parity price therefor; to the Committee on Agriculture.

By Mr. WOLFF:

H.R. 13950. A bill to amend the Occupational Safety and Health Act of 1970 to require the Secretary of Labor to recognize the difference in hazards to employees between the heavy construction industry and the light residential construction industry; to the Committee on Education and Labor.

H.R. 13951. A bill to provide financial and other aid to enable the United States to assist Jewish refugees to emigrate from the Soviet Union to Israel or the country of their choice; to the Committee on Foreign Affairs.

By Mr. CASEY of Texas:

H.R. 13955. A bill making appropriations for the legislative branch for the fiscal year ending June 30, 1973, and for other purposes.

By Mr. BRADEMAS:

H.J. Res. 1117. Joint resolution designating the third week of April of each year as "Earth Week"; to the Committee on the Judiciary.

By Mr. HECHLER of West Virginia:

H.J. Res. 1118. Joint resolution proposing an amendment to the Constitution of the United States relating to the nomination of individuals for election to the offices of the President and Vice President of the United States; to the Committee on the Judiciary.

By Mr. RAILSBACK:

H.J. Res. 1119. Joint resolution proposing an amendment to the Constitution of the United States to require that persons 18 years of age and older be treated as adults for the purposes of all law; to the Committee on the Judiciary.

By Mr. TEAGUE of Texas:

H.J. Res. 1120. Joint resolution proposing an amendment to the Constitution of the United States to modify the method of appointment and terms of office of the Federal judiciary; to the Committee on the Judiciary.

H.J. Res. 1121. Joint resolution proposing an amendment to the Constitution of the United States providing for the reconfirmation by popular vote of certain Federal judges; to the Committee on the Judiciary.

By Mr. BERGLAND (for himself, Mr. ABOUREZK, Mrs. ABZUG, and Mr. HARRINGTON):

H. Res. 901. Resolution expressing the sense of the House that the full amount appropriated for the fiscal year 1972 for the Farmers Home Administration's farm operating loan program and waste facility grant program authorized by the Consolidated Farmers Home Administration Act of 1961, be released and made available by the administration to carry out the objectives of these programs; to the Committee on Appropriations.

By Mr. TEAGUE of Texas:

H. Res. 902. Resolution to instruct the Judiciary Committee to make a continuing study of the fitness of Federal judges for their offices; to the Committee on Rules.

By Mr. WOLFF (for himself, Mr. ANDERSON of Tennessee, and Mr. CHARLES H. WILSON):

H. Res. 903. Resolution expressing the sense of the House of Representatives that the President should suspend, in accordance with section 481 of the Foreign Assistance Act of 1961, economic and military assistance and certain sales to Thailand for its failure to take adequate steps to control the illegal traffic of opium through its borders; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

337. By the SPEAKER: Memorial of the Legislature of the State of New Mexico, relative to the control of television advertising of certain drugs and medicines; to the Committee on Interstate and Foreign Commerce.

338. Also, memorial of the Senate of the State of Arizona, relative to a Federal program for research and cure of sickle cell anemia; to the Committee on Interstate and Foreign Commerce.

339. Also, memorial of the House of Representatives of the State of Missouri, relative to the "blacking out" of television coverage of professional sporting events within a 50-mile radius of the city in which events are held; to the Committee on Interstate and Foreign Commerce.

340. Also, memorial of the Legislature of the State of Florida, relative to establishment of the National Academy of Criminal Justice in the State of Florida; to the Committee on the Judiciary.

341. Also, memorial of the Legislature of the State of Idaho, relative to providing for the forwarding of State income tax forms; to the Committee on Post Office and Civil Service.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CARTER:

H.R. 13952. A bill for the relief of Appalachian Regional Hospitals, Inc.; to the Committee on the Judiciary.

By Mr. RAILSBACK:

H.R. 13953. A bill to provide for the relief of Sandstrom Products Co., of Port Byron, Ill.; to the Committee on the Judiciary.

By Mr. WAMPLER:

H.R. 13954. A bill for the relief of Appalachian Regional Hospitals, Inc.; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

202. The SPEAKER presented a petition of the Congress of Micronesia, Capitol Hill, Saipan, Mariana Islands, Trust Territory of the Pacific Islands, relative to making the trust territory eligible for certain water-pollution-control facilities, which was referred to the Committee on Public Works.

