent, there would be little difficulty. Under my amendment, each school in the Baltimore area would be required to have a minority group population of at least 16 percent no later than 10 years after adoption of an acceptable plan. This is only five or six in a class.

Many have objected recently to programs of racial quotas or strict racial balances. My amendment does not require either. It only specifies the minimum percentage of minority group students each school is to have. Many schools will have varying numbers beyond that percentage and, unfortunately, the present logistics of the situation are such that some schools will still be largely or totally composed of minority group students.

Adoption of the national commitment for integration provided in my amendment now is vital if the money in the committee bill for pilot programs is to be useful. If the pilot programs are not clearly the precursor to implementation of a national program, we will have demonstration programs only in those areas where local politicians and school board members are willing to take the initiative and advocate such programs on their own.

There may be such communities and they deserve our help and encourage-

ment. In most communities nothing will be done until the full and firm policy of the Congress is implemented and established. The critical areas, however, are those where local leaders would not voluntarily undertake a program of integration that was not a national requirement but would be willing and anxious to get in on the ground floor of an inevitable program. In many of these communities we would obtain the most meaningful information during the pilot program period.

My amendment would not mandate any particular plan or set of plans to be imposed from community to community across the country. Instead, great flexibility would be left to those involved at the local level, including parents and community members as well as educators and school officials. A plan useful and acceptable in Chicago might be substantially different than the plan for Hartford, Conn., or Durham, N.C. In addition, a plan developed at the local level is much more likely to be supported by those in the community than one imposed by authorities from Washington or another city. The planning process itself will serve an educational function for those involved at the local level.

A number of possible techniques are identified in my amendment, including construction of magnet schools and educational parks, together with school redistricting, pairing, and transportation. But it should be clear that this is not simply or primarily a busing proposal. If transportation is identified as a useful technique in a city, my amendment requires that the burden shall fall equitably on minority and majority children. But, if we have to depend solely upon busing children from one area to another on a metropolitanwide basis to achieve integration, we will fail, no matter what bill or plan we adopt.

Success will come only if we open up the suburbs for housing as well as education. Experience has shown that we will never have truly integrated schools until we have an integrated society. Schools have borne the burden of integration alone too long.

This does not mean we should not attack the segregation in our schools. We must.

But we must resolve to go beyond this and begin to provide housing in the suburbs for low- and middle-income whites as well as blacks.

My amendment recognizes, as does the committee's bill, that we can no longer require school systems to undertake new responsibilities or programs without sufficient funding to assure that the quality of education does not deteriorate. Two billion dollars a year would be provided for the training, construction, and additional educational materials required by my program.

Under my amendment, any school district that does not cooperate in the formulation and implementation of the regional plan will be ineligible to receive Federal education funds. Furthermore, no State which provides State funds to a noncooperating school district will be eligible for Federal funds.

The amendment I have outlined will require leadership at all levels in this country. For years, politicians have been unwilling to lead this Nation out of the darkness of racial isolation and hatred. Those in the North as well as the South have found it easier to inflame the issue rather than to solve it. It has been easier to look for faults in someone else or in some other area of the country rather than to analyze our own failings.

We have allowed race to be pitted against race, region against region, and class against class. The result has been inevitable. Anger, distrust, and suspicion infect the relationships of millions of Americans. Whites fear blacks and blacks distrust whites; Southerners are bitter about the North, which continually castigates the South; and the lower middle class are encouraged to take out their frustrations on the poor, the young, and the black.

We cannot allow this situation to continue if this country is to survive. Millions of Americans know this and are searching for leadership from someone, somewhere. A country that has found no leadership on the question of racial equality and questions the willingness of the Supreme Court to come to grips with this problem again as it did in 1954, will watch and listen to what we say and do. They will be guided by our views and will judge us by our actions.

Mr. President, I do believe that this amendment is the way to solve the problem. This body and the Executive must take the initiative and stop abdicating their responsibility to come up with constructive ideas and constructive proposals.

There may be better plans. I do not claim omniscience, but during the year since my amendment was first debated, no other Member of this body has come up with an alternative or suggested change. I have asked Members of this body, especially those expert in the field of education, to propose alternative suggestions. To date, I have not received any. Instead, we debate the fake issue of busing.

We should address ourselves to the real issue, and that is, how do we have quality integrated education in America?

Mr. ALLEN. Mr. President, first, I want to commend the distinguished Senator from Connecticut for the statesmanship he has shown throughout the entire discussion in the past two Congresses about the proper way to arrive at school desegregation. I want to commend him further for being one of the few—and I say one of the very few—Members of the Senate from outside the Southern States who seems to be sincerely committed to the proposition of desegregation of the public schools, north, east, south, and west. I think it takes a real statesman to take that position.

I want to commend him for the efforts he has made in support not only of his own amendment but also of the support he gave in the past Congress to the Stennis amendment, which would have sought without stipulating the exact method of desegregating to provide a uniform system of desegregation.

I should like to inquire of the Senator from Connecticut if I correctly understand his proposal that in a metropolitan area, over a period of 10 years, it would be the duty of the school systems in that metropolitan area to desegregate over that period of time up to the point where the ratio of students in the various school systems would be at least one-half of that ratio in the metropolitan area.

Mr. RIBICOFF. The Senator is correct. Let me give an example. In my own home town of Hartford, Conn., the figures show that 16 percent of the students in the metropolitan area are blacks and Puerto Ricans. Under my amendment, at the end of 10 years, all the schools in the metropolitan area—which include 27 towns—would have to have at least 8 percent of their students made up of minority pupils. This is one-half of the 16 percent minority-group population for the area. This would amount, really, to about two or three minority-group pupils in a class of 25.

I cannot conceive that the American people are so bigoted or narrow-minded that they would not allow their children to go to a school with two or three black students in a class.

Let me give the Senator another example, more extreme than the Hartford area, and that would be the metropolitan Baltimore area, where the minority-group percentage is larger, 32 percent. That would mean that throughout the metropolian area, the minority-group students in each school would make up at least 16 percent of the student body. This would actually be four or five minority students in a class of some 30 students. This is basically what I am driving at. I am giving the Senator examples to highlight the questions the Senator has asked.

Mr. ALLEN. Mr. President, I have said on the floor of the Senate, my distinguished colleague, the Senator from Alabama (Mr. SPARKMAN), has said on the floor of the Senate, and the distinguished Senator from Mississippi (Mr. STENNIS) has said on the floor of the Senate that we in the South can live with any system of desegregation that is applied uniformly throughout the country.

That is what I like about the plan of the distinguished Senator from Connecticut. It is not a plan for desegregating the public schools in the South. It is a plan for desegregating the public schools throughout the country. It would provide the same method for desegregating public schools in Hartford County or in New York City as is provided for the public schools in Birmingham, Ala. Is that correct?

Mr. RIBICOFF. The Senator is absolutely correct. We must realize that we are one Nation and the problems are the same everywhere. The census and the HEW figures have proven what I suspected at the time the Stennis amendment was under consideration: That integration has moved more rapidly in the Southern States than it has in the Northern States.

Mr. ALLEN. The HEW records indicate that.

Mr. RIBICOFF. The Senator is correct.

Mr. ALLEN. As a matter of fact, segregation is gaining in the North, whereas it is almost a thing of the past in the Southern parts of the country.

Mr. RIBICOFF. The Senator is correct.

Mr. ALLEN. Mr. President, as I understand the plan of the Senator from Connecticut, it would be a national plan that would be in effect throughout the country, in the metropolitan areas.

Mr. RIBICOFF. Yes. I would give the Senator some figures to make clear what we are talking about. In this country there are 268 standard metropolitan statistical areas (SMSA's) comprising about 70 percent of our population. An SMSA is comprised of a city of 50,000 or more people and the contiguous towns. Thirty percent of our population is scattered in rural areas and small towns and cities and would not come within the definition of an SMSA. Those communities would be subject only to the rules set by the courts at this time.

Mr. ALLEN. Mr. President, the Senator would concede that under the present solution and under the present rules of the Federal courts, we do have a system for desegregating in the South and an entirely different policy for desegregating in areas outside of the South. Is that not correct?

Mr. RIBICOFF. There is no question about that. One of the ironies that I see reflected in the panic about busing demonstrated on the floor is that we can count on one hand the busing orders in the North. There are busing orders in Detroit and Pontiac, Mich., Pasadena, Calif., and a few other cities. That is all.

Talking about busing in the North is talking about a fake issue. I called the school authorities in Connecticut this past weekend. There are about 650,000 students in Connecticut. Some 400,000 of them are bused to school every day. If we were to say that those 400,000 children could not be bused, we would have a revolution in the State of Connecticut. Forced busing is a scare word today in the North. And yet there are no court orders for busing in most Northern States. I am trying to work out a program to end discrimination so that we in the Congress will assume our responsibility on this question and not abdicate it to the courts.

Mr. ALLEN. Mr. President, has Congress not been derelict in its duty in providing an overall national policy that the court might adopt and implement?

Mr. RIBICOFF. I think Congress is more than derelict. Congress is failing in its basic function to legislate.

My feeling is that the courts are getting mighty tired of taking the rap and making all the tough decisions to solve a very knotty problem. I think the courts would welcome with enthusiasm Congress tackling this matter and coming up with a plan that makes sense and that applies in the North, South, East, and West so that we treat all people in the country uniformly.

Mr. ALLEN. Mr. President, I think the Senator is correct. Earlier today in my remarks on the floor I pointed out that it looks to the junior Senator from Alabama as if the courts are asking Congress to set guidelines in this area, and Congress is not doing it.

Mr. RIBICOFF. I would predict that, if the Scott-Mansfield proposal becomes the law, the courts may well throw up their hands and say, "This is your problem; handle it from now on."

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

Mr. ALLEN. Mr. President, I thank the distinguished Senator from Connecticut for yielding, and I apologize for using up his time.

Mr. RIBICOFF. It has been a pleasure to engage in the colloquy with the Senator from Alabama.

Mr. PELL. Mr. President, I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, this is a matter which has come before us on a number of occasions. It troubles me very deeply. In the first place, I certainly impute the best of motives to the Senator from Connecticut in this regard. I am troubled by the matter to such an extent that I could not in good conscience support it and vote for it. I shall therefore be compelled to vote against it. That does not mean that we cannot find some way to utilize some part of this idea.

This proposal deals with the question of racial segregation, whether constitutional or unconstitutional. Whether de facto segregation is lawful or unlawful, is not relevant to the requirements of this amendment. The Senator from Connecticut says that is a virtue. To me it is not, because we should not give up our focus on the concept of individual rights against discrimination at the same time we pursue educational and social policies more broadly. There is de jure segregation—a result of official discrimination—in the South and in the North. That is why we have the activity in the courts.

This plan does not shrink from busing; I point out that the plan expressly contemplates that. Busing is an element of it. It is specific. The transportation of children must be provided for.

Another thing, aside from the premise on which it is based, is that it lays down a racial definition in terms of integration and not a constitutional question. It says that we are determined to bring about unity through introducing some of the minority races in every school, whether this is wise or unwise, or educationally desirable or not in a given situation.

For example, Mr. President, the basis for this kind of dealing with racial imbalance—and the words used in the plan of the Senator from Connecticut are "racial separation"—is the SMSA. The SMSA is the standard metropolitan statistical area. In my State one SMSA extends from the tip of Manhattan Island to Montauk Point. When we talk about busing or equalizing the percentage of students from Manhattan Island out to Montauk Point, we get ourselves involved in a situation that involves an enormous population and an enormous area within the context of the pending bill and distances of more than 140 miles.

This would require $2 billion a year. That is a fantastic amount of money, when the bill—and it is an enormous bill—comes to about $6 billion a year. And in addition we are spending about $4.5 billion a year now. This would be another $2 billion added to what we are spending now.

The crushing thing to me is that this bill, aside from what it does, would transfer the whole Federal plan with respect to desegregation to a totally different base, because it has very tight sanctions. In other words, school districts either comply with the plan of the Senator from Connecticut or lose all Federal education funds.

Mr. President, I beg those who are interested, and some of my colleagues on the committee are interested, to look at section 601. Section 601 absolutely cuts off any kind of Federal education funds unless you go this route. I simply cannot agree to that. I think this is too untried, too new, and too amorphous to cut off all Federal educational funds unless every district in the country goes this route.

What is a practical suggestion? I believe, and this will not influence the Senator from Connecticut and I do not seek to overween him in any way, that this is a very interesting concept.

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

Mr. JAVITS. Mr. President, will the Senator yield to me for 2 additional minutes?

Mr. PELL. I yield 2 additional minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I have stated this to the Senator from Connecticut heretofore. I believe that it is an interesting concept, but I do not believe it should be put on this bill, which already has many things to break its back in terms of money, in terms of plans, and we will have to see where we are going to go.

The Ribicoff plan, which is a totally new approach, should be a separate bill. As I stated, I am not trying to overween the Senator from Connecticut or to talk him out of the proposal. I am not talking about that.

If it still remains open, I would lend myself, and even join the Senator, in trying to use this as some basis for a totally new approach—one may be deserved—to the whole question of dealing with racial imbalance and integration.

We are trying to do it in New York. As the Senator knows, our State has been a leader, not only in dealing with desegregation in a constitutional sense, but also in dealing with problems of racial imbalance as they impinge on education.

I would lend myself to reworking the Ribicoff plan as a separate bill with the idea that we are embarking on a totally new plan.

I repeat that I am not trying to influence the Senator to withdraw his amendment but I would pledge myself to

work with the matter and to bring out a bill which would be credible, and which I would like very much to support. However, this would take us upon a totally new path in this highly troublesome matter.

Standing here and now, to put it on this bill, I cannot in good conscience go along with the proposal.

For the record, I would like to indicate some of the specific problems raised for me by the Ribicoff amendment:

First, the SMSA was conceived as a statistical unit unrelated to the purposes of education. It often bears little realistic relation to the practicalities of student assignment, for example, Bedford-Stuyvesant and Montauk Point;

Second, in granting the Secretary of HEW discretion to exempt some parts of an SMSA from participation in a plan, the amendment provides no standards relating either to time or distance of travel—Montauk Point and Harlem are within the same SMSA—or other educational considerations;

Third, provides for a blunderbuss dispersal of minority group students. In some metropolitan areas, it would result in reasonably integrated schools; in other areas it would leave one minority student in every classroom. Not only would this create unnecessary expense, it would also undermine a sense of identity and community not inconsistent with integration, but inconsistent with overly wide dispersal.

Examples of such counter-productive results could be found in such major cities as Seattle and Minneapolis. As of 1968, the SMSA of Seattle had 6.6 percent minority group students, Minneapolis, 3.5 percent. Under the Ribicoff formula, minority students in these cities would be so widely dispersed as to be wholly isolated from one another;

Fourth, although the amendment gives lipservice—pages 11–12—to the notion that transportation burdens should fall equally on majority and minority children, there are few incentives provided to result in many suburban children choosing to attend school in the cities—the magnet school rationale presented is expensive, and in any event, will only involve small numbers of children; and

Fifth, the committee bill gives equal representation on parent committees to minority and nonminority parents, reflecting a belief in pluralism within our schools. By giving minority parents only a proportionate voice, the Ribicoff amendment dilutes the effectiveness of their participation in assuring pluralistic curricula, et cetra.

Mr. RIBICOFF. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. PELL. Mr. President, how much time remains on either side.

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. PELL. And the Senator from Connecticut?

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

Mr. PELL. Mr. President, I yield to the Senator from Minnesota for 4 minutes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. MONDALE. Mr. President, I rise to support the pending amendment of the Senator from Connecticut. It seems to me there are several indispensable considerations that must be taken into account as we look at the troubled racial and educational climate of our country.

First, as I hope we are deciding here today, we must have a continued commitment to the elimination of discrimination in every school system of this country. I do not regard that as a standard which applies only to the South; I regard it as a national standard which applies, and should be applied, to every school system in our Nation.

Without victory for support of that constitutional requirement I think all else we do is lost. We must not abandon their effort, to which this Nation and its laws have been committed over the many years.

Today we have voted, and hopefully the Congress as a whole will take this position, to continue support for the elimination of officially sponsored school segregation in all school systems throughout the country.

I see the amendment offered by the Senator from Connecticut in a different context because it seeks to deal with the broader issue of what best serves the educational and social health of this country.

The Senator from Connecticut has looked with great care at the undeniable trends toward concentration of the poor, the black, and other minorities in the central cities of this country—a trend which, according to the latest census, is becoming more accelerated rather than less. He has looked at the undeniable fact that many of our central city schools are failing abysmally, and will fail in the future, and at the fact that nothing contributes to racial tensions more than separation. He has come up with a sophisticated and sensitive plan to bring about integrated education in the communities of those metropolitan areas.

I cannot say I agree with every detail of the amendment, it does underscore the need for a program in this area, and it underscores the need to look at the broader problems that must be dealt with if we are going to have effective and quality education in an integrated America. For that reason I am pleased to support the amendment of the Senator from Connecticut, and I join many others in commending him for his creativity and courage in this field.

Mr. RIBICOFF. Mr. President, I take this opportunity to express my gratitude to the distinguished Senator from Minnesota who for 2 years has been living with this problem. No one knows this problem better and I do appreciate his support.

Mr. PELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Rhode Island has 3 minutes remaining.

Mr. PELL. Mr. President, few men in this body have had the interest and concern about this problem than has the senior Senator from Connecticut. I was rereading the debate on this same amendment of just under a year ago. I realize this is a very far reaching program and means a great deal to him. But I also realize that if we add this amendment to the bill at this time we are authorizing an additional $2 billion. In addition, what would concern me is that we would be legislating a 10-year bill, with a cost of $20 billion, in a bill with a considerably shorter life.

In addition, section 709 of the emergency school assistance portion of S. 659 does to a considerable degree, although not as well and completely as he would like, accomplish what the Senator from Connecticut would like to have done in the first 2 years of this amendment.

For these reasons I must reluctantly oppose the amendment of the Senator from Connecticut.

Mr. JAVITS. Mr. President, will the Senator yield to me for 1 minute?

Mr. PELL. I yield 1 minute to the Senator from New York.

Mr. JAVITS. Mr. President, again I reiterate that I realize the split in the committee. Again I reiterate if the matter is left in that position I would undertake, in connection with the Ribicoff amendment to which its sponsor has given much thought and interest in personal responsibility, to really do my utmost to help him, because it is his creation, to work out a constructive addition to the path we are on now. But I cannot feel that can be done in the context we are now working on. I am sorry but I just cannot see it.

The PRESIDING OFFICER. All time has expired. The yeas and nays have been ordered. The clerk will call the roll.

The second assisant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Wyoming (Mr. MCGEE), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 29, nays 65, as follows:

[No. 69 Leg.]

YEAS—29

Allen	Hart	Mondale
Baker	Hughes	Moss
Bayh	Inouye	Muskie
Bellmon	Jordan, N.C.	Nelson
Church	Kennedy	Packwood
Cooper	Long	Ribicoff
Cranston	Magnuson	Sparkman
Eastland	Mansfield	Stennis
Ellender	McGovern	Williams
Fulbright	Metcalf	

NAYS—65

Aiken	Brock	Chiles
Allott	Brooke	Cook
Anderson	Buckley	Cotton
Beall	Burdick	Curtis
Bennett	Byrd, Va.	Dole
Bentsen	Byrd, W. Va.	Dominick
Bible	Cannon	Eagleton
Boggs	Case	Ervin

Fannin	Mathias	Smith
Fong	McClellan	Spong
Gambrell	Miller	Stafford
Goldwater	Montoya	Stevens
Gravel	Pastore	Stevenson
Griffin	Pearson	Symington
Gurney	Pell	Taft
Hansen	Percy	Talmadge
Hatfield	Proxmire	Thurmond
Hollings	Randolph	Tower
Hruska	Roth	Tunney
Humphrey	Saxbe	Weicker
Javits	Schweiker	Young
Jordan, Idaho	Scott	

NOT VOTING—6

Harris	Jackson	McIntyre
Hartke	McGee	Mundt

So Mr. RIBICOFF'S amendment (No. 912) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 951

Mr. ERVIN. Mr. President, I call up my amendment No. 951, and ask that it be stated as modified.

The PRESIDING OFFICER. In accordance with the previous order, the Senator from Tennessee (Mr. BAKER) has the floor.

Mr. BAKER. Mr. President, I ask unanimous consent that I may yield to the Senator from North Carolina for the purpose of offering his amendment without losing my right to the floor.

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

Mr. ERVIN. I ask that the amendment be stated as modified.

The assistant legislative clerk read as follows:

At the end of the committee amendment add the following additional title and section appropriately numbered:

TITLE——RULES OF EVIDENCE TO BE UNIFORM

SEC. —. "The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning students to public schools shall be uniform throughout the United States.

Mr. ERVIN. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Virginia (Mr. SPONG) be added as a cosponsor of this amendment.

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

Mr. ERVIN. It is my understanding that the floor manager of the bill and the ranking minority member of the committee are willing to accept the amendment, and for that reason I am prepared to yield back my time.

Mr. PELL. Mr. President, I believe the Senator from Minnesota (Mr. MONDALE) would like a minute.

Mr. ERVIN. I yield the Senator from Minnesota as much time as he may use, and yield back the remainder of the time after he has finished.

Mr. MONDALE. Mr. President, I think the amendment as modified is an excellent one. I have felt, as I have reviewed the record of cases on the desegregation issue in this country, that the strongest argument the South has made is that the law against official discrimination has been prosecuted more vigorously in the South than in the North.

As I understand the amendment as modified by the Senator from North Carolina, it simply says that the same rules of evidence, presumptions, and the rest should obtain in every school desegregation lawsuit in the country, North or South, and I strongly favor that. I think it is essential fairness, and I support it.

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

Mr. MONDALE. I yield.

Mr. JAVITS. I join the Senator in that.

The Senator from North Carolina, at our request, was gracious enough to eliminate from his amendment, as will be noted by the printed amendment, what might have worried some of us about eliminating not evidentiary questions but substantive questions contained in the Civil Rights Act of 1964. As it now stands, I think it simply pursues Senator Ervin's constant campaign which resulted in the adoption of the Stennis amendment some time ago.