SENATE—*Monday, March 20, 1972*

The Senate met at 11 a.m. and was called to order by Hon. HAROLD E. HUGHES, a Senator from the State of Iowa.

PRAYER

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

Almighty God, we thank Thee for everything around us which communicates Thy presence and lights our life with eternal splendor. We thank Thee for the greatness and glory of nature, for the history of the race, for the lives of noble men, for thoughts of Thee conveyed in words, in symbols of stone and glass, in architecture and art. We thank Thee for the memory of solemn vows which summon us to renewed striving. We thank Thee for hushed moments of quiet thought and silent prayer, for seasons of communion when the eternal holds our spirits raptured and alone. While we work at temporal tasks, give us grace to bring our labor under the spell of that kingdom which is above all earthly kingdoms whose builder and maker is God.

In His name, who is King of Kings and Lord of Lords. 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., March 20, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. HAROLD E. HUGHES, a Senator from the State of Iowa, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. HUGHES 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 Friday, March 17, 1972, be dispensed with.

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

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the Legislative Calendar, under rule VIII, be dispensed with.

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 nominations on the Executive Calendar, under New Reports.

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar, under New Reports will be stated.

DEPARTMENT OF LABOR

The legislative clerk read the nomination of Michael H. Moskow, of New Jersey, to be an Assistant Secretary of Labor.

The ACTING PRESIDENT pro tem-

pore. Without objection, the nomination is considered and confirmed.

U.S. ARMY

The legislative clerk read the nomination of Col. Charles Van Loan Elia, Veterinary Corps, U.S. Army, to be a brigadier general, Veterinary Corps.

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

U.S. NAVY

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

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

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK

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

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

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

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

LEGISLATIVE SESSION

Mr. 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.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

TWO MONDAY MORNING THOUGHTS

Mr. SCOTT. Mr. President, I have two Monday morning thoughts, one sacred and one profane.

The sacred one is inspired by the Chaplain's prayer this morning. I would add: We thank Thee, God, for this dear land. Lead us to lend a helping hand, that it may ever better be.

The profane thought is inspired by the Gallup poll yesterday, indicating that Senator HUBERT HUMPHREY is very strongly ahead of Senator MUSKIE in what is laughingly described as a contest for the presidential nomination of the other party.

I want to suggest that perhaps the ticket should be, once more, HUMPHREY and MUSKIE, because I see no reason for breaking up a losing team.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

WELCOME TO SPRING

Mr. BYRD of West Virginia. Mr. President—

> The year's at the spring
> And day's at the morn;
> Morning's at seven;
> The hillside's dew-pearled;
> The lark's on the wing;
> The snail's on the thorn:
> God's in his heaven—
> All's right with the world.

QUORUM CALL

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

Mr. MANSFIELD. 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. BYRD of West Virginia. 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 FOR ADJOURNMENT TO 9:30 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. tomorrow.

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

(The above order was subsequently changed to provide for the Senate to convene tomorrow at 9:15 a.m.)

ORDER FOR RECOGNITION OF SENATORS NELSON AND MONDALE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the recognition of the two leaders on tomorrow under the standing order, the distinguished Senator from Wisconsin (Mr. NELSON) be recognized for not to exceed 15 minutes and that he be followed by the distinguished Senator from Minnesota (Mr. MONDALE) for not to exceed 15 minutes.

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

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

MESSAGES FROM THE PRESIDENT

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

ECONOMIC OPPORTUNITY FOR MINORITIES—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 92-194)

The ACTING PRESIDENT pro tempore (Mr. HUGHES) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Banking, Housing and Urban Affairs:

To the Congress of the United States:

From its start, America has prided itself on being a land of opportunity.

In recent years, we have done much to press open new doors of opportunity for millions of Americans to whom those doors had previously been barred, or only half-open. In jobs, housing, education, old obstacles are being removed. But for Blacks, Mexican-Americans, Puerto Ricans, Indians and other minorities who have known discrimination, economic opportunity must also increasingly be made to mean a greater chance to know the satisfactions, the rewards and the responsibilities of business ownership. Such opportunities are not only important in themselves; they also help make possible the economic and social advances that are critical to the development of stable and thriving communities on which the social and economic vitality of the Nation as a whole depend.

Despite a long history of frustration and lost potential, minority Americans want business ownership—and they should. Potential minority entrepreneurs are eager to join the mainstream of the Nation's commerce. Many need help in getting started—and increasing numbers are getting that help. A working coalition of the Government, the private sector and minority communities is moving rapidly to provide disadvantaged Americans with opportunities to own and control their own successful businesses.

The principal need of minority business today is for a greater supply of investment capital. Technical assistance, training, promotion and business opportunities are all fundamentally related to investment capital, that centripetal force which draws together the people, skills, equipment and resources necessary to operate a profitable business.

The coalition of public and private sectors and minority interests supporting disadvantaged business enterprise must be strengthened now, if we are to achieve the goal of generating the additional investment capital needed.

Today, therefore, I am turning to the Congress for its cooperation and help. I

urge the approval by the Congress of the following:

—first, the Minority Enterprise Small Business Investment Act of 1972;

—second, a budget request for the Office of Minority Business Enterprise of $63.6 million for fiscal 1973;

—third, a variety of other small business legislation currently pending in Congress which will directly and collaterally aid minority enterprise.

THE PRESSING NEED

The Nation's black, Spanish-speaking, and Indian and other minorities constitute about one-sixth of the American population. Yet in 1967—the last year for which final figures are available—these American minorities accounted for well below 1 percent of the total business income of the Nation. Gross receipts of almost $1.5 trillion were reported in that year by all American businesses. Of this amount, minority-owned firms received only $10.6 billion, or less than 1 percent. In the United States today, there are more than 8 million businesses; minority Americans presently own only about 4 percent of these businesses, despite the fact that they constitute almost 17 percent of our population.

These statistics starkly summarize the gross disparity of the minority enterprise imbalance, but they do not adequately outline the broader effects on our society at large. The human cost, in terms of lost potential and lowered horizons, is immeasurable.

RESPONDING TO MINORITY NEEDS

Recognizing the need for Government incentives and leadership, I took steps in my first months in office to awaken the Federal Establishment and the private sector to the potential for development of minority business. First, I established the Office of Minority Business Enterprise (OMBE) within the Department of Commerce to plan and coordinate comprehensive minority business development. Secondly, the Small Business Administration (SBA) undertook to increase minority participation in its many business programs. Thirdly, I directed all Federal departments and agencies to respond to the aspirations and needs of minority entrepreneurs, particularly by use of their procurement powers.

PROGRESS REPORT

I am pleased to report to the Congress that our efforts to stimulate the Federal Government and private sector have been highly productive. A comprehensive statement of accomplishments was published in January of this year entitled, "Progress of the Minority Business Enterprise Program." Let me summarize the highlights of that report for you and outline our current status.

Office of Minority Business Enterprise. Only the private sector working with the Government can reverse a century's discouragement of minority enterprise; the Government cannot do it alone. The Nation's established corporations, financial institutions, professional associations, foundations, and religious organizations are indispensable to meet the demand of minority businessmen for seed capital, operating funds, suppliers, markets, expert technical and management assistance and related business essentials.

Three years ago, there were no precedents, no rule books, no methods, no blueprints on how to focus the resources of these groups on a common objective. OMBE's greatest achievement during these past three years has been to forge an alliance of Government, private sector, and minority business interests. The Office has succeeded in launching a carefully contoured, integrated set of programs that will work to engage minority entrepreneurs fully in our Nation's economic life.

Gains. Since the establishment of OMBE, American minorities have gained greater access to both Government and private sector contracts and concessions, business loans and loan guarantees, technical and management assistance, and other business aid. This access has been developed without reducing programs available to nonminority small businessmen. Federal assistance, channeled through these vehicles, has been enlarged from less than $200 million in 1969 to some $700 million currently, and the $1 billion threshold for fiscal 1973—five times the 1969 level—is within reach. New markets have been opened as minority suppliers and businessmen have expanded their operations and sales in unprecedented volume.