I thoroughly associate myself with the views of the Senator from Minnesota.

Mr. PELL. Mr. President, I think the amendment of the Senator from North Carolina is just and fair. It helps insure that all parts of the country will be treated alike.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from North Carolina.

The amendment was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Tennessee (Mr. BAKER) is recognized.

Mr. BAKER. Mr. President, I call up my amendment which is at 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. BAKER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 734, after line 22, insert at the end of Title VII the following new section:

SEC. 718. (a) Notwithstanding any other law or provision of law, in the case of any order on the part of any United States District Court the effect of which is or would be to require that pupils be transported to or from school on the basis of race, color, religion, or national origin, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall take effect upon the date of its enactment and shall expire at midnight on June 30, 1973.

(b) If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remaning provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby.

Mr. BAKER. Mr. President, this amendment to section 718 is, in effect and essentially, a reoffering of the third section of the Griffin amendment. It might be characterized as a legislative stay or supersedeas of judicially required busing until the orders of the trying court have been finally determined on appeal to the U.S. Supreme Court or until the time for appeal has expired.

Mr. President, these issues have been argued at length in our previous consideration of both the Griffin amendment and the Mansfield-Scott amendment, and I shall not detain the Senate long in a further elaboration of these points. I think it is sufficient to say that the distinction between this stay proposal and the Mansfield-Scott stay proposal is that Mansfield-Scott is applicable only to what I shall term the Richmond-type cases—that is, cases in which the U.S. district court has ordered the consolidation of school districts, consisting of counties, townships, cities, and the like. The Mansfield-Scott substitute does not apply to cases where there is judicially decreed busing for racial balance not involving school district lines.

It occurs to the senior Senator from Tennessee, in offering this amendment, that the question of whether judicially decreed busing crosses such jurisdictional lines is not a valid and desirable basis for deciding that the order to bus shall or shall not be stayed pending a final determination of appeal to the U.S. Supreme Court.

I think, rather, it is far more equitable and far more desirable to say, in effect, that Congress determines as a matter of public policy that judicially ordered busing of students in desegregation cases is of such moment, of such importance and significance, that the interim orders of the trying court and the appellate courts shall not be implemented until each case is finally determined on appeal to the U.S. Supreme Court or until the time for appeal has expired and the order thus has become final.

In addition, this amendment differs from the Griffin stay order by incorporating the language of Mansfield-Scott which provides that the section shall take effect upon the date of its enactment and shall expire at midnight on June 30, 1973. This section was put into the amendment to meet the argument which was anticipated to be made by some that this sort of stay could run ad infinitum, without end.

Thus, it appears to me that it is desirable that Congress now express itself in favor of a stay of the effectiveness of any busing order until that busing order has been fully tried and determined in the Federal judiciary, through the appellate procedure, to final judgment in the U.S. Supreme Court. This is far more narrow than the scope of the Griffin amendment. In many respects, it is far more narrow than the effect of the Scott-Mansfield substitute. It is highly desirable, in my opinion, that we now go on record as saying to ourselves, to the country, and to the courts that this matter is of such moment and importance that busing or-

ders should not be implemented until the particular busing order is fully tried and determined in the U.S. Supreme Court or until the opportunity for such appeal has expired.

Mr. DOMINICK. Mr. President, will the Senator yield at that point?

Mr. BAKER. I yield.

Mr. DOMINICK. I am very happy that the Senator from Tennessee has offered this amendment. It struck me, in studying the Scott-Mansfield amendment, that one of the things that it might do would be to tend to have large districts which are now one district for the purpose of the financial end divide themselves into two or three, in order to comply with the conditions that are set forth in the Scott-Mansfield substitute, in order to avoid any court-ordered busing, which therefore would defeat the very thing we have been trying to do in consolidating districts for the purpose of getting a larger tax base and a better school district for all. I think this handles that matter rather well.

I might say to Senators that we have a situation in the West and in many other areas of very large districts where busing conceivably could go on for 60 to 100 miles, in order to get from one end of the district to another. This amendment would handle that. If the amendment is rejected, we will be forced to do something about incorporating larger districts of this kind so that they will be subject to the same conditions of the Scott-Mansfield theory as now applies.

Mr. BAKER. I thank the junior Senator from Colorado.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

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

Mr. BAKER. I yield to the Senator from Georgia.

Mr. TALMADGE. Mr. President, I compliment the Senator from Tennessee on his amendment. I shall certainly support it. I think it is a great step forward.

One of the problems we have in our educational system at the present time is that we have just about as many different orders as we have different district judges. In one district, a judge will order this done. In another district, which might be contiguous to the first district, a judge will order something else. In a third district, he might devise still a third remedy. So our educational officials are completely confused as to what they are supposed to do, particularly when they see one judge ordering one thing, and another judge ordering something else.

It seems to me that whatever policy we have should be absolutely uniform throughout the country.

As I understand the amendment of the distinguished Senator from Tennessee, it would order a stay in these cases until the Supreme Court of the United States could make a determination and set a policy which would be a guide for every district court and every appellate court in the Nation. Is that not true?

Mr. BAKER. That is entirely true. I thank the distinguished senior Senator from Georgia for making that valid point.

Mr. TALMADGE. What the Senator is trying to do, in the final analysis, as I understand it, is to give everyone his day in court, and allow him to exhaust his right to appeal, before he has to comply with these severe court orders. This has not been the case heretofore.

Mr. BAKER. The Senator is correct.

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

Mr. BAKER. I am glad to yield to the distinguished junior Senator from Florida.

Mr. CHILES. Mr. President, I was listening to the questions propounded by the senior Senator from Georgia (Mr. TALMADGE) and I want to ask the Senator from Tennessee, how would this apply to some of the orders issued in my State? Most of the orders issued in my State are court orders requiring busing which are now final and the time for appeal has now run.

Mr. BAKER. In answer to the very pertinent question just raised by the distinguished Senator from Florida, I would say that it would not apply at all. The criterion, the basis on which this supersedeas can operate, would be that the busing order had not yet been fully tried and determined through the appellate procedure if the busing order were final by the operation of time or by the operation of law, that is, the Supreme Court had acted and the decree was final. Then it could not apply.

I might say to the Senator that that is a serious problem. It is a form of discrimination of the kind described and alluded to by the senior Senator from Georgia (Mr. TALMADGE). My only rejoinder would be in that respect to say that I would very much hope the Senator from Florida or another member of this body would offer another and different amendment that would accommodate to that.

In this particular case, I am trying to eliminate the legislative stay and the supersedeas of the cases now being appealed in order to preserve a similarity; that is to say, after the case had been tried and was on appeal, the case now would be that the court itself would issue a stay which has the inherent jurisdiction to do away with or to supersede that order until a final determination is made because of the public interest question involved. But the Federal courts have not issued stays on their own volition. The appellate courts have not issued supersedeas of the lower court orders.

Therefore, to keep it within the format and the framework of the judicial reviewing process, I am trying, by this amendment, to write in a stay with supersedeas of the lower court orders, all of the reviewing processes, which would culminate with the Supreme Court.

Mr. CHILES. If I understand correctly what the Senator has just said, he would attempt to stay any orders which were not final; is that correct?

Mr. BAKER. That is correct. It would stay those cases.

Mr. CHILES. Now proceeding on to those cases coming into being, would it offer no relief where the time for the appeal had run? I keep looking for an amendment that I can vote for, that will apply uniformly not only to Florida but to all the other States in the Union. The intentions of the amendment of the Senator from Tennessee (Mr. BAKER) are good. They would help Tennessee but I do not see that they would provide much relief for Florida. In the so-called Mansfield-Scott amendment and almost all the other amendments, I find nothing in them that would apply uniformly to all the States. I think that should be the criterion.

Mr. BAKER. I fully understand the concern of the Senator from Florida, and I am sympathetic to it. The only possible rejoinder I can make is that there are ample precedents setting an example. We have the experience of busing in all States, whether Florida or not. There may be other cases. There may be many requiring busing or additional busing, so that I would very much hope the Senator from Florida would find this a partial if not a complete solution to his problem.

Mr. COOK. Mr. President, will the Senator from Tennessee yield?

Mr. BAKER. I yield.

Mr. COOK. First, the distinguished Senator from Georgia (Mr. TALMADGE) just stated that what the Senator really desires is an ultimate decision by the Supreme Court. That is not required within the total purview of the Senator's amendment, as I understand it. What the Senator is saying is that if an appeal is made, if the time runs and the appeal is not made to the Supreme Court, then that order becomes final at that stage.

Mr. BAKER. That is right.

Mr. COOK. So, really, we are not talking about bringing every case to the Supreme Court; is that not correct?

Mr. BAKER. That is right.

Mr. COOK. If the time expires for the appeal, or the appeal is not perfected, then the effect of the lower court order is the same as if the Supreme Court had acted; is that not correct?

Another question, because this should get into the RECORD. Suppose the appeal is not taken at one stage but prior to the expiration of time for that appeal, at that stage of the game, the order is vacated and, let us say, the district involved decides to vacate the action brought and decides to bring it on a different ground or a different basis so that in effect they can start all over again?

Mr. BAKER. Well, of course, in that case, it would be my view that the order was not final, since a previous order had been vacated and a new suit had been commenced. In that case, if I understand the Senator from Kentucky correctly, that case would be subject to a stay and supersedeas orders by this amendment.

Mr. COOK. The only point I want to make is that something should be in the RECORD and something should be in this discussion that when such action is brought, and prior to the time the final order occurs, let us say in the lower court, the action is vacated, then we then have that entire time in which to bring it over again. There comes a time, with the cul-

mination of the order, that we cannot play around without the final order and vacating the lower court action, to decide to bring that action all over again. Does the Senator see the point I am after?

Mr. BAKER. Yes, I do. But I think the rules of procedure inherent in the jurisdiction of the court fully determines that issue because the court will not permit the authorities—certainly not an agency of a local government—to trifle with the court by beginning and dismissing cases. It takes two to dismiss. So I do not think that we are in jeopardy in that respect.

Now, Mr. President, let me resummarize——

Mr. COOK. Before the Senator resummarizes, it would not be the desire of the Senator from Tennessee, the originaator of the amendment, that such action should occur?

Mr. BAKER. No, it would not.

Mr. COOK. All right, I thank the Senator from Tennessee very much.

Mr. ERVIN. I should like to call to the attention of the Senator from Kentucky (Mr. COOK) the fact that in a great majority of cases with school boards and courts of appeal, until the final order the local interlocutory orders would not be subject to appeal.

Mr. COOK. I agree with the Senator.

Mr. PELL. Mr. President, I yield 5 minutes to the Senator from Minnesota (Mr. MONDALE).

The PRESIDING OFFICER (Mr. BUCKLEY). The Senator from Minnesota is recognized for 5 minutes.

Mr. MONDALE. Mr. President, I rise to oppose the amendment offered by the Senator from Tennessee.

I believe the amendment is unconstitutional. In the case of Holmes against Alexander (1970), the Supreme Court ruled that the time for pursuing the standard of "all deliberate speed" had ended. The Court held that, some 17 years since Brown against Board of Education, the time had come for the immediate end of officially sponsored segregation is public schools.

That decision was designed to end what had been more than a decade of delays, of appeals, of futile evidence-taking—in which each defendant school district resorted to full effort every known legal tactic to avoid eliminating discrimination.

The decision in Holmes against Alexander cuts through all that, ruling that where a court finds discrimination, the court should immediately order its elimination.

That is what the Constitution now clearly requires. This amendment, seeks to introduce once again the possibility of delays in all cases while appeals are taken. In effect it seeks to nullify the immediacy which the court found essential to protection of constitutional rights.

The operative effect of the amendment, if it were operative, would be to require every school district that was ordered to desegregate to appeal. They would be under pressure to avoid the court order, and they would do so simply by the device of appealing. No matter how fruitless, no matter how frivolous, no matter how hopeless the appeal, they would nevertheless be compelled to appeal because, by that act, they would be able to avoid the reach of the 14th amendment.

Also, there are any number of school districts in this country which have already been ordered to desegregate. The orders have become effective, and appeals have been taken. Some of those school districts have been desegregated for some time while the appeals are pending. If the pending amendment is agreed to, as I read it, every one of those school districts overnight could simply ignore the Federal court order and segregate again. The amendment would cause confusion that would be almost impossible to correct.

It is important to point out that the courts have discretion now in limited cases to stay an order where they find it essential to do so. We have seen this recently in the fourth circuit in the Richmond case. In the Richmond case, for the first time, orders were given to desegregate schools across a single school district line. The fourth circuit, I think wisely, said that the nature of the order was so different from any that had been issued in the past that it ought to be delayed until the Supreme Court has a chance to rule on it. I think they ruled wisely on the matter.

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

Mr. MONDALE. I yield.

Mr. SPONG. Mr. President, the stay granted by the fourth circuit only applies through the appeal to the fourth circuit. The fourth circuit did not say that the stay would apply through a final decision of the Supreme Court.

Mr. MONDALE. The Senator means that a temporary stay has been granted.

Mr. SPONG. The Senator is correct. And I appreciate the courtesy of the Senator from Minnesota in allowing me to interrupt him. I merely want the record to reflect the situation as it exists. When we speak of going across school districts, I think we should bear in mind that in Virginia every school district is a complete political subdivision. What the district court ordered is not just to combine school districts in the normal use of the word, but it ordered political subdivisions to be merged.

Mr. MONDALE. The Senator is correct. And I think this is the first time that such an order has been issued.

Mr. SPONG. Mr. President, I might say that the hearings the Senator from Minnesota has conducted so ably over the last year and a half already reflect that fact. People on each side of the question have said there is no precedent up to now for such an order.

Mr. MONDALE. Mr. President, for that extraordinary reason, I think the circuit court acted as they did. However, other than in such exceptional cases, as I construe the Holmes case, the 14th amendment requires immediacy.

This amendment attempts to repeal the Holmes case and encourage appeals in every case where appeals can still be taken.

What many Senators have argued for here is a standard that is the same throughout the country in the North as well as the South. This amendment is blatantly sectional. It says that in the South, where most of the court orders have already been issued, there will be no delay. They must go ahead and continue to desegregate. But many school systems in the rest of the country could appeal, and no desegregation would take place there. For constitutional reasons, and for reasons of uniformity I hope that this amendment will be rejected.

Mr. BAKER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Tennessee has 6 minutes remaining.

Mr. BAKER. Mr. President, I yield 2 minutes to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 2 minutes.

Mr. ERVIN. Mr. President, it has been some time since I read the Alexander case. My recollection of the Alexander case is that the district court refused to order desegregation. The case was appealed to the Supreme Court of the United States by those seeking complete desegregation. The U.S. Supreme Court said that the district court could not any longer put off ordering desegregation—that the time for acting with deliberate speed had expired.

I think the Senator's amendment is very wise because if a school is ordered to be desegregated and the case is appealed, the school authorities ought not to be compelled to go ahead and desegregate. If there is no stay of judgment, and the school authorities win an appeal, it would be like trying to unscramble scrambled eggs. It is very difficult.

Every court in the United States has the power to stay judgment. A judge ought not to insist that his order be carried out until all appeal remedies have been pursued.

We need not worry about frivolous appeals. If it is a circuit court appeal, the circuit court will not entertain it. And if the appeal is frivolous, the Supreme Court will not grant certiorari. So, there is no danger of much delay in carrying out the decree if the appeal is frivolous.

I think the Senator's amendment is a very good one and I urge the Senate to agree to it.

Mr. BAKER. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 1 minute.

Mr. BAKER. Mr. President, the only rejoinder I make to the distinguished Senator from Minnesota is that this amendment in no way is calculated to stop the immediate process of desegregation. This amendment is to stay the orders on busing in connection with desegregation.

I tried in the colloquy on other amendments considered by the Senate to point out that antibusing is not anticivil rights. The reason for this attempt to make a legislative stay or a supersedeas stay is not to readjust or anything like that. Busing is such an extraordinary remedy in the matter of public schools that the courts should not implement

their judgments until each case has been fully determined by the Supreme Court.

This amendment would not retard desegregation. It would retard the course of busing.

Mr. MONDALE. Mr. President, I think it must be pointed out that the Supreme Court made it absolutely clear in the Swann case, that desegregation cannot be limited to walk-in schools.

I think that the pending amendment would try unconstitutionally, futilely in my opinion, to deny the Supreme Court and other Federal courts a remedy that is clearly within their power. And that remedy cannot constitutionally be taken away.

This amendment would cause great confusion, interminable delay and inevitable appeals. And it has a regional bias.

Mr. President, I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, I will not go over the ground so excellently trod by my friend, the Senator from Minnesota. I, too, have grave doubts as to the constitutionality of this provision, as I had grave doubts as to the constitutionality of that part of the Scott-Mansfield amendment on which this is based.

Other than the question of inequity in appeals which the Senator from Minnesota has so very eloquently pictured, I am very troubled as to what this could do with respect to existing orders.

It is said by the Senator from Tennessee—and I know that he means every word of it in the best of faith—that this applies to the cases in which the orders are not final. However, he does not deny that it relates to future cases which may arise between now and the expiration date, June 30, 1973. Therefore, I see the distinct probability that those districts which are very unwilling participants in this process will go into court and seek reform of the equity orders applying to the entire desegregation matter. They will seek an affirmance of that order. If the court actually affirms it, there will be an automatic stay of 16 months, which could undo everything you are doing now.

The district does not have to pay attention to the order. That is what the Senator from Tennessee is handing them on a silver platter. I do not believe we can build that kind of structure, which could invalidate everything we are doing, from the fact that in one case—to wit, Richmond, in a particular set of circumstances, where they are dealing with new law, because now the court is requiring busing interdistrict—we are going to make that the basis for a dismantlement operation which this amendment would put into effect.

I repeat again that I know the Senator from Tennessee means everything he says in the utmost good faith as to the finality of proceedings, and that it would not be terminated by final order; but I see nothing here to prevent any district from going to court and, if they can, get affirmative modification involving transportation. That is it. They are out of the whole thing for 16 months. I do not believe this could be our intention. Therefore, I hope very much the Senate rejects the amendment.

Mr. BAKER. Mr. President, I yield myself 1 minute.

As I understand the argument of the Senator from Minnesota and the Senator from New York, the point is made that a stay and supersedeas busing orders would be unconstitutional, unconscionable and inappropriate to the processes of desegregation.

I do not mean to be critical but I only respectfully point out the language to which they refer states:

"the effectiveness of such order shall be postponed until all appeals in connnection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall take effect upon the date of its enactment, and shall expire at midnight on June 30, 1973.

That language is exactly and precisely the same language that was offered in the Mansfield-Scott amendment, and which was supported by the Senator from Minnesota and the Senator from New York, and which was adopted by the Senate. If it was so then, it is so now.

I suggest this is simple, bare equity, and they are identical in their concept.

Mr. President, I reserve the remainder of my time.

Mr. PELL. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Rhode Island has 7 minutes remaining.

Mr. PELL. How much time is remaining to the Senator from Tennessee?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. PELL. Mr. President, I yield to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. MONDALE. Mr. President, I think the reasoning of the Scott-Mansfield amendment—and I have great doubt that that stay provision is constitutional—is that the Richmond case went beyond the boundaries of the single school district to order desegregation across several district lines. It was new and unique. Never before has a court issued such an order.

Therefore, out of fairness to the entire new law involved, the Scott-Mansfield sponsor felt there should be a stay giving the court a chance to rule in this case. But that is different than the proposal of the Senator from Tennessee. He says that every case, no matter how routine, or how much it looks like every other case decided over the past 18 years, should be appealed, and while they are, the order should be stayed.

It seems to me his amendment goes beyond anything the Scott-Mansfield amendment had in mind it and would create a great deal of confusion.

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

Mr. MONDALE. I yield.

Mr. SPONG. This is only to clarify the record with regard to the Richmond case. Aside from the uniqueness, the lack of precedence, which the Senator from Minnesota has already mentioned, there is this very practical matter involved. If the order itself were implemented and then the decision reversed at any stage on appeal, the various school districts would be faced with undoing, with unscrambling a situation already put into force, and there would be administrative havoc.

Mr. MONDALE. The Senator is correct. In fact, the circuit court has issued a temporary stay for the reason the Senator from Virginia suggested.

Mr. BAKER. Mr. President, I yield myself 1 minute.

If I understood correctly, the Senator from Minnesota said it is the intention of the Senator from Tennessee that every case, no matter how routine, or how much it looked like any other case, should be reviewable and stayed. The answer is, of course. It is entirely inconceivable to me that anyone in this Chamber would ever concede that any case in the Federal judiciary should not be appealable.

I do not propose for one instance by this amendment to grant any new right of appeal, but if there was an implication in the statement of the Senator from Minnesota that there should not be a right to appeal, that is more startling and revolutionary than anything that we have discussed in the last several days.

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

Mr. PELL. I yield to the Senator from Minnesota.

Mr. MONDALE. By no means do I suggest that. I say the Senator from Tennessee is creating a constitutional crisis because under his amendment every single court order that ordered desegregation would be appealable, no matter how futile the appeal, and automatically the district court order would be stayed. To me, that is unconstitutional and unwise.

Mr. PELL. Mr. President, I have listened to the debate and have studied the amendment which proposes a stay on busing orders until June 30, 1973. I believe that if the amendment were agreed to it would encourage a certain number of frivolous appeals. For that reason I intend to vote against the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BAKER. I yield back the remainder of my time.

Mr. PELL. I yield back the remainder of my time.

Mr. GAMBRELL. Mr. President, I would like at this time to offer a substitute to the amendment of the Senator from Tennessee (Mr. BAKER). The amendment is proposed on behalf of myself and Senators CHILES and SPONG. I send the amendment to the desk.

Mr. JAVITS. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, may we know from the distinguished Senator whether he is calling up an amendment

which is provided for under the unanimous-consent agreement, and if so, what part of the unanimous-consent agreement?

Mr. GAMBRELL. Mr. President, I am exercising the option I have to offer an amendment under the unanimous-consent agreement.