Funding OMBE and SBA. Our efforts on behalf of minority business secured substantial congressional approval, and OMBE was appropriated a supplemental budget increase of $40 million for the last six months of fiscal 1972, as I requested. I am hopeful that both the House and Senate will give favorable consideration to our present request for a fiscal 1973 OMBE budget of $63.6 million to provide urgently needed technical and management assistance to minority business. Together, these budgets will total more than $100 million. This figure offers a dramatic index of the commitment of this Administration to the purposes of an Office which was originally funded for fiscal year 1972 with less than four million dollars.

OMBE is a coordinating agency of the Federal Government, and as such does not itself engage directly in business financing. Direct loans, loan guarantees, surety bonding, lines of credit, and contract set-asides are supplied by the Small Business Administration (SBA) to small businessmen, including minority businessmen.

THE IMMEDIATE NEED: MESBIC LEGISLATION

Enactment of the Administration's proposed Minority Enterprise Small Business Investment Act of 1972 would give major impetus to the minority enterprise program, and would create a more productive mechanism to achieve its objectives.

Background. When the Congress passed the Small Business Investment Act of 1958, it recognized that small business generally lacks seed money and working capital. To give incentives for small business investment, the act empowered SBA to license "Small Business Investment Companies" (SBICs). Such companies are private investment institutions capitalized at a minimum of $150,000 from private sources. SBICs are eligible to borrow from SBA at an incentive ratio of $2 from SBA for every $1 of its private capital. Thus, a $150,000 SBIC can borrow $300,000 from SBA for investment in its own account. Also, after it raises $1 million in private capital, an SBIC is eligible to borrow $3 from SBA for every $1 of private capital.

Because of these incentives, substantial amounts of private capital have been invested in small business through SBICs. More than 40,000 small business financings have been completed by SBICs from the program's inception, totaling $1.9 billion in risk capital. *But only a small fraction of that amount has gone into minority businesses,* because usually risks and costs are even higher for minority small businesses than for small businesses generally.

MESBICS

To fill the need for minority enterprise high risk capital, the SBA evolved the *Minority Enterprise* Small Business Investment Company (MESBIC). A MESBIC is a specialized SBIC: 1) it limits its investment to minority enterprises; 2) it is supported by financially sturdy institutional sponsors; 3) it is underwritten in large part by its sponsors.

In 1969 OMBE joined with SBA in launching a national network of MESBICs with SBA licensing and regulating MESBICs and OMBE promoting them. Today, 47 MESBICs operate throughout the Nation with private funds totaling in excess of $14 million. Since MESBIC seed capital has the potential of freeing $15 for investment in minority enterprises for every one privately invested dollar, more than $210 million is currently available through this program. All this is achieved at relatively low cost to the Government.

MESBICs have the potential of becoming sophisticated investment companies, knowledgeable in the peculiar problems of minority business investment, and able to bring sound business principles and practices to their tasks. Seeking a fair return on investment, MESBICs can act effectively to raise the success prospects of portfolio companies.

MESBIC Limitations. Despite the proven values of the MESBIC mechanism, it labors under burdens which endanger further development. The cost of administering minority business investments and the risk of early loss are both very high. Moreover, the short term success pattern of minority businesses has not been sufficiently encouraging to enable them to attract equity investment in normal competitive markets. But the recent successes of minority enterprises have shown that they can compete if they are given enough equity assistance to carry them through this early period.

THE MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT ACT OF 1972

The primary object of my message today is to urge that the proposed Minority Enterprise Small Business Investment Act be acted on favorably and with dispatch by the House in its upcoming small business hearings. This act will restructure SBA financing of MESBICs so that they can operate on a fiscally sound basis.

Provisions of the Act. The legislation proposes a statutory definition of a

MESBIC and authority to organize it as a nonprofit corporation. This status would facilitate foundation investments and tax-deductible gifts to MESBICs.

Building on our experience with SBICs and MESBICs, the act would reduce the level of private capital required to qualify for $3 to $1 assistance from SBA, from $1 million to $500,000; provide increased equity to MESBICs in the form of preferred stock to be purchased by SBA in place of part of the debt instruments purchased by SBA from MESBICs under current law; and lower the interest rate on SBA loans to MESBICs to three points below the normal rate set by the Treasury during the first five years of the loan.

Restructuring Effects of the Act. The immediate impact of this legislation would be to materially restructure the MESBIC program and stimulate increased private investment and gifts to MESBICs, resulting in greatly increased capital for minority business enterprises, at startlingly small Federal cost.

The legislation would: Lower the high cost of starting the investment program of a MESBIC; allow MESBICs to take advantage of full SBA financing; enable MESBICs to invest more in equity securities and to reduce interest rates to portfolio companies; provide special incentives to existing smaller MESBICs which have pionereed the program.

In the act, I am proposing a fairer partnership between the private and public sectors—a partnership that would yield enabling capital for minority enterprise. The MESBIC program is sound, practical and necessary. It equitably extends our free enterprise system by making it work for all Americans.

CONCLUSION

Opening wider the doors of opportunity for one-sixth of our people is a social necessity, which responds to an imperative claim on our conscience. It also is an economic necessity. By stimulating minority enterprise—by permitting more of our people to be more productive, by creating new businesses and new jobs, by raising the sights and lifting the ambitions of millions who are enabled to see that others who started under handicaps like theirs are writing records of economic success—we help to stimulate the whole economy.

I therefore urge the Congress to give its swift approval to the Minority Enterprise Small Business Investment Act of 1972, to my fiscal year 1973 budget request for $63.6 million for OMBE, and to our other small business proposals currently pending in the Congress.

Hard work, private risk, initiative, and equal chance at success—these are the American way. Helping ensure for all of our people an opportunity to participate fully in the economic system that has made America the world's strongest and richest nation—this too is the American way. And this lies at the heart of our program for minority enterprise.

RICHARD NIXON.

THE WHITE HOUSE, *March 20, 1972.*

EXECUTIVE MESSAGES REFERRED

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

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

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business be extended for an additional 6 minutes.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. SCOTT. 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.

Is there further morning business?

PROGRAM

Mr. SCOTT. Mr. President, I yield 3 minutes to ask of the distinguished majority leader what is the program for today and the rest of the week?

Mr. MANSFIELD. Mr. President, in response to the question raised by my distinguished colleague, the minority leader, may I say first, as I indicated to him previously this morning, it is not the intention to call up the Ervin-Mansfield resolution until later in the week.

SENATE RESOLUTION 280 PLACED ON CALENDAR

Therefore, I ask unanimous consent that Senate Resolution 280, which would normally be laid before the Senate under the rule, be placed on the Senate Calendar under "General Orders." This is the disposition of a resolution under the normal procedure if not disposed of prior to the end of the morning hour. I would hope that would meet with the approval of the distinguished minority leader.

Mr. SCOTT. Yes. I have no objection, and it is desirable that we agree on a later date for the discussion.

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

Mr. MANSFIELD. Mr. President, to follow the question raised by the distinguished minority leader, on Monday, Tuesday, and Wednesday, at least, of this week, the Senate will be considering the unfinished business, which is the equal rights for men and women constitutional amendment.

If the business is completed on Wednesday—and there is a question as to whether it will be—the order will include the following matters:

On Thursday, Senate Resolution 280, the Supreme Court resolution—the Ervin-Mansfield resolution, so-called.

Following the disposition of that resolution, on Thursday or Friday—I must emphasize that these days are subject to change because the sequence may be changed somewhat—the Senate will consider S. 2956, the war powers bill.

On Monday, S. 9526, the naval vessel loans bill.

On Tuesday, S. 1821, Government traffic on civil air carriers, on which a time limitation has already been entered into.

On Wednesday and Thursday, S. 3178, suspension of section 315 of the equal time provision. With regard to this latter item, it may be necessary to endeavor to get it before the Senate late this week if at all possible; it depends on circumstances.

Again, it should be said that all of these days are subject to change. Other measures that will be disposed of during this period, as they are cleared, will be S. 2895, stabilization of egg prices, and all other legislation which may be available on the calendar.

As the Senate is aware, beginning at the conclusion of business on Thursday next week, we enter on a 2-day Easter recess, I believe; and if we can dispose of all this legislation in the meantime, the Senate will be doing extremely well. But, to the best of my knowledge, that is the schedule as we can see it at this time.

Mr. SCOTT. May I inquire whether the majority leader is aware of the possibility of any conference reports or other privileged matters?

Mr. MANSFIELD. Yes, there are some, but the only one I know of is the Radio Free Europe and Radio Liberty conference report, which I understand will be taken up in the House today. If it is, and it is not too late—and that is a flexible term—we will take it up in the Senate this afternoon, and there will be a yea-and-nay vote on it.