Mr. JAVITS. With a 40-minute time limitation?

Mr. GAMBRELL. Yes, as I understand the agreement.

The PRESIDING OFFICER. The agreement states that on the Chiles, Baker, Gambrell amendments there shall be 40 minutes each.

Mr. GAMBRELL. That is my understanding. They are three separate amendments.

The PRESIDING OFFICER. Does the Senator from Georgia wish to use a part of his 40 minutes, or is he offering a separate substitute for which he is entitled to 30 minutes?

Mr. GAMBRELL. Mr. President, this is the amendment I had in mind to offer when I reserved the time.

The PRESIDING OFFICER. The Senator will have 40 minutes on the amendment, 20 minutes to a side.

Mr. JAVITS. I thank the Senator. I have no objection.

The PRESIDING OFFICER. The amendment of the Senator from Georgia will be stated.

The legislative clerk proceeded to read the amendment.

Mr. GAMBRELL. Mr. President, I ask unanimous consent that further reading of the amendment may be dispensed with and that the amendment may be printed in the RECORD.

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

The amendment, ordered to be printed in the RECORD, is as follows:

SEC. 718(a). Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court, to the extent that it has the effect of requiring in any school or school system the transportation of students or teachers in order to overcome racial imbalance, or in order to carry out a plan of racial desegregation, with respect to which Federal funds may not be used as provided in subsection (a) of the Scott-Mansfield, the effectiveness of such order shall be postponed until plans 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 by the appropriate local educational agencies thereof. Plans 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 school population in public school systems which have total minority student population greater than 15 per centum, or

(2) such plans are in effect in not less than seventy-five of the one hundred 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.

Likewise no plan shall be deemed to have been adopted for the purpose of this section unless such plans, approved by the appropriate local educational agency after public hearing, has ben submitted by the chief legal officer or other appropriate official of such agency to the Attorney General of the United States and the Attorney General has not interposed an objection within sixty days after such submission, provided that any plan objected to by the Attorney General shall be deemed to have been adopted for the purpose of this section if the Federal District Court having jurisdiction of such agency shall have approved such plan for desegregation as being in accordance with the Constitution of the United States and as providing for the racial desegregation of such schools without regard to the origin or cause of existing segregation. The Attorney General shall interpose an objection under this section to any such plan if he shall find that the means of desegregation adopted therein are not substantially consistent with those provided for in the court approved school desegregation plans throughout the United States.

Mr. GAMBRELL. Mr. President, I plan to state the amendment in detail and I shall be happy to distribute copies of the amendment to those interested.

Mr. President, the substance of the amendment, in effect, is a modification of the Scott-Mansfield amendment, so as to deal with the real question it raised on the busing controversy. My amendment would temporarily suspend court-ordered busing in the same situation where Federal funds cannot be used for busing under Scott-Mansfield.

Mr. President, under my amendment, court-ordered busing is not prohibited, as in the case of the Griffin amendment.

Under my amendment, as in the case of Scott-Mansfield, court orders are only suspended so that the constitutional problem under Griffin is avoided.

Under my amendment, only busing which cannot be funded under the Scott-Mansfield amendment is suspended.

Under my amendment, the suspension is only temporary, until school desegregation is made uniform throughout the country.

Under my amendment, voluntary busing plans would be permitted as in the case of Scott-Mansfield.

Under my amendment, as proposed by Senators MONDALE, STENNIS, and RIBICOFF, the distinctions between de jure and de facto segregation are abolished.

The primary reason for the adoption of this amendment is its fairness. Massive busing should not be required in some areas of the country when others have not even begun the desegregation process.

The amendment suspends court ordered busing until desegregation plans, with or without busing, have been made applicable to 75 percent of the students, or to 75 percent of the public school systems, among those systems having substantial minority public school population.

Such plans must either have the approval of a Federal district court or the Attorney General of the United States, and must be substantially consistent among themselves.

In other words, Mr. President, court-ordered busing plans are suspended until desegregation by race becomes a uniform practice at least through 75 percent of the school system and public school population.

A suspension of forced school busing will permit an orderly judicial or legislative settlement of the whole busing question, free of public furor. Whatever the ultimate solution of the busing and school desegregation question is, equal protection of the law requires that it be applied in a way which is uniform throughout the country.

As the distinguished senior Senator from Georgia indicated a while ago in his remarks, it is completely unfair and unworkable to school systems to attempt to implement desegregation plans which have some requirements in one section of the country and other requirements in other sections of the country. It is no wonder there are people marching on the streets in Richmond, Va.; Flint, Mich.; Denver, Colo.; and San Francisco, because they have enough sense to read what is going on elsewhere and they say, "How come they are applying this to me when they are not applying this over there?"

On January 25 of this year the Senate Democratic Caucus unanimously adopted a resolution which I would like to read at this time:

Whereas, civil rights laws are intended to secure equal protection of the laws for all citizens,

Now therefore be it resolved, by the Senate Democratic Conference,

That this body, through its leadership, shall make every effort to require that all laws securing equal protection of the laws are themselves applied equally and uniformly in every section of the country.

I am going to assume that that resolution, when it was unanimously adopted, was adopted in good faith by the members that conference and that they would not want any civil rights laws applied to one part of the country which were not being applied in another part of the country. That is all we are asking by this amendment—that we have a uniform system of school desegregation throughout the country before extreme and radical remedies are applied.

I reserve the remainder of my time.

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

Mr. GAMBRELL. On the Senator's time.

Mr. PELL. Mr. President, I yield 5 minutes to the Senator from Minnesota.

Mr. MONDALE. As I understand the pending amendment in the form of a substitute to the amendment of the distinguished Senator from Tennessee, it does several things. First of all, as I understand it, the amendment seeks to eliminate any distinction between segregation which arises from official discrimination and segregation which does not arise from official discrimination. Am I correct in that?

Mr. GAMBRELL. It would require that such segregation be eliminated before any busing orders could be put into effect, yes, in accordance with the Mondale amendment.

Mr. MONDALE. The Mondale amendment does not say that.

The Supreme Court has been dealing with situations where it is found that

school districts and other public bodies have worked together to discriminate against schoolchildren, and where a lower court order has been issued to eliminate such discrimination. Would the Senator say that, in addition, we must also eliminate segregation which does not arise because of official discrimination? Is that correct? The Senator deals with both as though they were the same.

Mr. GAMBRELL. That is correct, yes, in accordance with the Stennis-Ribicoff amendment.

Mr. MONDALE. In other words, the first thing we do is lump segregation that is de jure and de facto together, and treat them the same.

Mr. GAMBRELL. In accordance with what the Senate has agreed to on three previous occasions.

Mr. MONDALE. Is there anything to be found in the amendment offered by the Senator from Georgia which gives the Government the power to eliminate segregation which does not arise from official discrimination, and if so, could the Senator point it out?

Mr. GAMBRELL. No; this amendment does not require anybody to do anything. It leaves it to the Attorney General, the Department of Health, Education, and Welfare, and to private individuals to prosecute their constitutional rights to the fullest extent in every respect except forced schoolbusing.

Mr. MONDALE. Does the amendment which the Senator presents for the first time prohibit segregation based on so-called de facto segregation? Is that illegal now under his amendment?

Mr. GAMBRELL. The amendment does not prohibit anything. It suspends, in the way the Scott-Mansfield suspends, the effectiveness of busing orders and requirements until a certain level of compliance is achieved uniformly throughout the country, and how it is achieved is up to the existing law and authority that exists on the subject.

Mr. MONDALE. Does the Senator from Georgia know of any legal authority that exists today that one can refer to, to eliminate de facto segregation?

Mr. GAMBRELL. It is my understanding that the Senate on three separate occasions had expressed that to be the policy of the United States. I do not know whether the Senator from Minnesota voted for it, but we have had that policy expressed by the U.S. Senate.

Mr. MONDALE. But that policy did not empower any Federal agency to bring action to eliminate de facto segregation.

Mr. GAMBRELL. I do not purport to be an authority on school desegregation, but it is my understanding that some of the Federal courts are in the process of undertaking to eliminate that distinction and saying that segregation based on de facto conditions ought to be eliminated, as well as the de jure segregation. I am not going to say it is not required by law; I am just saying it is not the purpose of this amendment.

Mr. MONDALE. Does the Senator know of any Supreme Court cases which have eliminated segregation on a de facto basis?

Mr. GAMBRELL. I will say this to the Senator from Minnesota: The Supreme Court of the United States has decided a lot of things since 1954 that I did not anticipate, so I am not going to assume they are not going to decide that. All I am saying is we should have uniform desegregation practices across the country in accordance with the amendment adopted by this body, the Stennis-Ribicoff amendment.

Mr. MONDALE. To return to my question, does the Senator know of a single case in which the Supreme Court of the United States has ordered desegregation in a de facto segregation situation?

Mr. GAMBRELL. No, I do not know of any such case.

Mr. MONDALE. Mr. President, will the Senator from Rhode Island yield me additional time?

Mr. PELL. I yield the Senator 5 additional minutes.

Mr. MONDALE. Mr. President, the amendment offered by the Senator from Georgia is an extraordinary one indeed. The law now, in my opinion, clearly grants a remedy to eliminate segregation where it arises from official discrimination. But there has never been a decision by the Supreme Court that there is a similar prohibition against people living or going to school separately but not doing so because of official discrimination.

Nevertheless, the amendment offered by the Senator from Georgia says, in effect, that there can be no desegregation ordered even where there are the most outrageous examples of official segregation, until we have also eliminated de facto segregation in every major city.

Mr. GAMBRELL. Mr. President, I would like to correct one statement the Senator has made. The amendment does not prohibit any segregation; what it prohibits is forced busing. Forced busing is not the only means of desegregation, and I believe the Senator is aware of that. There is widespread desegregation in the city of Atlanta today; it has one of the most extensive desegregation programs in the United States, but there is no forced busing.

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

Mr. GAMBRELL. I am on the Senator's time.

Mr. MONDALE. The Senator is familiar with the recent Swann case. Did not the U.S. Supreme Court there say that under the Constitution, desegregation orders cannot be limited to the walk-in schools, and on some occasions must require busing?

Mr. GAMBRELL. That is what this is all about, yes.

Mr. MONDALE. And the Senator's amendment would, in effect, amend that Supreme Court decision and the Constitution of the United States. It would take a situation for which no remedy now exists, and say, "Until you can solve that problem, the 14th amendment will be suspended." I strongly oppose this amendment as an unconstitutional attempt to end efforts to overcome officially sponsored segregation.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). Who yields time?

Mr. PELL. I yield the Senator from New York such time as he may require.

Mr. JAVITS. Mr. President, I think the Senator from Minnesota has adequately made the case. I rise only because of the Stennis-Ribicoff amendment. Reading from the bill, that amendment reads as follows:

> It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964, section 182 of the Elementary and Secondary Education Amendments of 1966, and this title, shall be applied uniformly in all regions of the United States in dealing with conditions of segregation by race whether de jure or de facto in the schools of the local educational agencies of any State without regard to the origin or cause of such segregation.

The big difference between the amendment and this provision is that this provision applies to all given situations, no matter what people may call them, but those situations have to be in violation of law. What the amendment does is create a new law defining many situations as being not in violation of law which are in fact in violation of law, to wit, unconstitutional segregation, which is in violation of law, but is declared by the amendment not to be because 75 percent of the schools and students have not been cleared because of racial imbalance or segregation.

Mr. President, that is as different as day from night. True, the Stennis amendment used the words "de facto," but that is as far as it went in any similarity with this amendment, because it said if the law is applicable, no matter what people call it, it is applicable, and should be applied uniformly; but if it is not applicable, it is not applicable.

Remember, this was a few years ago. The theory was that de facto segregation was not being corrected because it was in the North, whereas de jure segregation was being corrected because it was in the South. We have since learned, with great surprise to many though not to me, that there is much of the segregation which was called de facto up until a little while ago which is de jure, and, therefore, becomes unconstitutional and is properly subject to control by the law.

So, Mr. President, I think the amendment is fatally defective in trying to maintain that something which is not unconstitutional segregation would be unconstitutional segregation in a situation which has nothing to do with individual rights, but deals only with collective responsiiblity.

As such, Mr. President, I cannot see how it is properly within our purview to use that for the purpose of completely impeding the effort to correct a constitutional deficiency. So I hope the amendment will be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. GAMBRELL. Mr. President, I yield 5 minutes to the Senator from Florida.

Mr. CHILES. Mr. President, I think if we can distinguish between this amendment and the Griffin amendment that we have voted on several times, it might help the discussion. The Griffin amendment said that there would be no busing for the purpose of trying to achieve a racial balance. The Gambrell amendment does not say there will not be any busing. There can be busing, but

the orders requiring busing will not be put into final effect until they are applied uniformly either to 75 percent of the schoolchildren or to 75 percent of the districts where there is an unequal balance of the races.

This amendment is just trying to provide for a uniform application. I have been looking for everything that, when it comes down to facts, in the way of an amendment or a bill or otherwise, is going to be applied the same way to my State of Florida that it will be applied to every other State.

I think this amendment would be. Under this amendment, as contrasted to the amendment of the Senator from Tennessee, we are not staying orders until all appeals have run. Nothing is said about the running of all appeals. We are simply going to require that all people be treated the same in this country, and that there be a uniform application of the law. I think that is a constitutional right, that we have a right to have uniform application of the law, and whatever distinction we made in 1954, based on de facto and de jure classifications of the schools, the reasons and causes for that have long since passed, and we only have to look to the South now to see that our de jure schools of 1954 are much more desegregated than the de facto schools in other parts of the country.

This amendment would correct that distinction. I can see where some people would be concerned because it does not slow down busing that will take place in the future in the North or somewhere else. It simply says we will have a uniform application, that however we treat children and education processes, they will be treated the same way in Florida, in New York, in California, and in every State of the land. The Attorney General is set forth as the agency whereby these plans can be cleared, and I think there would be a great impetus, if this passes, to see that we have a uniform application of the law. I think it affects the Mansfield-Scott amendment, because it does provide for uniform application of the law, and that it will not be applied one way to one area and another way to another.

If busing is good, let us apply it across the country. If there are to be limitations on busing, let us apply those across the country. Let us not stay orders until final appeals in some States, where the time for appeal has run in my State, for example, and orders cannot be stayed. Let us not have a distinction based on a reason that existed, perhaps, in 1954, but no longer exists.

I think the Gambrell amendment would cure that, and would provide for uniformity in the way we treat this problem.

The PRESIDING OFFICER. Who yields time?

Mr. GAMBRELL. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. PELL. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Georgia has 10 minutes, and the Senator from Rhode Island has 9 minutes.

Mr. PELL. I yield myself 2 minutes.

Mr. President, this amendment, as I understand it, would suspend the operation of court orders involving busing to eliminate segregation until uniform rules were developed throughout the Nation; until all districts involving 75 percent of the pupils in public schools or 75 of the largest school districts are under plans or orders consistent with those uniform rules. In effect, this amendment, as I see it, would suspend the Constitution, where busing is involved, until three-quarters of the school districts in the country had plans or where minority children were ordered to be transported.

I am compelled to oppose this amendment and shall do so.

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

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

Mr. PELL. I yield 1 minute to the Senator from Minnesota.

Mr. MONDALE. I thank the Senator.

Mr. President, the original Gambrell amendment added a new legal provision, authorizing suit by the Attorney General to eliminate segregated education regardless of cause in any of the major cities in this country. I interpreted it as a racial balance law, whether official discrimination existed or not.

The pending amendment deletes that provision, but requires prior elimination of de facto segregation as a condition for any court orders eliminating discrimination. Thus, we have created a requirement which cannot be met, and for which there is no legal remedy, as a condition for any further efforts to enforce the constitution and eliminate discrimination.

It seems to me that it is both unconstitutional and an act of futility to adopt the pending amendment, and I am hopeful that it will be defeated.

Mr. PELL. I am prepared to yield back the remainder of my time.

Mr. GAMBRELL. I am prepared to yield back the remainder of my time, but I should like to answer some of the arguments that have been made.

Does the Senator from Rhode Island wish to be recognized at this time?

Mr. PELL. No.

Mr. GAMBRELL. Mr. President, I am not surprised that some of the proponents whose States do not have any forced busing—in fact, they do not have any desegregation in operation in their States—cannot belly up to this proposal for equal treatment across the country.

I have drafted this amendment to fit the Scott-Mansfield amendment like a glove. That is, the identical busing that the Scott-Mansfield amendment outlawed by withdrawing Federal support is withdrawn from Federal court orders. I do not see how they can complain about that. If it is too bad to be supported by Federal funds, it is too bad to be enforced by court orders.

Second, the Senate has three times approved the Stennis-Ribicoff plan for abolishing the distinction between de facto and de jure segregation. All we have asked for in this amendment is to suspend forced busing until the objective called for by the Stennis-Ribicoff amendment is achieved in 75 percent of this country.

The Senator from Minnesota says that is not required by law, so how in the world can we achieve that? I would say that if desegregation is good enough for Georgia, it is good enough for Minnesota. If it is good enough under the Stennis-Ribicoff amendment, when it was passed three times, it is good enough today.

Finally, the means of achieving the uniformity I have adapted to be identical to the means by which voters' rights are protected under the voters' rights amendment, and these desegregation plans must be submitted either to the Attorney General of the United States or to the Federal district court for approval, to determine and to assure that desegregation is uniform throughout this country.

Mr. President, the Democratic caucus adopted the resolution which I read earlier. I think that those leaders of the Democratic Party who expect to get support from the South, from the West, from the East, and from the North, in places that are under busing orders today and under degregation orders today, will read this rollcall today to see whether there is any hypocrisy or any validity in the resolution calling for uniform civil rights enforcement throughout the country.

This country very badly needs an opportunity to resolve the busing crisis without the public clamor that is in progress today. A suspension of busing orders will give that opportunity. This amendment, different from the Griffin amendment, does not ask for a prohibition of busing orders. It asks only for temporary suspension. It will give the Senator from Minnesota all the time he wants to adapt a uniform desegregation plan that will apply throughout the country, if he can get one adopted.

The reason they are fighting this as hard as they are is that they know they cannot get Congress to pass for the entire United States what these courts are requiring in Georgia, Florida, California, Colorado, Michigan, Virginia, and the other places where busing orders are in force.

All we are asking for is equal protection of the law and a suspension of busing orders until we can get equal protection of the law. If equal protection of the law, in accordance with the Democratic Caucus resolution, is unfair, if that is unconstitutional, if that is un-American, I do not understand what American is.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. BUCKLEY). The Senator has 6 minutes remaining.

Mr. GAMBRELL. I yield 3 minutes to the Senator from Virginia (Mr. SPONG).

Mr. SPONG. Mr. President, I listened to the Senator from Minnesota say that he questions the constitutionality of this amendment. In order that the public might really be apprised of the situation that has existed with respect to these proceedings the past 5 days, I think we all ought to be aware that the constitutionality of almost every amend-

ment that has been put forward has been questioned.

The Senator from New York, in his exchange with the Senator from South Carolina, admitted to reservations about sections of the Scott-Mansfield amendment. The very able Senator from Kentucky, who is a constitutional expert, questioned the constitutionality of many of these amendments.

All some of us are trying to do is bring about a national desegregation policy in the United States. Two years have passed since the Stennis amendment was adopted, and there is more segregation in the major cities of the United States, more racial isolation, than there was at the time that amendment was adopted.

The Senator from Minnesota asked about the Supreme Court ruling on de facto segregation. Let the RECORD show that the Supreme Court of the United States has declined certiorari on three occasions in cities of the Midwest. If we had had the benefit of a Court decision 3 or 4 years ago, when some of these cases went up, the Charlotte case or the Richmond case might have been heard on a different basis entirely. The last certiorari that was denied was because the pleading was 1 day late.

We in this chamber have talked about desegregation and equal educational opportunity, and the truth of the matter today is that the black child in the larger cities of the South—in Richmond and Norfolk—has a better educational opportunity than in the cities that today show only 2, 3, or 4 percent black children attending a school that is not predominantly black.

So a number of us here in the Senate are going to continue to offer measures such as this, whose constitutionality might be questioned, just as I have questioned the constitutionality of the Scott-Mansfield amendment. But sooner or later this Nation is going to have to adopt a desegregation policy that not only places education in the forefront but also applies equally throughout the United States. I do not think anyone in this country should believe this measure, which we have debated back and forth today, yesterday, and last week—solves any problem.

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

Mr. GAMBRELL. I yield the Senator 1 more minute.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 1 more minute.

Mr. SPONG. Mr. President, I do not think any of us should represent to anyone, or that the public should be under the impression, that any great stride has been taken to help the educational opportunities of the underprivileged. Second, no stride has been made at all to render equitable and equal treatment throughout the United States in the attempted resolution of what is a very great problem indeed.

I thank the Senator from Georgia for yielding me this time.

Mr. PELL. Mr. President, I yield 2 minutes to the Senator from New York (Mr. JAVITS).

The PRESIDING OFFICER. The Senator from New York is recognized for 2 minutes.

Mr. JAVITS. Mr. President, I do not want to delay this particular debate. What I am about to open up is a big subject. I can open it up by citing the utterances of the distinguished Senator from Virginia (Mr. SPONG) just now, who is a great friend and a very great Senator, in my judgment. But what has been overlooked is the fact that this Nation's considered policy in Federal aid to education—and I was here when we inaugurated it—was conditioned upon non-Federal interference with the educational process. That was a more fundamental proposition to everyone here than anything we are discussing now. That all goes down the drain with this amendment, because the Federal Government will then be deciding what the commissioner of education in New York, has decided is a State policy with respect to racial imbalance. We could be right or we could be wrong—my colleague Mr. BUCKLEY, or I could disagree—I do not know what his attitude is. It is immaterial. But that is State policy, determined through State processes.

If we go this route, we will be going the route of the Federal Government, to write the rules as to what shall be educational policy in the States, using Federal educational aid as the carrot to do it. If that is the route we want to go, that is fine, and this amendment is in order; but if this is not the route we want to go, then the amendment is very much out of order and it should be rejected.

Mr. PELL. Mr. President, I am prepared to yield back the remainder of my time if the Senator from Georgia is.

Mr. GAMBRELL. I should like to reserve the remainder of my time. If the Senator from Rhode Island will yield back his time, I will take my remaining 2 minutes to close.

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

Mr. GAMBRELL. Mr. President, what the Senator from New York has just said demonstrates very clearly what I have said here today, and that is that what the opponents of the amendment fear the most is that a uniform desegregation policy will be adopted all across the United States, and that in New York they will have the same kind of interference we have had in Georgia, in Florida, and is now being had in Colorado, Virginia, Michigan, and other States in the Union.

Now, Mr. President, what this amendment does is simply to suspend the operation of busing, not desegregation, but busing until a uniform desegregation policy can be adopted all across this land.

What we need to know is whether Members of the Senate in the Democratic caucus will live up to the commitment they made on January 25 of this year, to see to it that every effort is made to require that all laws securing equal protection of the laws are applied equally and uniformly to every section of the country.

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

The PRESIDING OFFICER (Mr. BUCKLEY). All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Georgia (Mr. GAMBRELL).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), and the Senator from New Hampshire (Mr. MCINTYRE), are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Colorado (Mr. ALLOTT) is detained on official business.

If present and voting the Senator from Colorado (Mr. ALLOTT) would vote "nay."

The result was announced—yeas 29, nays 62, as follows:

[No. 70 Leg.]

YEAS—29

Allen	Eastland	McClellan
Anderson	Ellender	Proxmire
Baker	Ervin	Randolph
Bentsen	Fannin	Sparkman
Bible	Fulbright	Spong
Brock	Gambrell	Stennis
Byrd, Va.	Goldwater	Talmadge
Byrd, W. Va.	Gurney	Thurmond
Cannon	Hollings	Tower
Chiles	Jordan, N.C.	

NAYS—62

Aiken	Griffin	Packwood
Bayh	Hansen	Pastore
Beall	Hart	Pearson
Bellmon	Hatfield	Pell
Bennett	Hruska	Percy
Boggs	Hughes	Ribicoff
Brooke	Humphrey	Roth
Buckley	Inouye	Saxbe
Burdick	Javits	Schweiker
Case	Jordan, Idaho	Scott
Church	Magnuson	Smith
Cook	Mansfield	Stafford
Cooper	Mathias	Stevens
Cotton	McGovern	Stevenson
Cranston	Metcalf	Symington
Curtis	Miller	Taft
Dole	Mondale	Tunney
Dominick	Montoya	Weicker
Eagleton	Moss	Williams
Fong	Muskie	Young
Gravel	Nelson	

NOT VOTING—9

Allott	Jackson	McGee
Harris	Kennedy	McIntyre
Hartke	Long	Mundt

So the Gambrell amendment to the Baker amendment was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. MOSS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the amendment of the

Senator from Tennessee (Mr. BAKER). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. COTTON (after having voted in the affirmative). On this vote I have a live pair with my colleague from New Hampshire (Mr. MCINTYRE). If he were present and voting he would vote "nay." If I were permitted to vote, I would vote "yea." I withhold my vote.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Colorado (Mr. ALLOTT) is detained on official business.

If present and voting the Senator from Colorado (Mr. ALLOTT) would vote "yea."

The result was announced—yeas 43, nays 49, as follows:

[No. 71 Leg.]

YEAS—43

Allen	Dominick	Jordan, Idaho
Anderson	Eastland	McClellan
Baker	Ellender	Proxmire
Beall	Ervin	Randolph
Bennett	Fannin	Roth
Bentsen	Fong	Smith
Bible	Fulbright	Sparkman
Brock	Gambrell	Spong
Buckley	Goldwater	Stennis
Byrd, Va.	Griffin	Talmadge
Byrd, W. Va.	Gurney	Thurmond
Cannon	Hansen	Tower
Cook	Hollings	Young
Curtis	Hruska	
Dole	Jordan, N.C.	

NAYS—49

Aiken	Humphrey	Pearson
Bayh	Inouye	Pell
Bellmon	Javits	Percy
Boggs	Kennedy	Ribicoff
Brooke	Magnuson	Saxbe
Burdick	Mansfield	Schweiker
Case	Mathias	Scott
Chiles	McGovern	Stafford
Church	Metcalf	Stevens
Cooper	Miller	Stevenson
Cranston	Mondale	Symington
Eagleton	Montoya	Taft
Gravel	Moss	Tunney
Harris	Muskie	Weicker
Hart	Nelson	Williams
Hatfield	Packwood	
Hughes	Pastore	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Cotton, for.

NOT VOTING—7

Allott	Long	McIntyre
Hartke	McGee	Mundt
Jackson		

So, Mr. BAKER'S amendment was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PELL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REPORT ON HIGHER EDUCATION IN APPALACHIA

Mr. RANDOLPH. Mr. President, at this point in our discussion of the merits of the higher education bill, I want to share with Senators some data from a study on higher education in Appalachia. The intent of this study, funded by the Appalachian Regional Commission, was to analyze the present status of higher education in the 13-State region. As you know, the Appalachian Regional Commission has been focusing its small planning moneys in ways, such as this study, to gain more support for Appalachian education institutions. This support is necessary to correct the fiscal and program gaps that exist in the Appalachian region today.

The results of this study could not come at a more decisive time—as we decide the Federal response to the needs of all higher education:

The data clearly demonstrates that for all classes of higher education institutions, those located in Appalachia fall considerably below the national average educational operating expenses for full-time equivalent students. The gap between 4-year colleges nationally and Appalachian 4-year colleges ranges from about $300 to $800 per student. The study shows that Appalachian institutions have fewer Ph. D.'s per student than the national norms. It also demonstrates conclusively that lower family income students in Appalachia do not receive as many dollars per student from the Federal guaranteed loan program as students with higher family incomes.

Student financial aid data, when combined with national enrollment projections, indicate that there are substantial numbers of young people in Appalachia who would like to attend college but are unable to attend. A rough estimate of the number is approximately 79,714 young Appalachians.

There is more data yet to be analyzed, but there can be no question that Appalachian higher education institutions should receive additional support from the Federal Government.

In view of the needs of Appalachian higher education institutions described in this study, let it be clear that this body intends that more Federal program funds for Appalachian institutions of higher education be allocated by the responsible Federal agencies. Particular attention is directed to title III, Higher Education Act of 1965 that more developing institutions consortia programs must be funded in Appalachia to enable these institutions to provide student-recruitment and retention program, support special student service programs, curriculum program improvement and programs to retrain and recruit faculty.

I strongly recommend that after the passage of this act, discussions begin between the Office of Education and the Appalachian Regional Commission that will lead to a significant number of Appalachian higher education programs funded by title III, HEA, 1965, and special programs for the disadvantaged during the coming year.

CONCLUSIONS AND RECOMMENDATIONS—APPALACHIAN HIGHER EDUCATION STUDY

There is evidence that as a class, Appalachian higher education institutions are in trouble. They are having difficulty attracting students for tuition or other reasons and they subsidize their students to a lesser degree than higher education institutions in other regions. Private schools in Appalachia, especially 2-year schools, are fast becoming a minor part of the educational scene. If it is felt that quality education, both public and private, should be available to serve Appalachian students, attention should be given to procedures for alleviating and correcting the trend established in this report.

More is needed than simply a supply of funds in order to keep higher education a major factor in Appalachian education. Efficient use of resources at hand must be accomplished and maintained. This holds true for public as well as private institutions. With this in mind, the concept of uniting several aspects of the higher education system under the auspices of consortia bears careful thought. Consortia many operate on various levels. Subregionally, administrative functions for a large number of institutions could be combined under single direction. Admission requirements could be standardized, data processing—a costly item for institutions—could be combined, and so forth.

Locally, consortia could be established to share facilities—such as libraries, classrooms, laboratories—as well as staff. This would be especially useful if the consortia included public and private institutions. Easing of the educational load for public institutions would be a byproduct of this sort of association.

Finally, a regional planning consortia would greatly benefit all institutions since some overall direction and stimulus for Appalachian higher education could be achieved.

In view of the needs of Appalachian higher education institutions described in this study, it is recommended that the Commission investigate ways that the developing institutions program—title III of the Higher Education Act of 1965—be expanded to provide funds for consortia programs to enable Appalachian higher education institutions to provide recruitment and retention programs, support student service programs, curriculum program improvement, and programs to upgrade faculty. It should be pointed out that because of limited funds, many Appalachian higher education institutions that qualified under this act have not received program support. In fiscal year 1971, Congress has increased the funds available in this program by $18 million. Coupling the findings of this study and an increase in the Federal aid program that focuses on these very programs of Appalachian institutions, it is strongly recommended that discussions begin immediately between the Office of Education and the Appalachian Regional Commission that will result in a significant number of Appalachian programs funded by title III during the coming year.

The second major recommendation of this study relates to the outputs of the higher education study in Appalachia. Generally, our system produces more elementary education teachers, social scientists, and humanities graduates than health professionals and scientists. It is recommended that the Commission give priority consideration to any higher education program it sponsors or funds

to programs or facilities that focus on a manpower need or skill identified by sound data in each application. Such a priority consideration would provide greater impact to the needs of the region and promote a greater responsibility on the part of higher education institutions in the region.

THE OTHER FUNDING ALTERNATIVE: STUDENTS IN APPALACHIA

It has been pointed out that higher education institutions in Appalachia are in trouble and that some sort of aid must be forthcoming, such as programs for increasing enrollment. One possible way to achieve this may be through federally funded aid programs directed at students.

The State of Illinois conducted a study that showed a significant percentage of students would attend private instead of public institutions if some sort of financing were available. Three types of programs have been previously mentioned—loans to students, grants to students, and a federally supported loan bank for students. Of these three alternatives, the most attractive is the grants directly to students. It has also been shown that guaranteed loan programs fail to attract the low-income Appalachian students.

Additionally, Appalachian institutions should attempt to do more for students native to the region. Migration data obtained, although admittedly sketchy and incomplete, showed that over the 2 years under consideration, Appalachian enrollments decreased in Appalachian institutions. This is alarming since education of the Appalachian student should be the highest priority of these institutions. It is suggested that more intensive recruiting of Appalachian students occur with an emphasis on special programs suited to the needs of the students. The migration survey showed very little in the way of innovative programs adapted specifically to students of the region.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

REPORT ON NATIONAL GROWTH—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. BUCKLEY) laid before the Senate following messages from the President of the United States, which, with the accompanying report, was referred to the Committee on Banking, Housing and Urban Affairs:

To the Congress of the United States:

I am pleased to transmit the first biennial Report on National Growth as required by Section 703(a) of the Housing and Urban Development Act of 1970.

This report was developed by the members and staff of the Domestic Council Committee on National Growth, under the Chairmanship of George Romney, Secretary of Housing and Urban Development. Their efforts are deeply appreciated.

RICHARD NIXON.

THE WHITE HOUSE, *February 29, 1972.*

EXTENSION OF TIME FOR THE COMMITTEE ON AGRICULTURE AND FORESTRY TO FILE A REPORT

Mr. TALMADGE. Mr. President, I ask unanimous consent that the Committee on Agriculture and Forestry be granted an extension of time until March 30 for the filing of the report required by section 3 of Senate Resolution 76.

This extension will allow the committee to make a more comprehensive report of its findings and recommendations.

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

EXTENSION OF TIME FOR THE COMMITTEE ON GOVERNMENT OPERATIONS TO PUBLISH ITS RULES

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the Committee on Government Operations have until March 17, 1972, to publish its Rules of Procedure in the CONGRESSIONAL RECORD, pursuant to section 133B of the Legislative Reorganization Act of 1946, as amended.

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

RULES OF COMMITTEE ON COMMERCE

Mr. MAGNUSON. Mr. President, pursuant to section 133B of the Legislative Reorganization Act of 1946, as amended, I ask unanimous consent that the text of the committee rules be printed in the RECORD.

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

RULES GOVERNING THE PROCEDURE OF THE SENATE COMMITTEE OF COMMERCE, ADOPTED PURSUANT TO SECTION 133(b) OF THE LEGISLATIVE REORGANIZATION ACT 1946, AS AMENDED

I. MEETINGS OF THE COMMITTEE

Regular meeting days are the first and third Tuesdays of each month.

II. QUORUMS

1. Ten members shall constitute a quorum for official action of the Committee when reporting a bill or nomination; provided, that proxies shall not be counted in making a quorum.

2. For the purpose of taking sworn testimony a quorum of the Committee and each Subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in Committee on any bill, resolution, amendment, or any other question, a majority of the members being present, a member who is unable to attend the meeting may submit his vote by proxy, in writing or by telephone or through personal instructions.

IV. BROADCASTING OF HEARINGS

Public hearings of the full Committee, or any Subcommittee thereof, shall be televised or broadcast only when authorized by the chairman and the ranking minority member of the full committee.

V. SUBCOMMITTEES

Subcommittees shall be considered de novo whenever there is a change in the chairmanship and seniority on the particular Subcommittee shall not necessarily apply.

PROGRAM

Mr. MANSFIELD. Mr. President, I been have asked by the distinguished minority leader what the program for the rest of the day will be.

It is my understanding that the distinguished Senator from Arkansas (Mr. FULBRIGHT) is prepared to call up his amendment and also that he and the distinguished Senator from Colorado (Mr. DOMINICK) have agreed to a limitation of 1 hour, to be equally divided as previously described.

It is my understanding that after that the distinguished Senator from North Carolina has at least three amendments—there may be others—but he, likewise, is willing to consider a reduced time period.

It would be my suggestion to the Senate, as long as the yeas and nays will probably be ordered on the amendment to be proposed by the Senator from Arkansas (Mr. FULBRIGHT), that at the conclusion of the vote on the Fulbright proposal the Senate then adjourn to the hour of 9:30 tomorrow morning.

Mr. ERVIN. Mr. President, I would like to have the opportunity of calling up my amendment after the Fulbright amendment.

Mr. MANSFIELD. That will be all right.

Mr. ERVIN. I assure the majority leader I would be willing to agree to a time limitation.

Mr. MANSFIELD. Would the Senator be prepared to lay down one of his amendments tonight and start taking them up in sequence tomorrow?

Mr. ERVIN. Yes. I will be prepared to lay down the one that I withdrew the other day, that guaranteed a child the right to attend a neighborhood school.

Mr. PASTORE. Mr. President, are we to understand that there will be only one more vote tonight?

Mr. MANSFIELD. Only one more vote, if that meets with the approval of the Senate.

Mr. SCOTT. Mr. President, I should like to inquire of the distinguished majority leader what he thinks the order of business will be following the final vote on this bill on or before 2 o'clock tomorrow.

Mr. MANSFIELD. Mr. President, it would appear to me that the chairman of the Foreign Relations Committee and the ranking Republican member have three conference reports which are available, having to do with banks of various kinds, and that the distinguished Senator from Wisconsin (Mr. PROXMIRE) will be prepared to take up the conference report on the foreign aid bill. It is hoped that it might be possible to take up tomorrow, if it does not go too late and there is not too much opposition to it, the bill having to do with the increase in the price of gold from $35 an ounce fine to $38. That will be followed by the debt limit bill, which is vitally needed, and the Senator from Virginia wanted to be given notice of it because he has a personal interest in this legislation.

Then we also have a number of money bills out of the Rules Committee this week which are on the calendar, and I would have to discuss a day certain with the distinguished Senator from Louisiana (Mr. ELLENDER), who has a personal interest in matters of that nature.

Mr. SCOTT. Mr. President, could I

inquire at this time about when the distinguished majority leader intends to call up for confirmation the nominations of the Attorney General designate and Deputy Attorney General designate?

Mr. MANSFIELD. Just as soon as possible. As the Senator knows, they are not on the executive calendar as yet, but they will be given expeditious consideration. Could the Senator tell me if they will be reported out to the calendar this week?

Mr. SCOTT. I understand the nominations are to be reported out to the calendar either today or tomorrow; is that not correct?

Mr. ERVIN. We approved them in the Judiciary Committee today, so they should be reported today. There was no opposition in the vote on them.

Mr. HUMPHREY. Mr. President, will the majority leader yield?

Mr. MANSFIELD. Yes, indeed.

Mr. HUMPHREY. Just as a matter of clarification, is my understanding correct that there will be a final vote at 2 o'clock tomorrow on the higher education bill?

Mr. MANSFIELD. That is correct.

Mr. HUMPHREY. Will all amendments have been considered at that time?

Mr. ALLEN. Mr. President, as I understand it, at 2 o'clock we only begin voting, and any amendment could be put in to be voted on without debate.

Mr. MANSFIELD. The Senator is correct.

Mr. JAVITS. But it is also understood that we may move to table any amendment which is put up for a vote without debate.

Mr. MANSFIELD. The Senator from New York is correct.

Mr. SCOTT. Mr. President, I hope all Senators will be present, because some of the matters on which we have already voted might well recur without debate at the last minute as we start the vote at 2 o'clock tomorrow.

Mr. MANSFIELD. And there will be a number of rollcall votes tomorrow.

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

Mr. SCOTT. I yield.

Mr. HUMPHREY. I want to assure my beloved friend from Pennsylvania that I love his companionship so much I intend to spend the day with him tomorrow.

Mr. SCOTT. Mr. President, I want the distinguished Senator from Minnesota to know we enjoy seeing his beloved countenance so much that we would be happy to have him here at all times.

Mr. MANSFIELD. Mr. President, that is enough badinage for the moment.

AMENDMENT NO. 920

I ask unanimous consent that I may now ask unanimous consent that the debate on the Fulbright amendment (No. 920), be offered shortly, be limited to 1 hour, to be equally divided between the distinguished Senator from Arkansas (Mr. FULBRIGHT) and the distinguished Senator from Colorado (Mr. DOMINICK).

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

ORDER FOR ADJOURNMENT TO 9:30 A.M.

The PRESIDING OFFICER. The Chair reminds the Senator from Montana that under the existing order the Senate will convene at 9:45 tomorrow morning, unless the Senator wishes to have it changed.

Mr. MANSFIELD. Yes. Mr. President, I ask unanimous consent that that be changed to 9:30.

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

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, February 29, 1972, he presented to the President of the United States the following enrolled bills and joint resolution:

S. 7. An act to provide for the establishment of the Buffalo National River in the State of Arkansas, and for other purposes;

S. 960. An act to designate the Sycamore Canyon Wilderness, Coconino, Kaibab, and Prescott National Forests, State of Arizona;

S. 1857. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended;

S. 2896. An act to amend chapter 83 of title 5, United States Code, relating to adopted child;

S. 3122. An act to extend certain provisions of the Federal Water Pollution Control Act through June 30, 1972, and others through April 30, 1972; and

S.J. Res. 189. Joint resolution to authorize the President to designate the period beginning March 26, 1972, as "National Week of Concern for Prisoners of War/Missing in Action" and to designate Sunday March 26, 1972, as national day of prayer for these Americans.

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 Educational Act of 1963, and related acts, and for other purposes.

AMENDMENT NO. 920

Mr. FULBRIGHT. Mr. President, I call up amendment No. 920.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 735, beginning with line 1, strike out through line 20 on page 753.

The PRESIDING OFFICER. The Senate will be in order.

Mr. FULBRIGHT. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. FULBRIGHT. Mr. President, for the information of the Senate, I have asked the pages to place on Senators' desks a one-page summary of what is involved in this amendment.

This is a very large bill, and the particular provision I seek to strike by my amendment is some 20 pages long. It is a very important proposal involving as much as $60 million in the fourth year, so it is not a small item by any means, but a very large item.

Before addressing myself to the merits of the proposed Foreign Service Scholarship Program—which are minimal—I want to say something about the procedure. This proposition, as S. 390, has been on the Senate Calendar since May 12, 1971. Yet, to my knowledge, the sponsor of the measure has never seen fit to arrange with the leadership time to debate S. 390. Instead, this item keeps bobbing up as a rider to the Higher Education Act amendments. I believe I know the reason—or one of the reasons, or three reasons: It is strongly opposed by the President, the State Department and the Civil Service Commission. It is also opposed by the Defense Department.

This unusual procedure illustrates the questionable nature of this proposal and its total lack of support from the executive branch.

The last time that I had occasion to discuss this rider, on August 6, 1971, during the original Senate debate of the Higher Education Act amendments, I explained the Foreign Relations Committee's 10-to-2 vote against S. 390 on the grounds that the committee found the program unnecessary, undesirable, uneconomical, untimely, and unrealistic. If anything, all of these arguments have only been reinforced by economic developments during the last 6 months.

To summarize my previous statement—the program to train at Government expense a large number of foreign affairs undergraduates is unnecessary because the Civil Service Register is already overflowing with qualified applicants for whom no positions are available. Since we discussed this last, things have only gotten worse. Unemployment has risen, and Federal agencies have had to make further cuts in personnel. In June 1971, when the Foreign Relations Committee last had hearings on this matter, we received data that there were then 50,000 eligible persons on the Civil Service Register, including thousands with advanced degrees. The State Department added that 9,700 persons had applied to take the Foreign Service examination the previous December for a total of 100 to 200 appointments in the Foreign Service. There is a vast oversupply of people who want to have a glamorous foreign affairs career. Quite clearly, we do not need to spend scarce Government funds to attract people to this field of endeavor.

The program is undesirable in its effect on open competition for Federal employment, giving an elite group an edge on prestigious positions. This is bad public policy.

The program is uneconomical because it would pay the bills of students who would otherwise be financing their own education in this field. Its total cost is completely out of line with our other priorities. By 1965 it is estimated to cost the taxpayer $60 million a year according to its own sponsor. That is far more than we spend on existing educational exchanges with some 50 foreign countries.

The program is untimely since our limited resources are more urgently needed elsewhere. With all of our financial problems and the concern over budget deficits and the strength of the dollar, I find it almost inconceivable that we should take seriously this additional program.