The other conference reports which are extant, but not in being as far as the two Houses are concerned, have to do with ocean dumping, on which the House acts first; the Golden Eagle program, on which the House acts first; the stratified primitive area bill, on which the House acts first; the higher education conference report, which will take some time. But may I say I am in full accord with the statement made by the distinguished Republican leader to the effect that it is our hope that the conference on the higher education bill will not only give consideration to the so-called busing amendment by the House and the so-called busing amendment by the Senate, but also proceed, as much as its language allows, to the consideration of the recommendations of the President of the United States, so that we can face up to this issue on one basis and dispose of it as soon as possible.

Mr. SCOTT. I thank the distinguished majority leader, and I assume in referring to the recommendations of the President, he is referring at this time particularly to the recommendations regarding the moratorium.

Mr. MANSFIELD. Primarily, yes. The distinguished ranking Republican member of the conferees, the Senator from New York (Mr. JAVITS), has indicated that might well be brought within the scope of the conference, as well as other recommendations by the President.

Mr. SCOTT. That is a possibility we ought to bear in mind.

On the Radio Free Europe and Radio Liberty matter, the Senate has acted overwhelmingly in favor of the continuance of those programs, And I believe, also, the House. Therefore, while there is strong opposition, I think it is minimal in numbers, and this measure is extremely important to the continuance of the program. The people in the program can no longer be paid for any length of time.

There is enormous attestation to its value to the American point of view and its dissemination abroad, and I surely hope that we can act on it promptly. I think that newspaper editorial opinion has been almost unanimously in favor of the continuation of these programs.

I thank the distinguished majority leader.

Mr. MANSFIELD. Mr. President, may I say that although I am opposed to Radio Free Europe and Radio Liberty, I agree with the distinguished Republican leader that as soon as it is brought over, action will be taken expeditiously, and the Senate will work its will, which I think will probably be in favor of the conference report.

We have two other measures in conference, one having to do with the healing arts and the other with manpower development and training, on which the conferees have not yet acted. So, in my judgment, the only conference report on which Senate action is likely within the next few days will be the one on Radio Free Europe and Radio Liberty, which hopefully will be over this afternoon.

Mr. BYRD of West Virginia. Mr. President, the majority leader has indicated a very ambitious program which will carry us over until the time for the Easter recess. I want to compliment the Senate on having acted, thus far, on several very thorny issues. Some of the other measures which will be taken up before the Easter recess are somewhat controversial, and I wonder whether the distinguished majority leader can indicate whether rollcall votes are expected daily until the beginning of the Easter recess.

Mr. MANSFIELD. Mr. President, it is the anticipation of the leadership that there will be rollcall votes every day between now and the 2-day Easter recess.

I call to the attention of the Senate that as of today, there have been 100 rollcall votes this year, which indicates that the Senate has been applying itself and that the record up to this moment is quite responsible and I think very good.

Mr. SCOTT. Since the newspapers are often not commendatory in referring to absenteeism, I wish to state that I have answered 94 of those rollcall votes. I have been absent 2½ days during the entire session, and that on business of considerable importance, in attendance at the university board of visitors of which I am a member.

The distinguished majority leader, the assistant minority leader, and the assistant majority leader have all been very assiduous in their attention to their duties; but at times we are plagued by absenteeism, and I hope this notice will help us to get a good representation between now and Easter.

Mr. MANSFIELD. Mr. President, may I say once again in conclusion that while certain days were listed in connection with considering the legislation carried in sequence, if conditions warrant changes, the Senate will be on notice that changes will be made. But to the best of our knowledge at this time, this is the schedule, based on the days and the sequence, as far as legislation is concerned which will be considered between now and the beginning of the Easter recess.

The ACTING PRESIDENT pro tempore. All time for the transaction of morning business has expired.

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:

S. 2097. An act to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse; and

H.R. 10390. An act to extend the life of the Indian Claims Commission, and for other purposes.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. HUGHES).

COMMUNICATIONS FROM EXECUTIVE, DEPARTMENTS, AND SO FORTH

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

PROPOSED AUTHORIZATION OF USE OF HEALTH MAINTENANCE ORGANIZATIONS IN PROVIDING HEALTH CARE

A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend title 10, United States Code, to authorize the use of health maintenance organizations in providing health care (with an accompanying paper); to the Committee on Armed Services.