Finally, I said in August, the program is unrealistic. It would saddle busy Congressmen and Senators and agency heads with the nomination of students and administration and supervision of the pro-

gram. The students' obligations to the Government are not spelled out and much else is left to be decided in some future regulations to be issued by these busy people. The program has been compared to a type of diplomatic ROTC and considering the problems ROTC has been having, are we sure we want to set up another one? And if a diplomatic ROTC then why not an agriculture ROTC, a science ROTC, and so on down the list?

As I mentioned, these arguments have only gained weight with time. I find it unrealistic that we should be asked to launch an expensive and unnecessary program at this time when we cannot provide adequate funding of existing programs, In fact, more than token appropriations for any of the other programs covered by S. 659 will be difficult to obtain and I do not see why we should further endanger their prospects by taking on a Foreign Service scholarship program.

I repeat what I stated last year—that this program under its different guise is one that the Foreign Relations Committee has studied from time to time beginning with its original form of a Freedom Academy designed to train people in cold war tactics. If this could not be justified in the past, it surely cannot be justified now.

As an example of where we might find ourselves going with this program, I call attention to an article in the Nation of October 4, 1971, entitled "The Cold War College: Degrees in Paranoia," and 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. FULBRIGHT. The article discusses the Freedom Studies Center at Boston, Va., which likes to be called the "cold war West Point." It was established by private funds after the Congress' failure to enact the freedom academy bill. It has big plans for the future, however, which would require $11 million for realization, "part of which the Center's organizers hope will come from the Federal Government, with the help of the Congressmen on their advisory board." The article raises questions on the wisdom of putting public funds into the Center and on other principles—

> Some might question the propriety of federal and state government officials receiving indoctrination on internal subversion from lecturers who imply that liberal Senators are Communists. Some might question the role of the public school officials who serve on the advisory board of an "educational" institution which claims many college professors are "Communist dupes." Some might question the tax-exempt status of an institution so aggressively devoted to political propaganda. Some might even question the need for a school of cold-war psycho-political warfare.

We all should question this. What we need is to rid ourselves of the cold war mentality and not to perpetuate it.

I think it particularly appropriate to mention that in view of the President's trip to China—of which I approve, and I applaud his efforts. I think they were good ones, in the right direction. To institute a program now which, originally at least, was intended to approach the cold war in a much more aggressive manner seems to me to be inconsistent with what the President has in mind.

I hope the Senate will take seriously the significance of this program. If it should be instituted at this time, I think it would burden us not only with an enormous amount of money, as it is a very large program, as its terms provide, but also it would raise serious doubts about the sincerity of what I believe to be a new attitude, a new policy, on the part of this administration—a new attitude of which I approve and of which I believe the majority of the people in this country approve.

So I hope that the Senate will adopt my amendment, which simply strikes this program from the bill.

As mentioned in the one-page summary which I have had placed on the desk of each Senator, there already is ample opportunity for the training of people, with the orientation and language training that is now authorized in the Foreign Service Act and which is now being provided to employees of some 30 Government agencies. The State Department, in its Foreign Service Institute, teaches many of the specialized subjects for the Foreign Service.

In summary, I might say that the theory always has been—and I think it is still a proper one—that men and women who enter the Foreign Service should have the typical broad liberal arts training in history and the humanities which our great universities furnish; and that is the proper background for a Foreign Service officer, in contrast to the much more specialized activity of a soldier, for example. In the academies they do have some liberal arts courses, but they specialize at an earlier age for a highly specialized profession. The profession of Foreign Service officer seems to me of quite a different character, because their responsibility is to interpret our own country to foreigners and to be able, through their knowledge of broad subjects, to understand foreign countries. When it comes to the specialties, that is provided for already in the language courses, if they do not take them in their undergraduate work, although all our colleges of any consequence are quite adequately prepared to offer courses in the languages that are necessary.

I might add that several of our leading universities have schools for Foreign Service officers—that is, they offer, in addition to the regular academic program, the same type of training which is contemplated by this scholarship program.

So what we have here is the institution of an entirely new program, with its own board of trustees of, I believe, nine persons. Then, as bait to the Senators and others, it puts upon us and Representatives and various other officials in the Government the opportunity to nominate people. This bill deals in quite large numbers. I read from page 740:

> Not more than 3,500 students may be admitted under section 1205 as new members of the program in any academic year for the purpose of pursuing courses of study leading to an undergraduate degree, and not more than 1,500 students may be admitted under section 1205 as new members of the program in any academic year for the purpose of pursuing courses of study leading to a graduate degree.

Under these scholarships, 5,000 students will be given the opportunity to take courses which are already available to them.

Also, there is the implication, which I think is very important, that, having been nominated under this scholarship program, a feeling of elitism would grow, that they would be given preference over anyone else who may apply for these positions who did not have the benefit of a scholarship—in other words, the graduates of our established institutions who are now the applicants and the people in the Foreign Service at present. There are now 9,700 applicants, as reported by the State Department, for only 100 or 200 places a year.

I think it is most untimely and is contrary in spirit to the present policy of our Government, which is not to specialize in the pursuance of the cold war but to try to bring about a change in the attitude of the people of the various countries who, during the past 25 years, have been so hostile and have caused so much trouble in the world. We, of course, have become involved in those troubles.

So I hope the Senate will adopt this amendment.

I reserve the remainder of my time.

EXHIBIT 1

THE COLD-WAR COLLEGE

(By Berkeley Rice)

(NOTE.—Mr. Rice, a free-lance writer, has written many books and magazine articles. His latest book is The C–5A Scandal, published in May by Houghton Mifflin.)

What do West Point, Annapolis, Colorado Springs and Boston, Virginia, have in common? The first three are the sites of the U.S. Army, Navy and Air Force Academies. But Boston, (pop. 450) Virginia? That's the home of the Freedom Studies Center, which its organizers like to call the "Cold-War West Point" (see editorial: "Perfect Timing," *The Nation*, July 5). It serves as the headquarters for a vast and varied program of propaganda aimed at building public support for hard-line defense policies, increasing defense spending, and alerting the country to the menace of world communism.

It was supposed to be the United Freedom Academy, but the bill which would have authorized its establishment by the federal government never got through Congress. Backed by a group of conservative Congressmen in 1965, it reached the House Un-American Activities Committee, which approved it unanimously. The Johnson administration, however, along with the Departments of State, Defense and Justice, opposed the idea on the ground that it would duplicate and conflict with the work of existing government schools and agencies.

Though deprived of federal funds, the project's backers raised enough money from private corporations and foundations to get the Center started in 1966. This year they have launched a fund-raising campaign aimed at turning the Center into a full-scale "Cold-War College." A special appeal on behalf of the Center sent out by former Ambassador to Italy Clare Boothe Luce (whose Longela Farm is also located in Boston, Va.) has brought in contributions from thousands of patriotic Americans.

While the Center still has no official federal support, it does have powerful friends in

Washington. Its advisory board lists Vice President Spiro Agnew, Cabinet Secretaries John Volpe, Rogers Morton and George Romney, plus nine Senators (Mundt, Boggs, Harry Byrd, Dominick, Hansen, Hatfield, Long, Miller, Thurmond), twenty-eight Representatives and six state governors. Relations with the Pentagon are equally cordial. The Defense Department was instrumental in the Center's creation, and still provides high-ranking speakers and other forms of cooperation. At the Center's dedication ceremonies in 1966, the Joint Chiefs of Staff sent the Army's Director of Special Studies, an admiral from the Navy's Military Policy Division, a military color guard and a twenty-piece Navy band. J. Edgar Hoover sent his greetings, and President Lyndon Johnson wired: "You have my every wish for success."

One wonders how much President Johnson knew about this new venture to which he gave his blessing. The draft plan for Freedom Academy was drawn up by Edward Lansdale, a retired Air Force general who would have become its director had Johnson not picked him to run the U.S. counter-insurgency program in Vietnam. In the draft proposal Lansdale described the Academy as a center of "psycho-political warfare," and saw its potential students as "men of good will who—if they just knew how—are willing to strike a blow for liberty. . . . Such a blow, struck the right way and the right moment, could well change the course of history in favor of freedom." Lansdale envisaged sending teams of Academy graduates to foreign countries at the request of local political leaders, or "acceptable third parties." These freedom teams would "assist with practical advice on how to resolve problems of concern to freedom." Lansdale was not specific about what such problems might be, but those familiar with his thinking feel he meant the "liberation" of Soviet bloc countries, and the suppression of popular uprisings in non-Communist nations.

If all this sounds a bit like a private CIA, it should. Major General Lansdale is a former CIA official. The Center's directors of education and special projects are both former CIA men. One of the first guest speakers at the Center was ex-CIA chief Allen Dulles. In the words of its president, John Fisher, the Center's purpose is "to fill the gap between what the government can do, and what must be done," which describes equally well the activities of the CIA.

Though his background in foreign intelligence is minimal, Fisher has had considerable experience in domestic intelligence work. A former FBI agent, he joined Sears Roebuck in 1953 to run its "corporate security" program, which in that McCarthy era meant rooting out suspected Communist employees, rather than guarding against industrial espionage. Fisher then moved on to the staff of the American Security Council (ASC), an industrial blacklist organization that keeps tabs on alleged subversives for the benefit of member companies.

Since 1960 the ASC has shifted its emphasis from the threat of internal subversion to external military dangers. Using its own influential newsletter and radio program, it has become a powerful propaganda center for hard-line defense strategists, with close ties to the Pentagon and Congress. In recent years the House Armed Services Committee has commissioned studies from ASC on Soviet nuclear and maritime power. Both reports unsurprisingly called for sharp increases in U.S. defense spending. ASC also helped to mobilize nongovernmental support for the ABM, publishing its own book in defense of the system. None of ASC's studies mention that its corporate members include such major defense contractors as General Electric, North American Aviation, U.S. Steel, Republic Steel, Motorola and Honeywell. In 1969, the ASC and its publishing subsidiary ASC Press, spent more than $750,000. During the 1970 Congressional elections, ASC organized "Operation Alert," a "voter education" program to call attention to what it considers a growing strategic missile "gap," and to show how Senators and Representatives have voted on national security issues.

With the expansion of its operations, ASC which does not have a tax-exempt status, took over another anti-Communist organization called the Institute for American Strategy, which does. IAS produces textbooks on communism and patriotism, and has organized seminars on cold-war defense strategy for businessmen, educators, reserve officers and the National Governors Conference. IAS works closely with the American Legion, the National Education Association and state education officials in spreading its materials through local communities and schools. Its budget for 1969 was more than $200,000.

Using the tax-exempt IAS, the American Security Council in 1966 created the Freedom Studies Center as a tax-exempt educational institution. The ties between ASC, IAS and the Center are now so close that an outsider might easily think of them as a single organization. They share activities, office space, a communications center, finances, staff and a single president—John Fisher. This makes it relatively simple for Fisher to solicit contributions or assistance from his other two organizations.

With its reputation for aggressive anti-communism and hard-line defense strategy the Center has naturally attracted contributions from wealthy patriots and right-wing foundations. The Center's "founders," who have donated more than $10,000, include such right-wing angels as Henry Salvatori, the West Coast oilman, publisher Henry Regnery and Gen. Robert Wood, retired chairman of Sears Roebuck. Industry contributors include U.S. Steel, Sears Roebuck, Atlantic Richfield, Phillips Petroleum and Allis-Chalmers. The Center has also received financial support from the nation's conservative press: the Copley Newspapers, the Los Angeles *Herald-Examiner* and the Reader's Digest Foundation.

Operating on an annual budget of $250,000 to $300,000, the Center currently conducts monthly three-day seminars at its twenty-three-room mansion, located on 670 acres of Blue Ridge foothills near Culpeper, Va., about 90 miles from Washington, D.C. The estate cost about $500,000 and looks it. During the seminars the Center has the air of an antebellum plantation, with walks in the formal garden, afternoon and evening cocktails, and meals in the oak-paneled dining room with Negro servants. The seminar sessions take place in a briefing room with visual equipment worthy of any corporate board room. A dozen "tough-minded" speakers present what the Center calls "an inside look at the cold war." The speakers are generally a mixed bag of retired military officers, "experts" from the American Security Council, and hard-line professors from vaguely academic institutes of defense strategy.

The audience consists of twenty-five to thirty seminar participants (also called "guests" or "students") who pay about $125 for three days of room, board and tuition. Worthy newsmen, educators and government officials may attend on a "fellowship" basis. Participants seem to be selected either because they represent sources of corporate or foundation support, or because they hold positions from which they can spread the Center's gospel. Recent students included executives from General Electric and Litton Industries, newsmen from the *Los Angeles Times* and *The Detroit News*, officials from the Atomic Energy Commission, the Defense Supply Agency, the Industrial College of the Armed Forces, and the directors of civil defense for Massachusetts and Maryland.

The Center has made a special effort to recruit college and public school officials as participants. Success at the college level has been limited to such schools as Indiana Central, Converse, Le Moyne, Christopher Newport, C. W. Post and Ladycliff. At the public school level, however, it has had better luck. Its educational advisory board includes top public school officials of California, Texas, Massachusetts, Illinois, Florida, Kansas, and Nebraska.

At a seminar attended by this reporter, the participants included the administrative assistants to Reps. Robert Corbett (R., Pa.), Craig Hosmer (R., Calif.) and Jackson Betts (R., Ohio), an official of the National Education Association, an executive of the Franklin National Bank of New York, a vice president of W. R. Grace, two local Virginia reporters, a lawyer and several retired businessmen. There were three retired Canadian officers from an organization called "Polaris," which they described as a Canadian "industrial-security sort of thing," similar to the American Security Council, but more secretive. "We don't want this thing to get out," one of them told me. "The public wouldn't understand."

The seminar got under way with an introduction by President John Fisher. He told the guests that the Center plays an important part in filling the "cold-war education gap" by informing the public about the threat of world communism. For those guests concerned about U.S. domestic problems, Fisher warned that "meeting the Communist challenge is the main priority. Without this, all other problems in the United States are meaningless."

After cocktails and dinner the guests gathered in the briefing room for their session, a review of "cold-war hot spots" by Frank J. Johnson, an ex-Naval intelligence officer who now serves as foreign editor of the American Security Council's monthly newsletter, *Washington Report*. (This newsletter receives excellent editorial coverage in the country's conservative press, and is run in full by many papers.) Mr. Johnson still serves as an intelligence instructor in the Naval Reserve, and lectures regularly at the Foreign Service Institute. In his talk at the Center he gave a brief rundown on various countries in which he saw "an effort by communism to subvert mankind." An accompanying map showed the United States surrounded by a world of red- or pink-colored countries, which Johnson described as "a giant pincers that threatens to engulf us all." He pointed out a few bright spots like Brazil and Guatemala where military coups had saved the countries from communism.

As for remedies, Mr. Johnson saw little value in the Nixon Administration's efforts toward arms control negotiations and other diplomatic maneuvers. In his book, *No Substitute for Victory*, he has set forth several more imaginative solutions to the cold war. He recommends a naval blockade of Cuba, followed by a U.S.-backed invasion; unleashing Chiang Kai-shek's troops to attack mainland China; and taking "some piece of real estate away from the Communists," like Albania, to show them we really mean business. Mr. Johnson does not seem to fear the possibility that such strategies might easily end the cold war by starting a hot one.

The other speaker of the evening was Col. Raymond Sleeper, a former MacArthur staff officer who recently retired as head of the Air Force Foreign Technology Division, and became director of research for the Center and the American Security Council. One of Colonel Sleeper's current projects is the development of a computerized "cold-war situation room" at the Center which he hopes will serve as a model for a similar unit at the White House. In his address to the seminar, he compared Soviet and U.S. nuclear power and concluded that the United States is behind or rapidly falling behind in every category of nuclear arms, a view not shared by all U.S. defense intelligence experts. Colonel Sleeper is one of many retired officers associated with the American Security Council,

including Gen. Robert Richardson, former deputy chief of staff for planning for the Air Force Systems Command, who also appears regularly at the seminars.

General Richardson spoke this time on the U.S. strategic policy gap, or as he put it, "who can deter whom, and if not, who can come out of it best." He cited figures showing an alarming decline of U.S. strategic power, and urged the immediate deployment of an ABM system. Admitting the ABM has "a few technical deficiencies," he said, "It may not be the best thing, but you've got to start somewhere." Our greatest danger, he believes, is the "erosion of our will to get out there and use everything we have."

The next day, the seminar continued with a talk on "Communist semantic warfare" by Erik J. Vesely, a civilian intelligence specialist who has worked for the State Department, AID, the Air Force and the CIA, and who is now educational director of the Freedom Studies Center. Either because of the early hour, or his own semantic problems, Dr. Vesely's long and intricate analysis of Communist terminology left most of the audience completely confused.

Perhaps as an antidote, the seminar's main speaker was next—Walter Judd, a spell-binding 70-year-old professional anti-Communist. Judd writes frequently for *Reader's Digest*, and delivers the American Security Council's *Washington Report of the Air*, a daily five-minute anti-Communist radio program carried by several hundred stations across the country. He brought the audience a first-hand report from Vietnam, which he had visited recently. To him, the stakes in Vietnam are nothing less than the freedom of the United States. Judd is so convinced of this that he opposes any bombing halt or peace talks. He worries particularly about President Nixon's willingness to negotiate, an aberration he generously attributes to the influences of Nixon's "left-wing" advisers. "I wish he would stop saying he wants negotiation instead of confrontation. Confrontation is the only way to get to negotiation."

The only obstacle to a U.S. victory in Vietnam, according to Judd, is "civilian limitations on the military," a common theme at every Center seminar. Accusing the Administration of following the same "no-win" policies that led to a stalemate in Korea, Judd told the audience, "If our government isn't going to give this leadership, we've got to." The kind of leadership he has in mind for Vietnam would include invading the North, destroying its rail lines to China, bombing its dikes and flooding its rice fields. Whether or not such a policy would force North Vietnam into surrender (it would certainly drown many peasant farmers) it would probably bring Red China into the war, a prospect Judd would welcome.

Judd claims our will to win the war has been hindered because "the American people are not getting the facts" except from organizations like the Freedom Studies Center and the American Security Council. Despite this alleged absence of information, he also called for stricter censorship on U.S. reporting of the war, particularly on what he termed "minor setbacks," or "accidents" involving the death of innocent civilians. He criticized former President Johnson for trying to create his Great Society during the war: "He should have concentrated on the war, not social programs. Some of this stuff has waited 180 years, and it can wait a few years more."

During the question period that followed each lecture, a retired businessman from South Carolina asked Judd why men like Senators Fulbright, McCarthy and McGovern were "always wrong" on Vietnam. Judd replied that they were either ignorant, guilty of wishful thinking, or had fallen under the influence of Communists. Of the three possibilities, Judd leaned toward the third, particularly for Fulbright. "When a man makes as many decisions as he has over the years that favor the enemy, I just don't know. I'm not making any accusations now, but it's puzzling."

That afternoon the students heard lectures by two professors known in academic circles primarily for their aggressive views on defense strategy: James Atkinson of Georgetown's Center for Strategic and International Studies, and Stefan Possony of Stanford's Hoover Institution on War, Revolution and Peace. Both have served as consultants on defense strategy at the Pentagon, lecture often at the service war colleges, and are editors of the American Security Council's *Washington Report*. Professor Atkinson has designed a curriculum for Freedom Academy, and Professor Possony will be its chancellor for academic affairs.

Possony warned: "If the Soviets feel they have a superiority in armaments, they will knock us out at once." He went on to describe the peace movement in the United States as part of the Communist strategy of psychological warfare designed to "set us up for the ultimate kill." He claimed that the Communists had plotted and caused both World Wars in this way. The reason the American public is unaware of this danger, according to Possony, is that "the professors of history in this country are a pretty bad bunch." He suggested that many of them were in fact "Communist dupes."

The rest of the seminar was devoted to the threat of internal Communist subversion, William Lambie, an ex-FBI man who runs the American Security Council's subversive information service in Chicago, warned that the U.S. Communist Party is behind the peace movement, pointing out that demands for a halt in the bombing, withdrawal of U.S. troops and formation of a coalition government were all part of "the official party line." One of the students commented that even some government figures had been making such suggestions lately, and asked Lambie if he felt there are "Communists in the government in important positions." "Yes, definitely," replied Lambie, "but I've never been able to make up my mind if it's by design or accidental."

During the lectures, discussions, cocktail hours and meals, much of the time was devoted to identifying various people, organizations and movements as Communist or "Communist-inspired." No one offered or asked for evidence, for agreement was unanimous. In the three days of this particular seminar I heard the Communist label applied to: SDS, SNCC, SCLC, the civil rights movement, draft resistance, the peace movement, ROTC opponents, Mark Rudd, Father Groppi, Picasso and modern art, consumer protection, the income tax, the Ford Foundation, unions, liberal Catholic priests, pornography, drug addiction and sex education.

The U.S. press in general, and particularly its coverage of the Vietnamese War were said to be under the influence of Communists. *The New York Times, The Washington Post* and *Look* were described as "left wing." A few publications, such as the *Chicago Tribune* and *Reader's Digest*, received praise for standing fast against the leftist tide. People known as anti-Communists were "solid," "tough," or "practical" men. Most businessmen "know what the score is," but many college administrators need more "iron in the backbone." During cocktail hours the seminar participants discussed the speakers, whom they found generally impressive. As the man from the National Education Association put it, "these boys are really smart on this cold-war thing." After dinner, everyone stayed up late drinking and swapping jokes about hippies, Communists, Jews and other "oddballs."

The highlight of the seminar came when an army helicopter fluttered noisily out of the dusk and deposited the evening's guest of honor, Army Chief of Staff Gen. William Westmoreland. Accompanied by three aides—a general, colonel and major—Westmoreland joined the afternoon cocktail party. They all wore civilian suits, "to put you people at ease," as the Chief of Staff told us.

After dinner General Westmoreland gave a short talk on the war in Vietnam, the essence of which was that only "political restraints" from Washington had kept him from gaining a "classic military victory." While he did not say much that was new, his presence electrified the seminar, and represented a great coup for the Center. As one of Westmoreland's aides pointed out, the General turns down seven invitations to speak at private affairs for every one he accepts.

The reflected prestige of a visit by someone like General Westmoreland means a great deal to John Fisher, because he has big plans which require such publicity. Fisher plans to turn the Center into Freedom Academy, with 400 full-time graduate students and faculty. This would require $11 million, part of which the Center's organizers hope will come from the federal government, with the help of the Congressmen on their advisory board. Fisher admits he "wouldn't object to government support as long as they left the administration in our hands."

Some might question the wisdom of putting public funds in the hands of Fisher and his colleagues at Freedom Studies Center. Some might question the Pentagon's active support—including General Westmoreland's official visit—of a private organization so openly critical of U.S. military policies. Some might question the propriety of federal and state government officials receiving indoctrination on internal subversion from lecturers who imply that liberal Senators are Communists. Some might question the role of the public school officials who serve on the advisory board of an "educational" institution which claims many college professors are "Communist dupes." Some might question the tax-exempt status of an institution so aggressively devoted to political propaganda. Some might even question the need for a school of cold-war psycho-political warfare.

But not John Fisher. He sees his Freedom Studies Center as a vital link in the world's defense against communism. "Whatever we're doing here," he warns, "it isn't enough, because the other side's still winning."

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

Mr. FULBRIGHT. I yield 10 minutes to the Senator.

THE FOREIGN SERVICE SCHOLARSHIP PROGRAM

Mr. SYMINGTON. Mr. President, beginning in the late 1950's, and continuing on into the early 1960's, I offered and devoted much effort to legislation which proposed the establishment of a National Foreign Service Academy.

Over the years the type and character of the academy proposed was changed from an undergraduate to a graduate institution.

In effort to meet divergent concerns, including those arising about academic freedom, numerous other modifications were made in the academy proposal, with particular respect to the structure of the body that would create and operate the institution.

Despite refinements and major support of a distinguished panel of citizen experts and educators, the ultimate academy proposal, which was endorsed by the Kennedy administration, as did the predecessor proposals, failed to obtain committee approval.

Throughout the various shapes and forms the academy proposal, the overall objective of some of us continued to focus on the need to better prepare, train, and educate U.S. representatives who would serve us abroad. I say this by way of background that is parallel to the similar interests and efforts of Senator DOMINICK, author of the current proposal, to create a U.S. Foreign Service scholarship program, which is now included as title XII of S. 659, the Higher Education Act Amendments.

The Foreign Service Scholarship proposal envisions an annual entry of up to 5,000 students, 3,500 undergraduates and 1,500 graduates, chosen on the basis of competitive examinations by a board of trustees. These students will be seselected from among 8,424 applicants who will have been nominated to participate in the program by either the President, or the Vice President, or the Secretary of State, or a Senator, or Representative.

Composed of the Secretary of State, four presidential appointees with backgrounds in education or foreign affairs, and two Senators and two Representatives, the Board of Trustees would make arrangements with qualified universities and colleges for successful applicants to pursue full-time courses of study relating to the field of foreign affairs. Full scholarships would be given, along with monthly compensation of $200 per month for single students and $250 for married students, with additional allowances for their children.

Under different arrangements, Government officers and employees could also participate

Upon entering the program, a participant would agree to accept Government employment upon completion of his course of study and receipt of an undergraduate or graduate degree.

Under somewhat hazy authority, the board could assign graduates to Government jobs. In terms of authorization, cost of the program would rise from $15 million in the first year to $60 million in the fourth year.

In regard to provisions in the bill to allow for current Government employees and officers to study in our existing universities, the chairman of the Civil Service Commission advised us that in his view the bill was unnecessary. A spokesman for the State Department also registered the objections and criticisms of that Department.

With respect to the training for Government personnel, both the Commission and the State Department noted that, in effect, this provision would duplicate existing authority. In order to increase economy and to raise the standards of performance by employees in their official duties, Section 4301 of Title 5 of the United States Code authorizes the head of each agency to provide for training of employees in both Government and non-Government institutions; and the Foreign Service Act provides similar authority for the training of Foreign Service personnel at nongovernmental institutions as well as in the Foreign Service Institute.

In view of the present authority for department heads to provide for advanced education for employees when needed, I do not see the necessity of this phase of the proposed scholarship program.

In connection with the undergraduate and graduate scholarship program, the Civil Service Commission Chairman gave his opinion that:

> It would be a disservice to thousands of young people planning for the best use of their years available for education to encourage them to devote themselves to preparing for careers that cannot be made available to them.

Of the approximate 40,000 Americans serving abroad for the U.S. Government in 1969, the Civil Service Commission reports that roughly 12,500 were in administration and clerical work; 8,500 in the field of education; 4,000 in the social sciences; 2,000 in engineering; another 2,000 in blue collar occupations; 1,700 in budget and accounting work; 1,500 in supply work; 1,200 in the field of fine arts, and about 1,000 concerned with equipment and facilities. The Commission Chairman cited this breakdown in reference to their view that most of the overseas employees known to them do not need the proposed type of foreign affairs education and: "Would not be the types of specialists they are if they had to have it."

With the State Department receiving about 10,000 applications for Foreign Service officer and Foreign Service information officer appointments, but making only from 200 to 300 appointments each year, apparently there is an abundant talent pool for the Foreign Service.

Practically all young new officers chosen have studied one or more languages. More than half have one or more graduate degrees and they come from all parts of the country and represent hundreds of different colleges and universities.

The Foreign Service Officer Corps consists of only 3,005 men and women. They represent every State in the Union and more than 500 different colleges and universities.

The proponent of the bill also views the scholarship program as offering a needed impetus to obtain greater representation of minority groups in the Foreign Service Officer Corps at State. To the extent, however, that such a scholarship program would encourage more young people to study for Foreign Service careers than Government jobs exist to which they may be appointed, this stimulus would be misplaced. It would produce false hopes and further frustration.

In this connection, I am glad to learn that greater efforts are currently being made at the State Department under a special minority program. It is anticipated this year that of about 100 appointments in both FSO and FSOI, about 20 appointments will go to applicants representative of minority groups.

It has also long been my view that greater opportunity should be afforded to women in the Foreign Service. Currently there are but 152 women among the 3,005 members of the Foreign Service Officer Corps.

With a recent change in policy, that number may grow. Wives of Foreign Service personnel are now permitted and encouraged to take the qualifying examination. I am glad to note also that a relatively greater number of women—19 out of 96—were appointed Foreign Service officers in this year than in any of the previous 4 years.

This Foreign Service scholarship program proposed in title XII of the Higher Education bill is now subject to a motion to strike. According to the statement of purpose in the bill, the objective is twofold: First, to provide an opportunity for young Americans to enter the field of governmental foreign affairs; and, second, to improve the professional education and training of current Government employees so engaged.

While I am in sympathy with and find the objectives highly desirable, I question whether the means chosen offers promise of substantial accomplishment of those purposes beyond that which would normally occur under existing policies, without the ultimate additional authorized expenditure of $60 million annually.

Department heads already have the authority to provide under certain circumstances for the further training and education of Government employees.

Undoubtedly the scholarships and compensation offered to potential undergraduate and graduate students to study in the field of foreign affairs would attract, and possibly increase, the number of Americans choosing to pursue international relations as a career. But it appears doubtful that the seeming promise of a government career could be fulfilled for such great numbers if program participants were additional to that quantity of students, who, on their own volition, and with the assistance of existing general government scholarship or loan programs, are now pursuing or would pursue courses in international relations.

Mr. President, in summary, I do not see that any fundamental change would be made in the present system other than to provide a special subsidy for those who will undertake to study in the field of foreign affairs; nor am I persuaded that our country has a great need at this time to provide this special incentive to foreign affairs students.

Benefits might accrue in strengthening the courses in international relations that are presently offered in some 118 higher educational institutions which, if approved by the board of trustees, would be attended by the scholarship recipients. Those potential benefits, however, could well be outweighed by problems similar to those that have arisen in recent years, as we continue to discover and recognize some of the significant developments incident to the vast research contracts between the Department of Defense and American universities.

For the foregoing reasons, I shall vote in support of the motion to strike.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, as a member of the Foreign Relations Committee, I agree with some of the points that have been made. I have been quite torn on this matter. I agree particularly with the Senator from Arkansas with regard

to the question of appointments to the program; my amendment to strike this portion was defeated in committee. As the only Foreign Service officer to have served in this body, I understand the points the Senator from Arkansas and other Senators are making.

The reason we reported it from the Labor and Public Welfare Committee was that we felt, on balance, it had merit. It increased the number of young people who would be better educated by studying the field of foreign relations. Obviously, there are not enough jobs in the Foreign Service to give everyone an opportunity to serve in the Foreign Service, but it would mean that the body politic of our country would be enriched each year by an increased 5,000 persons who had studied foreign relations. That, in itself, would certainly be a salutary effect for the Senator from Colorado, whose idea this is, and who has pursued it very hard, effectively, and vigorously for many years, that made a good case and the committee supported reporting out the program as a position of the bill.

In this regard, the Senator from Colorado was very considerate to this body last year when the higher education bill was considered—the same bill, actually, before the present "snafu"—he withdrew his amendment at that time, so that the bill could be passed with alacrity. This is another reason why we wanted to give him the opportunity to have it heard at this time.

For these reasons, I will be opposing the amendment.

Mr. President, I turn over the remainder of my time to the Senator from Colorado.

Mr. FULBRIGHT. Mr. President, will the Senator from Rhode Island yield?

Mr. PELL. I yield.

Mr. FULBRIGHT. If we are really interested in informing more people about foreign relations, why would it not be more efficient to spend the $60 million on public broadcasting and informing all the people of the United States about foreign relations?

Foreign relations, as such, is not a highly specialized subject like physics, or mathematics. It is simply a knowledge of the people and the history of various cultures and various nations.

When the Senator himself says there will not be enough places for all these students to serve after they have absorbed all this information, why would it not be better to spend this money to inform everyone in the country?

Mr. PELL. I would use it for that purpose. As Alexander Pope said, "The proper study of mankind is man." I would say that the proper study of the world around us is the world, and I would support that proposal, too.

Mr. FULBRIGHT. Mr. President, did not the Senator, in preparation for his training for the Foreign Service, take what we normally call the undergraduate liberal arts courses?

Mr. PELL. The Senator is correct. However, I do not visualize all of these young men, or many of them, going into the Foreign Service. I visualize it as informing an increased number of them.

Mr. FULBRIGHT. Then it is another scholarship program. We already have a liberal program which is quite large. It is 9 to 1 in our universities. If one gives a university $10,000 for the lending program, the Government will supply $90,000. We have a high multiplicity. I had something to do with that in the University of Arkansas. I got a citizen to put up $10,000. The Federal Government then put up $90,000.

I support the measure if that is the purpose. However, it has a history which shows a different objective than what the Senator says.

Mr. PELL. Mr. President, I appreciate the words of the Senator from Arkansas. All I can say is that I would like to see the program the Senator suggests—public broadcast work and other programs. The fallout from this program would be more beneficial than some of the other programs we have adopted.

Mr. President, I yield the remainder of my time to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, I thank the Senator from Rhode Island.

Mr. President, so that I may apportion my time, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 25 minutes remaining.

Mr. DOMINICK. Mr. President, I yield myself 15 minutes at this time.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 15 minutes.

Mr. DOMINICK. Mr. President, in order to set the record straight, I think I should reply first to the Senator from Arkansas and certain of the statements he made in his opening remarks.

This bill was introduced and included as title XII of the Higher Education Act of 1968 in the 90th Congress. It was reported out by the Labor and Public Welfare Committee to the floor. Because of the jurisdictional problems which were raised at that time, since it had not gone to the Foreign Relations Committee, on July 15, 1968, at the urging of the joint leadership and the Senator from Alabama (Mr. SPARKMAN), I agreed to remove it from the Higher Education Act with the assurance that hearings would be held in the Committee on Foreign Relations the following year—namely, in 1969.

In the 91st Congress I introduced S. 939 on February 7, 1969. Hearings were held before the Education Subcommittee on January 29, 1970. It was reported out of the Labor and Public Welfare Committee on October 13, 1970, and referred to the Committee on Foreign Relations in accordance with my previous agreement, where it died without hearings.

In the 92d Congress, S. 390 was introduced on January 28, 1971. After adopting the previous hearings by reference, it was reported out of the Committee on Labor and Public Welfare unanimously on May 12, 1971, and was referred to the Committee on Foreign Relations for 42 days. Hearings before the full Committee on Foreign Relations were held on June 18. It was reported out of that committee unfavorably by a vote of 10 to 2 on June 24.

S. 390 was offered as an amendment to S. 659. The amendment was withdrawn on the last day before Congress recessed, August 6, 1971, as the Senator from Arkansas continued to introduce minor amendments which threatened passage of the whole education bill before the recess.

So, once again at the urging of the Senator from Arkansas and the joint leadership, the Senator from Montana and the Senator from Pennsylvania, I withdrew the amendment in order to get the education bill through with the assurance which was given on the floor that time would be made available last fall or early this year for a debate on this particular bill.

During the process of the discussion prior to my withdrawal, the Fulbright motion to table this measure was rejected by a vote of 21 to 38. Also a motion to strike certain language authorizing monthly subsistence to married couples was rejected by a vote of 22 to 32. I bring this up to show for the record that this matter is not new to the Senate. It has been before this body four times. We have yet to have an opportunity to act due to the time pressures which coincidentally seem to perpetually threaten this amendment.

Here we are today with a 1-hour limitation, which I agreed to in order to get some kind of a decision on the amendment. It has been reported out of the Labor and Public Welfare Committee four times. It has been reported out of the Foreign Relations Committee once unfavorably.

What is the evidence behind it? The Senator from Arkansas indicated that one of his major concerns is that title VIII represents some kind of sneaky approach to an anti-Communist bill.

Frankly there could be nothing further from the truth than that. This program, if adopted, will provide scholarships, as was pointed out by the distinguished Senator from Missouri, for some 5,000 young men and women. If it is fully implemented, it will utilize some 118 institutions of higher learning in the United States.

Title VIII does not create one academy program where the students will be indoctrinated in one faith.

The second point to be made at this point is that most of the debate up to date from the Senator from Arkansas and also from the Senator from Missouri has revolved around the State Department. But the very purpose of this scholarship program is to make available to undergraduates, graduates, and Federal employees who want to transfer into this program, all phases of international relation training.

This overemphasis on the State Department overlooks the fact that our Government not only deals through the State Department, but it also deals through the Agriculture Department, in the Commerce Department, in the Federal Aviation Administration, in the Transportation Department, and in practically every other department of the Government imaginable. They are

dealing not only in this country with foreigners from overseas, but also dealing with a number of activities of those departments on overseas bases.

I think I should make it clear that we are not talking solely about the Foreign Service, but rather about the degree to which the United States is involved in all phases of international affairs with other countries in this world.

During the course of hearings, the program was endorsed by approximately 40 prominent educators and experts in the field of international affairs and foreign policy.

Dr. Philip Mosley, associate dean of the faculty of International Affairs of Columbia University, an extremely prominent and very helpful man who, unfortunately, died not more than 6 weeks ago and whose death was a great loss to this country, speaking about the bill, said:

It is excellent in both its broad purposes and its realistic provisions for execution of the program. Because of the strenuous efforts made since 1945 by universities and colleges, and by several foundations, the institutions of the country offer a wide range of intensive programs on international affairs generally and on the intensive study of most of the areas of the world. Your bill provides a flexible and efficient way of tapping these large resources of training and research. . . . It could make a tremendous difference in the awareness of our people about our responsibilities in world affairs and in the effectiveness of both the study and the conduct of our foreign policy in its very wide ramifications.

William Langer, professor of history, Harvard University, and former member of the advisory board of the Foreign Service Institute:

I am well acquainted with the problems of training for service abroad. I have therefore read your bill with great interest. I think it is an excellent bill, that will do much to strengthen our staffs abroad. I trust that it will soon be enacted into law.

Dr. Gerard J. Mangone, Woodrow Wilson International Center for Scholars, Washington, D.C., found the potential benefits of the program similar to that provided by the Peace Corps. Dr. Mangone said:

Having trained young American men and women for the Peace Corps, having interviewed them in India, Tanzania, Afghanistan, Nigeria, and Peru, I would maintain that Congress had wisely approved Peace Corps legislation that enormously enriched the United States; not in narrow monetary or vocational terms, but in strengthening the imagination, logic, and compassion of tens of thousands of young people who now bear the responsibility for the future of the United States. Yet when I traveled around the world in 1961, the professionals in the American missions were appalled at the idea of hundreds of young people arriving in the developing countries to assist in teaching, health, agriculture, and marginal economic productivity tasks.

Similarly fellowships for foreign service education will benefit the United States not only by preparation for a professional career, but by endowing tens of thousands of bright Americans with the liberal ideas that underlie this republic.

Dr. Mangone continues:

Surely there can be no doubt of the need for public support in this area. The United States has already veered its national policy and educational system inward. Private support for foreign study and international relations has been dropping. And the high costs of college education cruelly discriminate against the poor. Eighty per cent of those children whose parents earn above $15,000 a year go to college; only fifty per cent of those children whose parents earn from $7,500 to $10,000 a year go to college; and at $4,000 the figure drops to thirty per cent. Education for foreign service is an excellent medium to enhance the selection of future leadership in a republic and to replenish the reservoir of liberally-educated persons in a democratic society. I respectfully urge favorable consideration of Senate bill 390.

Samson B. Knoll, dean of the faculty, the Monterey Institute of Foreign Studies, Monterey, Calif.:

I shall like to speak not as one professionally engaged in training students for foreign service, but as a teacher and educator concerned with the welfare and the future of this nation. To me, one of the most vital aspects of the proposed bill is the provision that the program be supported in educational institutions throughout our country. This will prevent rigidity and formality which always threaten training for a specific purpose. Enabling the recipients of Foreign Service Scholarships to take their training at institutions of their choice which, of course, must qualify, will ever bring fresh ideas and fresh approaches to the study, and thereby to the conduct of foreign affairs.

Peter F. Krogh, dean, Georgetown University, School of Foreign Service, Washington, D.C.:

There is a great and urgent need for a scholarship program which would assist a representative and highly motivated group of United States citizens to gain a higher education in international relations. The need is great for the reasons set forth in the first section of the bill (1201) to which could be added the statement of Dr. Robert Hutchins that all problems are now world problems and what the world needs is citizens to solve them. The need is urgent because we are in danger, in this country at this time, of precipitously turning our backs on foreign affairs in favor of exclusive concentration on domestic problems. The provision of scholarship assistance to students of international relations could help to keep us looking outward. It could prevent the country from putting on international blinders at a time when it needs all the lateral vision it can command.

I might say that is an impressive list of educators who have helped to train people for State Department service, and who endorse this measure. They are certainly not the only ones.

Essentially what my amendment would do is provide education and training of our most valuable international commodity—our international representatives—through undergraduate and graduate scholarships, and in-service training, education, and research programs. It would complement the institutional grants of title I, part I of S. 659 by providing qualified students to study at the federally supported international centers. More importantly, the amendment would represent a step toward and a national commitment to bettering our international knowledge and understanding.

The scope of our increasing involvement in international relations is best illustrated by U.S. Civil Service Commission figures of January 1971, which indicate that a total of 59,832 Federal civilian employees represented our Government overseas, 35,831 serving in foreign countries and 24,001 serving in U.S. territories. Additionally, recent information obtained from the major agencies indicate that approximately 6,000 Federal employees working stateside hold positions requiring continuous contact with foreign countries and foreign nationals. Thus, approximately 66,000 Federal employees hold positions demanding varying degrees of foreign affairs-related training.

My amendment would furnish qualified persons for replacement and expansion of this Federal diplomatic work pool by utilizing the existing facilities and expertise of U.S. educational institutions, public and private. There are presently 77 institutions located in 31 States, the District of Columbia, and Puerto Rico offering curriculums in international relations and 41 institutions in 21 States and the District of Columbia having foreign service and diplomacy curriculums. Once these institutions receive board approval, they would be able to enroll eligible students under the undergraduate and graduate scholarships of the program.

If the resources of these institutions are properly tapped by the program, the Federal Government will be the recipient of educations and philosophies shaped by a variety of educational backgrounds from diverse sectors of American life which will expand our whole concept of foreign affairs education and practice.

The major strength of the Foreign Service Scholarship program is that it is just that—a scholarship program. As such, it is not an academy program requiring large capital outlays for buildings, grounds, and equipment rather than availing the money for investment in students at existing institutions. In fiscal year 1967, the cost of commissioning an officer from a service academy varied from $40,200 at the Naval Academy to $50,993 at the Air Force Academy. During the same year, a scholarship program similar to title VIII, the ROTC program, graduated regular officers at a cost of $6,000 per officer for the Air Force and $11,201 for the Navy. Additionally, academy training would provide excellent specialists in limited fields but would be unable to provide the breadth of curriculum necessary to train persons for our divergent foreign affairs needs.

Equally important is the program's statement of national commitment to a program of bettering the Nation's foreign affairs personnel. The amendment would place international diplomacy on an educational scale of importance equal to that of training doctors, teachers, military officers, and football players. This recognition is particularly important because governmental positions in foreign affairs have traditionally required a level of education or training comparable to at least that of a college graduate. In the past, there has been no federally supported undergraduate scholarship programs for foreign affairs students. This has severely limited Government recruitment in this area because today many of the Nation's most able

young people begin to acquire a sense of direction and purpose and commitment toward lifetime careers while they are still in high school. Most professional and vocational fields are competing for these students through undergraduate scholarship programs leading to careers in those fields. But the young man or woman at this 18- to 20-year-age level who aspires for a career in foreign affairs has never heretofore been able to see any educational programs which would lead in this direction, or any forms of scholarship assistance indicating that the Nation attaches a high priority to careers of this kind. The Government should not be limited to competing for a graduate level talent pool depleted by those students who committed themselves earlier in their educational process.

The Foreign Service scholarships would also provide access to those talented, economically disadvantaged, high school students who, in the past, have never had the opportunity to either enter or complete college.

The net effect of the student scholarship programs of title VIII is to make a foreign affairs career in some governmental department or agency a reality to not just a selected few but to all qualified students. The beneficiary of such an expanded talent pool will be the United States and those countries that deal with her.

In addition to being favorably reported out of the Committee on Labor and Public Welfare on four occasions, the predecessor of title VIII, S. 390, was unfavorably reported out of the Committee on Foreign Relations on June 24, 1971. The primary reason for the committee's unfavorable report was the State Department's strong opposition to the bill. The State Department opposed the bill despite great enthusiasm for the program by two of the State Department's eminent former Directors of the Foreign Service Institute.

In January of 1970, Ambassador Parker Hart, President of the Middle East Institute, testified that:

> I support the bill, particularly because the Foreign Service does not have, at the present time, a real constituency in the United States.

Ambassador Hart submitted a general statement of support for the hearing record on June 18, 1971, also. Ambassador George Allen, prior to his untimely death, testified on behalf of the 91st session bill, S. 939, and was an active supporter of it. He was particularly attracted to the wide participation of American colleges and universities available under the bill and thought that it offered a viable remedy to the defect that "the Foreign Service is already rather inclined to be cliquish." Also, Ambassador Allen thought that a 4-year academic testing period offered a better procedure of Foreign Service officer selection than through a 1-hour examination.

The State Department's opposition to the program is somewhat suspect in view of what Deputy Director General of the Foreign Service, Howard Mace, told the Education Subcommittee in January of 1970. Mr. Mace testified that:

> First of all, we don't believe that it is necessary to have an additional authority to obtain qualified younger officers for the Foreign Affairs community in that we find that there are ample applicants among the university graduates, including graduate students, to compete for the present competitive examinations for appointment.

This is particularly confusing in view of the State Depatment's traditionally defective recruitment of minorities.

Last year's State Department statement by David M. Abshire, Assistant Secretary for Congressional Relations, indicated that Negroes comprise only 1.3 percent of the Foreign Service Officer Corps and only 5.5 percent of the Foreign Service Reserve Officers. The latest available figures indicates that as of November 1967, only 16 Spanish-Americans, nine Orientals, and no American Indians were in the Foreign Service Officer Corps of 3,453. These figures are particularly appalling when one realizes that 66⅔ percent of the world's population is nonwhite and 12.5 percent of the U.S. population is black. At the summit of the foreign service hierarchy is the Ambassadors. They represent the President and the people of the United States in more than 100 Capitals around the globe. Assuming normal turnovers, several thousand such chiefs of mission have been sent abroad to represent the United States over the past 100 years. During that time, other than token exceptions in Haiti and the African countries, the United States had only five black Ambassadors. At the moment, there is one—Jerome Holland in Sweden. Sex discrimination in the Foreign Service is just as rampant. Women constitute less than 5 percent of all Foreign Service Officers, and hold less than 1 percent of the top positions in the State Department. Despite a 1970 State Department Task Force recommendation for stronger emphasis on the recruitment of women, only seven of the 117 junior Foreign Service Officers who entered the Corps in fiscal year 1971 were women.

The State Department Task Force report completed last year, "Diplomacy for the 70's: A Program of Management Reform for the Department of State", found that:

> Conventional recruitment methods are not successful in attracting minorities to the Foreign Service. For example, college recruiters were sent to 19 predominantly black colleges in the fall of 1969 to encourage black students to take the FSO written Examination. Only 13 students from these schools took the written examination. Six passed.
>
> Highly capable minority candidates are difficult to recruit because few have had any exposure to the Foreign Service as a career possibility and because the best of such candidates receive job offers from other employers who have aggressive minority programs and who offer better salaries and at least comparable responsibility. Also, other able minority candidates who for cultural or educational reasons are unable to pass the written or oral examinations must be identified, encouraged, trained and their skills developed.

To improve minority recruitment practices, the Task Force recommends, among other things, that:

> For those minority candidates who exhibit high potential but who might need a training program to make them competitive with other candidates, a combined work and study program be instituted. It would emphasize improving communications skills, and include courses in international affairs, American history, government and culture, all aimed at correcting gaps in the candidate's academic preparation.

The minority recruitment problem is best exemplified in an article in the October 1970 Foreign Service Journal by Frederick Quinn. The article contains the views of an elite group of 40 well-educated ghetto teachers appointed to the New Jersey Urban Education Corps. In discussing the teachers' interests in a Foreign Service career, Mr. Quinn states:

> It has not figured as a career option for most of them to date. "You live in a different world," one intern said. "I would no more think of going through the door of the State Department than you would about having lunch in the Soul Kitchenette."
>
> It is time for change on both sides. If UN statistics are reasonably correct, more than half the world's population is under thirty years of age, and the majority of that population is non-white. By honestly and clearly discussing "the black experience" as a central part of American history and culture, we are helping find another bond between audiences in the Third World and the United States; and to the extent that the foreign service pursues an energetic minority recruitment program in the United States, it helps close the generation and color gap which confronts America in its representation abroad.

Perhaps sufficient qualified applicants are available for State Department positions, but quite obviously there are not enough qualified applicants representative of our whole varied society to compete for the positions. It is incomprehensible to me how the State Department can oppose a bill which would provide exactly the academic preparation for qualified, representative applicants that the Task Force recommends.

I singled out the State Department only because of what I considered to be unwarranted criticism of the program and because it has been emphasized by the Senator from Arkansas and the Senator from Missouri. I do not need to go into the mechanics of the program, because the Senator from Missouri went into that very carefully and, I thought quite well.

What title VIII would provide for the first time is an opportunity for high school students and beginning college students and minority people to even consider the possibility of a career connected with foreign relations. It will give them some type of hope, that when they complete their educational process they will have a chance of getting a job in a field they like, whether it is in commerce, transportation, with the FAA, with the State Department, or whatever particular field may be involved.

So I think it is wrong to have any implication in the record that this title would create any type of so-called anti-Communist tinged education. Nothing could be further from the truth than that.

I think it is wrong to consider the program coverage as being restricted to the State Department. It has to do with more than merely the State Department. I think we should do something to provide a career opportunity to these people. People have said in the past an 18- or

19-year-old boy cannot make up his mind as to what type of career he should be in; therefore, we should not give those young people a scholarship program.

The Senator from Arkansas said at one point during the debate that if we provide diplomatic specialists, we are going to have to provide similar scholarship programs for science. We have already provided one for science in the National Defense Education Act. That was specifically designed to take care of the number of people to be trained in the scientific field. But we have never done anything for the Foreign Service Scholarship Program. Thus, the young people who are finding it difficult to find the means and the mechanisms to go to college say to themselves, "There is no point in my even considering a field of this kind as I must go into a career now which will offer scholarship opportunities." What is it? It might be medicine. It might be science. It might be teaching. But why not include within this field of possible careers the broad foreign relations training so we will have better qualified people to handle our affairs in dealing with other peoples of the world?

It strikes me it is not really very sound to try to oppose a program like this, when there is not any field in the country which is more important to this Nation, particularly considering the fact that there are very few fields in this country which have not already received some kind of subsidy.

I reserve the remainder of my time.

Mr. FULBRIGHT. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Does the Senator yield back his time?

Mr. FULBRIGHT. Mr. President, I ask unanimous consent to reserve such time as may be necessary for a quorum call, and I yield back the remainder of my time.

Mr. DOMINICK. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. DOMINICK. Mr. President, I am going to use my 3 minutes for the purpose of establishing a complete record. I think it is a very important vote, as far as I am concerned, and as far as the country is concerned.

We have a large bill in front of us. We are obviously going to have a long conference. One of the things that seems to me to be important is to make sure that what we are dealing with in higher education actually pertains to higher education. Nothing can be more important in this particular section of the bill than what has been incorporated and reported favorably by the various members of the Committee on Labor and Public Welfare ever since 1968, really without dissent.

I find it curious that, when we are dealing with a concept which has nothing to do with the transfer of the Foreign Service Institute, when we are dealing with the concept of higher education, we should refer it to the Foreign Relations Committee at all. This will not stop the Senator from Arkansas from making a motion to strike, in any event, but it does seem curious to me that a matter which belongs in the Committee on Labor and Public Welfare should be turned over to the Foreign Relations Committee when what seems to be involved is a scholarship program.

Mr. President, it is time that the United States adopt a national commitment to wage international understanding and cooperation rather than war. Title VII would effectively meld our greatest resources—our students, our educators, and our educational institutions—toward this end. I urge that this amendment be defeated and what the committee has reported will be approved.

I yield back my time.

The PRESIDING OFFICER. All time has been yielded back on the amendment.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Senator from Maine (Mr. MUSKIE), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois (Mr. STEVENSON) and the Senator from Washington (Mr. JACKSON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOPER) and the Senator from Florida (Mr. GURNEY) are detained on official business.

The result was announced—yeas 48, nays 42, as follows:

[No. 72 Leg.]

YEAS—48

Allen	Fong	Moss
Anderson	Fulbright	Nelson
Bayh	Gambrell	Pastore
Bentsen	Gravel	Pearson
Bible	Hart	Percy
Burdick	Hatfield	Proxmire
Byrd, Va.	Hollings	Randolph
Byrd, W. Va.	Inouye	Ribicoff
Cannon	Jordan, N.C.	Saxbe
Case	Mansfield	Sparkman
Chiles	Mathias	Spong
Church	McClellan	Stennis
Cranston	McGovern	Symington
Eagleton	McIntyre	Talmadge
Ellender	Miller	Tunney
Ervin	Montoya	Young

NAYS—42

Aiken	Dominick	Mondale
Allott	Eastland	Packwood
Baker	Fannin	Pell
Beall	Goldwater	Roth
Bellmon	Griffin	Schweiker
Bennett	Hansen	Scott
Boggs	Hruska	Smith
Brock	Hughes	Stafford
Brooke	Humphrey	Stevens
Buckley	Javits	Taft
Cook	Jordan, Idaho	Thurmond
Cotton	Kennedy	Tower
Curtis	Magnuson	Weicker
Dole	Metcalf	Williams

NOT VOTING—10

Cooper	Jackson	Muskie
Gurney	Long	Stevenson
Harris	McGee	
Hartke	Mundt	

So Mr. FULBRIGHT's amendment was agreed to.

Mr. FULBRIGHT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MILLER. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. BYRD of Virginia). The amendment will be stated.

The legislative clerk read as follows:

On page 599, at the end of line 16 insert: *"Provided,* That such internship duties and activities shall not be involved directly with campaign or other partisan political activities."

Mr. MILLER. Mr. President, this amendment has to do with section 931, under part (c), which is entitled "Interns For Political Leadership."

The purpose of this amendment is to make sure that the internship program is not abused for the benefit of an elected official in a campaign or for partisan political gain. The bill specifically provides for political involvement of interns with elected officials in the performance of their duties, in their office, which will give the interns an insight into the problems and operations of the government. This is a desirable program.

However, if the public gains the impression that the program is being abused for the benefit of the official in his campaign activities or for partisan political purposes, public support will be lost.

The taxpayers rightfully can expect that such activities should be paid for by the official or by his party, not the taxpayer. Normal activities of the office can be indirectly involved with the official's appearance at party functions or with correspondents of a partisan nature.

We are not nit-picking on this point. It would be expected, however, that both the official and the intern would understand that such incidental activities are a far cry from direct involvement in a campaign or in partisan political activities which exist only in a very minor degree in the duties of public servants.

I have discussed this matter with the distinguished manager of the bill, Senator PELL, and with Senator JAVITS, and I understand that this accords with their understanding of the bill. I am merely trying to be helpful and strengthen the bill with respect to this provision, because I believe that, properly conducted, this internship program is a very fine measure.

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

Mr. MILLER. I yield.

Mr. JAVITS. Mr. President, the Senator from Iowa has discussed this amendment with me, and it is satisfactory so far as I am concerned.

Mr. MILLER. I thank the Senator.

Mr. PELL. Mr. President, I have discussed this amendment with its author and with the author of the section of the bill, the Senator from Minnesota (Mr. HUMPHREY), and it is agreeable with him.

I think the little colloquy in which we have engaged is a very useful exercise because, as I understand the intent of

this amendment, it is not to prevent an intern in a Representative's or a Senator's office from driving his boss to the airport when he goes off to make a political speech or to do the normal chores that would accrue to an intern in the course of his duties in the office of a member of either this party or the other party.

Mr. MILLER. The Senator is correct. We have discussed this matter. We are not interested in nit-picking. That, to me, would be an incidental and a minor thing. I cannot imagine anything like that defeating the purpose of the program.

I do not think there is any hang-up on these purely incidental, indirect activities which are bound to creep into any public office.

Mr. PELL. I recommend that the Senate adopt the amendment of the Senator from Iowa.

Mr. MILLER. I thank the Senator from Rhode Island.

Mr. PELL. I yield back the remainder of my time.

Mr. MILLER. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

AMENDMENT NO. 949

Mr. ERVIN. Mr. President, on behalf of myself and a multitude of other righteous Senators, I call up my amendment 949 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. ERVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

At the end of the committee amendment add the following additional title and section appropriately numbered:

PROTECTION OF RIGHT OF STUDENTS TO ATTEND NEIGHBORHOOD SCHOOLS

SEC. —. Notwithstanding any other provision of law, no court, department, agency, or officer of the United States shall have jurisdiction or power under any circumstances to order or require by any means whatever the State or local authorities operating any public school system in any State, district, territory, Commonwealth, or possession of the United States to deny to any student of any race, religion, or national origin admission to the school nearest his home which is operated by such authorities for the education of students of his age or ability. The Congress intends the statutory provision set out in the preceding sentence 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 or situation to which or to whom the Congress has the constitutional power to make it applicable, and to this end the Congress declares its invalidity in particular respects or in particular applications shall not impair in any way its validity in other respects or in other applications.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that time on this amendment not start running today.

May I say, for the information of the Senate, that there will be no further rollcall votes this evening. The vote on the pending amendment will be put over until tomorrow. I think that meets the approval of the author of the amendment.

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

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

INCREASED FUNDING FOR SUMMER JOBS FOR YOUTH

Mr. JAVITS. Mr. President, I should like the record to show that the annual struggle to get increased funding for summer jobs and recreational programs for youths is commencing again. The amount provided by the budget is, in my judgment, completely inadequate to needs documented by those closest to the situation.

A most depressing aspect of the current economic situation is its effect on the employment hopes and situation of economically disadvantaged youth in urban and rural areas.

While the current unemployment rate of 5.9 percent is bad enough nationally, the jobless rate among teenagers in the poverty neighborhoods in December—the last period as to which information is available—stood at 25.7 percent—four times as much, with the rate among black teenagers in such areas at 34.7 percent.

The summer months traditionally present an especially difficult situation—with so many youth out of school, the competition of college and of other youth for employment and other factors.

The Neighborhood Youth Corps summer job and recreational programs—authorized under title I of the Economic Opportunity Act of 1964, and the Manpower Development and Training Act of 1962—provide an existing mechanism to meet the summer problem; under the program work experience and related transportation is provided for poor youth between the ages of 14 and 21 with public and nonprofit private agencies and with earnings enabling many to continue their education in the fall; it also funds recreational programs for youth 6 through 12 years of age.

However, despite our efforts, funds appropriated for these programs in the regular appropriation bill, usually early in the fiscal year, are never adequate to the actual needs, and each spring, for the past 5 years, it has been necessary for me and other concerned members to seek additional funds by way of supplemental appropriation.

The prognosis for this summer is particularly upsetting, since there will be added to the factors I have cited—those arising from returning veterans—the inability of the private sector alone to meet its quotas in hiring under its voluntary summer programs, and general economic conditions.

A city-by-city survey conducted by the National League of Cities—U.S. Conference of Mayors, at my request, documents the needs for a total supplemental appropriation of $291.5 million for the programs, which breaks down as follows:

$268.3 million for the job component; this amount together with the $175.7 million already available, would fund 947,928 10-week job opportunities for economically disadvantaged youth ages 14 to 21 in urban and rural areas. The administration has requested a supplemental appropriation of $82.2 million for this purpose, to fund an aggregate total of 609,300 opportunities, the same number of total opportunities funded last year.

$1.3 million for a related transportation necessary for such youths to participate in the job program; the administration would provide $1.4 billion out of existing funds.

$21.9 million for the recreational support program—providing activities to children 6 through 12 years of age, and for which no funds are now available. The administration has requested a supplemental appropriation of $12.8 million for these purposes, again the same aggregate amount as was made available last year.

Mr. President, to the end of obtaining more adequate funds for these programs for the coming summer, I have written Secretary of Labor James D. Hodgson whose Department administers these programs urging him to submit a revised budget request for additional funds.

Additionaly I have submitted a statement to the Committee on Appropriations asking it to appropriate the full amount documented by the National League of Cities when it considers a supplemental in executive committee sometime later next month; at this point the House has not acted upon the supplemental appropriation bill.

I hope that the Secretary and the committee will take action to provide more adequately for these programs; if not then I shall consider it again necessary to seek additional amounts when the supplemental appropriation bill is considered on the floor.

So that Members will have an accurate picture of the situation in their own States, I ask unanimous consent to have printed in the RECORD a letter dated February 23, 1972, from the National League of Cities, together with the city-by-city charts which show the results of their survey, as well as a copy of my letter, dated February 25, to Secretary of Labor Hodgson.

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

U.S. SENATE,
Washington, D.C., February 25, 1972.

HON. JAMES D. HODGSON,
Secretary,
Department of Labor,
Washington, D.C.

DEAR MR. SECRETARY: I am writing to urge the Administration to submit a revised supplemental budget request for additional funds for the Neighborhood Youth Corps summer job program, and for related transportation and recreational activities to meet the needs of poor youths in urban and rural areas during the coming summer.

As you know, the Neighborhood Youth

Corps job program funds work experience and related transportation for poor youths between the ages of 14 and 21 with public and non-profit private agencies in the summer months, providing them with earnings enabling them to complete or continue their education; the recreational component provides summer recreational opportunities to poor children between the ages of 6 and 12.

The current national unemployment rate of 5.9 percent falls most heavily on economically disadvantaged youth. The most recent available statistics released yesterday show a jobless rate among teenagers in poverty neighborhoods of 25.7 percent in the last quarter of 1971 with the rate among black teenagers in such areas at 34.7 percent.

Experience indicates that even if the overall employment situation improves, as we hope it will, youth—particularly poor youth—will continue to have unemployment ranging from four to five times the norm. As you noted generally on February 17, 1972, in testimony before the Joint Economic Committee:

"The unemployment situation of teenagers vis-a-vis adults has deteriorated over the past decade. In 1962, the unemployment rate for teenagers averaged 3.1 times higher than for workers 25 years of age and over. Beginning in 1963, the ratio began to exceed 4 to 1, and in no year did it drop below 4 to 1; the average ratio of teenage to over-25 unemployment in the years 1963–71 amounted to 4.7 to 1."

Already, there are substantial signs that increases the number of returning veterans, economic cut-backs, and other factors will aggravate further the youth unemployment situation in the coming summer.

The National League of Cities—U.S. Conference of Mayors, representing most of the public agencies which conduct the Neighborhood Youth Corps summer program, advises, on the basis of an extensive survey, that there will be a very real need for 947,928 ten-week job opportunities in the program for this summer, compared with the 641,639 which it projected at this time last year.

The National League of Cities estimates that a total of $444.0 million will be needed to provide the projected 947,928 opportunities, it is my understanding that the administration intends to provide only 609,300 nine-week opportunities, the same as last year, with a total appropriation for jobs of $257.9 million—which would consist of $175.7 million already available and an additional $82.2 million which it has requested in a supplementary budget request.

Thus there is a short-fall of $186.1 million and 338,628 opportunities in the job program for the coming summer, on a ten-week basis.

It should be noted that the National League of Cities survey relates to the number of job and recreational opportunities which could be effectively used; in fact the Department of Labor has estimated the "target group"—those who could benefit from the job program—in excess of 1.8 million youths.

I enclose a copy of a letter which I received, dated February 23, 1972, from the League, documenting these needs on a city-by-city basis.

Moreover, the National League of Cities estimates that there is an additional need for $1.3 million for related transportation and $9.1 million for the recreational support program, above the $1.4 million and $12.8 million respectively which the Administration hopes to make available.

Other special sources of refunding will not be adequate; the Emergency Employment Act of 1971, which will provide approximately 135,000 public sector job opportunities in this fiscal year and a similar number in the coming fiscal year will not focus upon the needs of poor youth; according to a preliminary sample taken by the Department of Labor only 14 percent of those now covered are in the age group below 21 years of age.

It appears also that general economic conditions will continue to make it difficult for the private sector to take up the slack through such voluntary job programs as those conducted by the National Alliance of Businessmen. The National Alliance of Businessmen—which has not yet established a goal for this summer—was forced last summer to reduce its goal by 30,000 from the 180,000 in the previous year because of general economic conditions similar to those faced today.

Accordingly, I urge the Department to submit a revised supplementary budget request responsive to these documented needs so that public and non-profit sponsors will be able to plan effectively programs which will provide youths with meaningful alternatives to continued frustration and restlessness in the coming summer.

Sincerely,

JACOB K. JAVITS.

FEBRUARY 23, 1972.

HON. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: In response to your request for information, we have made inquiries as to the cities' 1972 needs for the summer Neighborhood Youth Corps slots. The information we have received from the 50 largest cities shows that the total number of slots these 50 large cities could effectively use this summer is 410,035.

On the basis of our contacts with a sample of smaller cities, we estimate that their needs and the number of slots these smaller cities could effectively utilize to total 537,893.

Combining these figures—the total for the 50 largest cities with estimated needs for the balance of the nation—the present real need for 1972 is 947,928 slots nationwide.

We trust that these statistics will be helpful to you in pointing up the critical need for an enlarged appropriation for the summer Neighborhood Youth Corps.

Sincerely,

JOHN J. GUNTHER,
Executive Director,
U.S. Conference of Mayors.
PATRICK HEALY,
Executive Vice President,
National League of Cities.

SUMMER NEIGHBORHOOD YOUTH CORPS

	Rank in size	Population	Slots: 1971 need	Slots: 1971 actual[1]	Slots: 1972 need	Dollars, 1972 need
Region I: Boston	16	641,000	3,500	3,330	5,000	2,340,000
Region II:						
Buffalo	28	463,000	4,268	2,367	4,268	1,997,424
Newark	35	382,000	14,563	4,750	14,563	6,815,484
New York	1	7,868,000	77,500	40,541	77,500	36,270,000
Rochester	49	296,000	1,000	1,007	4,650	2,176,200
Region III:						
Baltimore	7	906,000	8,000	6,268	9,420	4,408,560
Norfolk	47	308,000	2,625	1,977	2,625	1,228,500
Philadelphia	4	1,949,000	12,500	6,189	12,500	5,850,000
Pittsburgh	24	520,000	2,500	6,164	9,265	4,336,000
Washington, D.C	9	757,000	36,000	11,689	36,000	16,848,000
Region IV:						
Atlanta	27	497,000	3,408	2,391	3,408	1,594,944
Birmingham	48	301,000	2,086	1,777	2,135	999,180
Dade County, Miami	42	335,000	8,226	4,532	8,226	3,849,800
Jacksonville	23	529,000	[2]	927	1,735	811,980
Louisville	38	361,000	3,500	2,062	3,500	1,638,000
Memphis	17	624,000	2,394	1,598	2,394	1,120,400
Nashville	30	448,000	[2]	1,330	2,000	936,000
Tampa	50	278,000	2,887	4,335	6,515	3,049,020
Region V:						
Chicago	2	3,367,000	40,000	25,695	40,000	18,720,000
Cincinnati	29	452,000	3,000	2,102	3,000	1,404,000
Cleveland	10	751,000	10,000	7,392	11,100	5,194,800
Columbus	21	540,000	2,000	1,184	2,000	936,000
Detroit	5	1,509,000	11,670	13,392	25,000	11,700,000
Indianapolis	11	745,000	2,500	1,217	2,500	1,170,000
Milwaukee	12	717,000	3,000	2,295	3,000	1,404,000
Minneapolis	32	434,000	2,735	1,589	2,735	1,280,000
St. Paul	46	310,000	1,025	787	1,025	479,700
Toledo	34	384,000	990	758	990	463,320
Region VI:						
Dallas	8	944,000	2,280	1,728	2,280	1,067,000
El Paso	45	322,000	1,125	830	3,000	1,404,000
Fort Worth	33	393,000	1,178	805	1,507	705,276
Houston	6	1,233,000	3,000	2,732	3,560	1,666,080
New Orleans	19	593,000	5,000	1,914	5,000	2,340,000
Oklahoma City	37	366,000	1,000	1,175	1,530	716,040
San Antonio	15	654,000	5,514	3,608	5,514	2,580,500
Tulsa	43	332,000	850	540	1,011	473,148
Region VII:						
Kansas City	26	507,000	4,000	2,345	4,000	1,872,000
Omaha	41	347,000	700	1,284	1,670	781,560
St. Louis	18	622,000	1,500	3,932	5,910	2,765,880
Region VIII: Denver	25	515,000	2,100	1,203	2,100	982,800
Region IX:						
Honolulu	44	325,000	2,191	513	2,800	1,310,400
Long Beach	40	358,000	20,000	17,983	25,000	11,700,000
Los Angeles	3	2,813,000				
Oakland	39	362,000	5,785	4,493	5,850	2,737,800
Phoenix	20	582,000	17,000	2,824	17,000	7,956,000
San Diego	14	697,000	2,500	3,136	4,510	2,110,680
San Francisco	13	716,000	5,000	3,107	8,000	3,744,000
San Jose	31	446,000	[2]	1,890	3,535	1,654,380
Region X:						
Portland	36	382,000	5,000	1,697	5,000	2,340,000
Seattle	22	531,000	5,000	2,682	5,000	2,340,000
50 largest total			354,490	220,066	410,035	192,268,856
Balance			287,149	328,304	537,893	251,733,924
Total			641,639	548,370	947,928	444,002,780

[1] All figures shown are for 10 week slots.

[2] Included in top 50 as a result of 1970 census.

SAMPLING OF CITIES OTHER THAN 50 LARGEST

	Slots			Dollars, 1972 need
	1971 need	1971 actual [1]	1972 need	
Akron	612	694	1,137	532,200
Albuquerque	600	745	1,000	468,000
Dayton	620	796	1,500	702,000
Gary	1,380	2,714	4,447	2,081,200
Jersey City	1,275	1,498	2,454	1,148,472
Paterson	1,200	900	1,500	702,000
Total	4,687	7,347	12,038	5,633,872

[1] All figures shown are for 10 week slots.

SUMMER YOUTH TRANSPORTATION PROGRAM

	Rank in size	Population	Dollars	
			1971 actual	1972 need
Region I: Boston	16	641,000	10,700	20,000
Region II:				
Buffalo	28	463,000	7,500	13,000
Newark	35	382,000	23,437	39,500
New York	1	7,868,000	149,130	251,400
Rochester	49	296,000	7,500	12,000
Region III:				
Baltimore	7	906,000	21,100	35,000
Norfolk	47	308,000	7,500	12,000
Philadelphia	4	1,949,000	34,360	42,000
Pittsburgh	24	520,000	12,650	22,000
Washington, D.C.	9	757,000	22,960	38,700
Region IV:				
Atlanta	27	497,000	12,080	30,000
Birmingham	48	301,000	13,790	24,000
Dade County, Miami	42	335,000	12,000	23,000
Jacksonville	23	529,000	6,300	14,000
Louisville	38	361,000	7,500	12,500
Memphis	17	624,000	11,860	18,000
Nashville	30	448,000	7,000	12,000
Tampa	50	278,000	7,500	17,000
Region V:				
Chicago	2	3,367,000	42,240	70,000
Cincinnati	29	425,000	7,920	15,000
Cleveland	10	751,000	19,310	35,000
Columbus	21	540,000	8,640	17,000
Detroit	5	1,509,000	36,560	75,000
Indianapolis	11	745,000	8,480	15,000
Milwaukee	12	717,000	47,280	65,000
Minneapolis	32	434,000	12,380	20,000
St. Paul	46	310,000	7,500	12,500
Toledo	34	384,000	7,990	15,750
Region VI:				
Dallas	8	844,000	19,340	23,990
El Paso	45	322,000	38,900	58,900
Forth Worth	33	393,000	8,130	15,000
Houston	6	1,233,000	16,387	45,000
New Orleans	19	593,000	14,790	25,000
Oklahoma City	37	366,000	14,000	25,000
San Antonio	15	654,000	14,570	26,570
Tulsa	43	332,000	7,500	12,500
Region VII:				
Kansas City	26	507,000	13,970	50,000
Omaha	41	347,000	13,500	15,000
St. Louis	18	622,000	25,790	43,500
Region VIII: Denver	25	515,000	18,320	29,000
Region IX:				
Honolulu	44	325,000	7,500	15,000
Long Beach	40	358,000	7,500	16,000
Los Angeles	3	2,813,000	82,870	82,870
Oakland	39	362,000	15,000	28,000
Phoenix	20	582,000	11,740	23,000
San Diego	14	697,000	14,360	30,000
San Francisco	13	716,000	11,970	25,000
San Jose	31	446,000	7,500	8,160
Region X:				
Portland	36	382,000	8,580	13,000
Seattle	22	531,000	19,060	32,100
50 largest total			954,394	1,608,940
Balance of 1971 participants			464,996	783,967
New cities				357,093
Total			1,419,390	2,750,000

SUMMER RECREATION SUPPORT PROGRAM (RSP)

	Rank in size	Population	Dollars	
			1971 actual	1971 need
Region I: Boston	16	641,000	168,000	180,000
Region II:				
Buffalo	28	463,000	96,000	120,000
Newark	35	382,000	77,000	140,000
New York	1	7,868,000	1,836,000	2,934,000
Rochester	49	296,000	53,000	95,000
Region III:				
Baltimore	7	906,000	276,000	335,000
Norfolk	47	308,000	132,000	180,000
Philadelphia	4	1,949,000	528,000	700,000
Pittsburgh	24	520,000	168,000	165,000
Washington, D.C.	9	757,000	228,000	364,000
Region IV:				
Atlanta	27	497,000	143,000	180,000
Birmingham	48	301,000	120,000	170,000
Dade County, Miami	42	335,000	126,000	192,000
Jacksonville	23	529,000	84,000	175,000
Louisville	38	361,000	96,000	130,000
Memphis	17	624,000	264,000	305,000
Nashville	30	448,000	72,000	150,000
Tampa	50	278,000	132,000	175,000
Region V:				
Chicago	2	3,367,000	649,000	2,100,000
Cincinnati	29	452,000	120,000	175,000
Cleveland	10	751,000	163,000	205,000
Columbus	21	540,000	132,000	211,000
Detroit	5	1,509,000	360,000	897,000
Indianapolis	11	745,000	130,000	195,000
Milwaukee	12	717,000	108,000	155,000
Minneapolis	32	434,000	60,000	96,000
St. Paul	46	310,000	36,000	58,000
Toledo	34	384,000	84,000	120,000
Region VI:				
Dallas	8	844,000	228,000	285,000
El Paso	45	322,000	144,000	200,000
Fort Worth	33	393,000	108,000	173,000
Houston	6	1,233,000	350,000	440,000
New Orleans	19	593,000	252,000	300,000
Oklahoma City	37	366,000	108,000	170,000
San Antonio	15	654,000	324,000	400,000
Tulsa	43	332,000	72,000	115,000
Region VII:				
Kansas City	26	507,000	108,000	130,000
Omaha	41	347,000	48,000	96,000
St. Louis	18	622,000	240,000	384,000
Region VIII: Denver	25	515,000	120,000	170,000
Region IX:				
Honolulu	44	325,000	60,000	99,000
Long Beach	40	358,000	72,000	125,000
Los Angeles	3	2,813,000	552,000	650,000
Oakland	39	362,000	84,000	125,000
Phoenix	20	582,000	144,000	200,000
San Diego	14	697,000	144,000	200,000
San Francisco	13	716,000	180,000	250,000
San Jose	31	446,000	85,000	100,000
Region X:				
Portland	36	382,000	84,000	135,000
Seattle	22	531,000	84,000	129,000
50 largest total			9,966,000	15,928,000
Balance			2,834,000	4,530,000
New cities				1,500,000
Total			12,800,000	21,958,000

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. BAYH. Mr. President, I ask unanimous consent that the amendment of the Senator from North Carolina (Mr. ERVIN) be temporarily laid aside for the consideration of my amendment, No. 957, which has been agreed to by the Senator from Rhode Island (Mr. PELL) and the Senator from Maryland (Mr. BEALL).

The PRESIDING OFFICER (Mr. BYRD of Virginia). Without objection, it is so ordered.

AMENDMENT NO. 957

Mr. BAYH. Mr. President, I call up my amendment, No. 957, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment as follows:

On page 685, line 11, strike the word "delinquent".

Mr. BAYH. Mr. President, I have discussed this matter with the Senator from Rhode Island (Mr. PELL) and the Senator from Maryland (Mr. BEALL), who introduced an amendment to the bill which I think is a very laudatory one, so far as making educational funds available to young people in correctional institutions is concerned.

I would ask the Senate to join me in deleting one word from an otherwise meritorious measure of my good friend from Maryland, with the following explanation:

Section 508 in the Education Amendments of 1971, S. 659, amends section 103(a)(7) of title I of the Elementary and Secondary Education Act of 1965 by allowing the Office of Education to fund programs in adult correctional institutions. The Office of Education already provides money for programs in institutions for neglected and delinquent children. Similar programs should be provided to children who presently do not qualify because they happen to be in adult correctional institutions. Section 508 is intended to accomplish that purpose, and I strongly support that intention.

However, in its present form section 508 is not satisfactory because it provides that funds allocated to adult correctional institutions be spent "solely for delinquent children." There are many "children" in adult correctional facilities who would be greatly benefited by programs funded by the Office of Education; however, under the present amendment most could not qualify. According to the National Council on Crime and Delinquency and the American Correctional Association there are very few delinquent children in adult correctional facilities. While statistics are not available, juvenile delinquents are not generally incarcerated in adult institutions because separate juvenile institutions are maintained by the States. A few delinquents do find their way into adult institutions, but this is an exceptional occurrence.

By deleting the word "delinquent" my amendment to section 508 removes the constraint in the present bill which unnecessarily limits the authority of the Office of Education. As a result of my amendment, the Office of Education will be able to fund programs for children in adult correctional facilities just as it already does for young people in institutions for dependent and delinquent children.

Mr. President, education programs in adult correctional institutions are desperately needed. Many prisoners lack even basic educational skills. Though such skills are of fundamental importance to finding and holding a good job, adequate educational programs are rarely provided behind prison walls. Without basic skills we can expect many of those presently incarcerated to resume their criminal activities once they leave prison. It is my hope that programs funded by the Office of Education under the authority provided in section 508 will give some of today's prisoners the skills necessary to avoid return to prison in the future.

Mr. President, what we are dealing with is the technical definition of the word "delinquent." A child is in deep trouble if we are talking about a 15- or 16-year-old or he would not be in that adult correctonal institution in the first place. Under the definition of many States, he has not qualified, per se, as a delinquent. Thus, we would make this measure of the Senator from Maryland available to all children whether technically a delinquent or whether a plain criminal under a given State statute.

Mr. BEALL. Mr. President, as the Senator from Indiana (Mr. BAYH) has just clearly stated, the purpose of the amendment I offered in committee, and which the committee adopted as part of the bill, was to make sure that children who are in institutions that would be properly termed an adult correctional institution would have the same opportunities for assistance and training as those incarcerated in an institution known legally as an institution for neglected or delinquent children.

Certainly the amendment just offered by the Senator from Indiana does clarify the language and corrects an oversight in the phrasing, making it much clearer, so that all children in adult correctional institutions will now be covered by this section.

I thank the Senator from Indiana for offering his amendment to clarify the language and I urge its adoption.

Mr. BAYH. Mr. President, may I express my deep appreciation to the Senator from Maryland, and also to the chairman of the Subcommittee on Juvenile Delinquency, for the leadership they have provided. We have had so many definitions in this area that we felt it was necessary to clarify the language and that is the reason for offering the amendment.

Mr. PELL. Mr. President, having listened to the colloquy and having talked with the Senators from Indiana and Maryland, and also with the ranking minority member of the full committee, I am assured of acceptance on all sides and would recommend that the amendment be agreed to.

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

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

The PRESIDING OFFICER (Mr. BYRD of Virginia). All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Indiana (Mr. BAYH), No. 957.

The amendment was agreed to.

Mr. BYRD of West Virginia. Mr. President, what is the pending question at this time?

The PRESIDING OFFICER. The pending question is on agreeing to the amendment offered by the Senator from North Carolina.

Mr. BYRD of West Virginia. I thank the distinguished Presiding Officer.

Mr. President, I ask unanimous consent, upon the disposition of the pending amendment by the Senator from North Carolina (Mr. ERVIN) on tomorrow, that the Chair lay before the Senate Amendment No. 952 by the Senator from North Carolina (Mr. ERVIN).

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent, upon the disposition of Amendment No. 952 by the Senator from North Carolina (Mr. ERVIN) on tomorrow, that the Chair lay before the Senate Amendment No. 950 by the Senator from North Carolina (Mr. ERVIN).

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

ORDER FOR RECOGNITION OF SENATOR BYRD OF VIRGINIA TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, following the remarks of the able Senator from Delaware (Mr. ROTH), the distinguished Senator from Virginia (Mr. BYRD), who now presides over this Chamber with great skill—and, may I say, with a degree of skill so rare as a day in June—be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER (Mr. BYRD of Virginia). Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent, following the remarks of the distinguished Senator from Virginia (Mr. BYRD) tomorrow, that there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes; at the conclusion of which the Chair lay before the Senate the unfinished business.

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 9:30 a.m. After the two leaders have been recognized under the standing order, the following Senators will be recognized for not to exceed 15 minutes each, and in the order stated:

Senators ROTH and BYRD of Virginia, after which there will be a period for the transaction of routine morning business for not to exceed 30 minutes with statements limited therein to 3 minutes; at the conclusion of which the Chair will lay before the Senate the unfinished business, the pending question being on the adoption of the amendment No. 949 offered by the Senator from North Carolina. The yeas and nays have been ordered on that amendment. The time limitation is 30 minutes. Consequently, a yea and nay vote on the Ervin amendment No. 949 will occur at about 10:30 a.m.

On the disposition of that amendment, the Senate will proceed to consider

amendment No. 952 by the Senator from North Carolina (Mr. ERVIN). There will unquestionably be a rollcal vote also on that amendment.

Following disposition of amendment No. 952, the Senate will proceed to consider amendment No. 950 offered by the Senator from North Carolina (Mr. ERVIN). The time limitation on that amendment is 30 minutes. Indubitably that amendment will also require a yea and nay vote.

The final disposition, may I say, of the unfinished business will occur at no later than 2 p.m. tomorrow. Several rollcall votes are, therefore, in the offing and Senators are requested to be present.

ADJOURNMENT TO 9:30 A.M.

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 9:30 a.m. tomorrow.

The motion was agreed to; and at 6:10 p.m. the Senate adjourned until tomorrow, Wednesday, March 1, 1972, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 29, 1972:

CIVIL AERONAUTICS BOARD

Whitney Gilliland, of Iowa, to be a Member of the Civil Aeronautics Board for the term of 6 years expiring December 31, 1977.

HOUSE OF REPRESENTATIVES—*Tuesday, February 29, 1972*

The House met at 12 o'clock noon.

Rev. Charles W. Hoemig, pastor of Holy Trinity Lutheran Church, Littleton, Colo., offered the following prayer:

For a moment, O Lord, may we be still and listen to Your voice.

So many things demand our attention. May Your words ring in our ears: "Seek first the kingdom of God."

Old values we cherished are being pushed aside. Remind us again that "if the foundations be destroyed, what shall the righteous do?"

Everywhere there is suspicion, and hate, and dissension. Open our ears to Your word that we should love our neighbor, whoever and wherever he might be.

May we know that You are the only hope for a troubled world. Strengthen us with Your power; inspire us with Your wisdom; sustain us with Your blessing. Help others to see through us to You. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 6291. An act to provide for the disposition of funds arising from judgments in Indian Claims Commission dockets Nos. 178 and 179, in favor of the Confederated Tribes of the Colville Reservation, and for other purposes.

APPRECIATION TO PASTOR CHARLES W. HOEMIG

(Mr. BROTZMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROTZMAN. Mr. Speaker, I would like to take this opportunity to express our deep appreciation to Pastor Charles Hoemig for offering the prayer today in the House of Representatives.

Pastor Hoemig is the senior pastor of the Holy Trinity Lutheran Church in Littleton, Colo., one of the fine cities in the Second District which I have the privilege of representing in this body. Before coming to Littleton, Pastor Hoemig served pastorates in Arvada, Colo., and Diamond Bar, Calif. Originally, Pastor Hoemig came from Fort Wayne, Ind.

While in Colorado, Pastor Hoemig has been active in civic affairs, as indicated by his recent service as president of the Littleton Kiwanis Club and president of the Metropolitan Denver Chapter of the Leukemia Society of America. In fact, he recently received the Vickie Franzen and John F. Hiatt awards for his outstanding leadership in the Leukemia Society of America.

Mr. Speaker, I am pleased that Pastor Hoemig was able to open our session today, and I am sure I speak for all of my colleagues in expressing the hope that he and his splendid family will be able to be with us again the near future.

SERIOUS QUESTIONS ABOUT CONSIDERATION OF BILLS FROM WAYS AND MEANS COMMITTEE UNDER UNANIMOUS CONSENT

(Mr. PATMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PATMAN. Mr. Speaker, I want to raise some serious questions about the consideration of these bills from the Ways and Means Committee under unanimous consent.

First. No hearing record exists for any of the 22 bills.

Second. Some of the bills—such as H.R. 7025, dealing with common trust funds by holding company banks—involve basic policy decisions which cannot be adequately considered under these procedures.

Third. Many of the bills involve complex questions which cannot be answered without hearings.

Fourth. The House cannot judge the impact of these measures unless an opportunity is given for public witnesses to testify.

Fifth. The reports do not—in all cases—fully comply with rule XIII requiring specific statements of the effect on revenue and the costs of administration.

In conclusion, Mr. Speaker, there is no need for unanimous-consent requests since the Ways and Means Committee apparently will be considering broad tax reform measures later this session as indicated in the debate on the debt ceiling earlier this year. All of these measures could be considered at that time and reported to the floor with a hearing record.

IRONY IS A CONSTANT PRESSURE

(Mr. ANNUNZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANNUNZIO. Mr. Speaker, in February 1947, Father Pat O'Connor, a member of the Columbian Missionary Order, visited General Chou En-lai on behalf of the Catholic press of the world. They discussed the religious persecutions then taking place. Chou at first denied such persecutions, masking it as land reform difficulties. But before the interview ended, Chou assured Father O'Connor that directives would be sent to insure that religious freedom would be respected.

Perhaps the directives were sent, but history knows that religious freedom was not respected, and that persecution continued until religion was virtually eliminated, and shortly thereafter no press, let alone a religious press, was allowed to ask such questions.

I wonder how similar is the statement in the joint communique issued yesterday that "China will never be a superpower and it opposes hegemony and power politics of any kind."

How can a nation with the atomic bomb and 800 million obedient people not be a superpower? How can a nation which involves itself in ideological "wars of liberation" across the face of the globe not be engaged in power politics? And how can a government which expresses its wish for the thoughts of Mao to rule the world be not desirous of sovereignty over other countries?

Now, I realize it is unfashionable, if not impolite, to accuse a new-found friend of dishonesty. So I will not do that. I only express my wonderment—and my fervent hopes to the contrary—whether my grandchildren, having watched or experienced the actual practice of those statements, will not be able to detect the irony of that statement more clearly than we can, just as we appreciate the irony of the promise to insure religious freedom.