REPORT RELATING TO DELIVERIES OF EXCESS DEFENSE ARTICLES

A letter from the Director, Defense Security Assistance Agency, transmitting, pursuant to law, a confidential report relating to deliveries of excess defense articles (with an accompanying report); 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 "Better Controls Needed in Reviewing Selection of In-House or Contract Performance of Support Activities," Department of Defense, dated March 17, 1972 (with an accompanying report); to the Committee on Government Operations.

PROPOSED "OLDER AMERICANS AMENDMENTS OF 1972"

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to provide for the continuation of programs authorized under the Older Americans Act of 1965, and for other purposes (with accompanying papers); to the Committee on Labor and Public Welfare.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A letter, in the nature of a petition, from the Community Civic Group, Rio Canas, Caguas, Puerto Rico, praying for the enactment of legislation to amend the Workmen's Compensation Act; to the Committee on Labor and Public Welfare.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIBLE, from the Committee on Interior and Insular Affairs, with an amendment:

S. 3129. A bill to authorize the establishment of the Longfellow National Historic Site in Cambridge, Massachusetts, and for other purposes (Rept. No. 92–702).

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

S. J. Res. 218. An original joint resolution to extend the authority conferred by the Export Administration Act of 1969 (Rept. No. 92–701).

By Mr. BUCKLEY, from the Committee on Interior and Insular Affairs, with amendments:

S. 1426. A bill to establish the Van Buren-Lindenwald Historic Site at Kinderhook, New York, and for other purposes (Rept. 92–703).

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. McGEE:

S. 3374. A bill to amend title 5, United States Code, relating to the permissible activity of governmental employees in political elections, and for other purposes. Referred, by unanimous consent, to the Committee on Post Office and Civil Service.

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

S. 3375. A bill to convey to the Battle Mountain Indian Colony the beneficial interest in certain Federal land. Referred to the Committee on Interior and Insular Affairs.

By Mr. BELLMON:

S. 3376. A bill to amend the Natural Gas Act in order to provide, after a 3-year period, for the termination of the Federal Power Commission's authority with respect to the fixing of charges for the production and gathering of natural gas, and to provide for a minimum charge for such production and gathering during such period. Referred to the Committee on Commerce.

By Mr. FANNIN (for himself and Mr. GOLDWATER):

S. 3377. A bill to extend the time for commencing action on behalf of an Indian tribe, band, or group. Referred to the Committee on Interior and Insular Affairs.

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

S.J. Res. 218. An original joint resolution to extend the authority conferred by the Export Administration Act of 1969. Ordered to be placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McGEE:

S. 3374. A bill to amend title 5, United States Code, relating to the permissible activity of governmental employees in political elections, and for other purposes. Referred, by unanimous consent, to the Committee on Post Office and Civil Service.

Mr. McGEE. Mr. President, I send to the desk a bill to amend title 5, United States Code, to revise the law relating to political activity of Federal employees and State employees who are engaged in the administration of federally financed programs.

Under existing law, generally known as the Hatch Act, all Federal employees in the competitive service are forbidden to play any role in any political campaign, with certain limited and largely irrelevant exceptions. The constitutionality of the Hatch Act was tested many years ago and sustained by a 5–4 margin of the U.S. Supreme Court. Thus the only avenue of reform for Federal workers is to change the law, if that is what the Congress wishes, and permit some activity.

Always this has been a highly controversial subject. Many claim that political activity by our employees would result in a new spoils system, while others believe that employees would be seriously oppressed by the incumbent political administration to buy fund-raising tickets, work for the party, and perform other acts which are now forbidden. There is no real evidence to substantiate this charge, but it is commonly accepted that Federal employees need this protection by law.

What it is, of course, is not a protection at all, but a deprivation of basic rights of citizenship. Our employees cannot serve in any capacity in the management of any political campaign for Federal, State, and local offices. It is a violation of the Hatch Act to serve on any committee, write letters in support of any candidate, serve on any board of any kind which advocates the election of any candidate in a partisan election.

The legislation I introduce today would change the law to permit some, but not all, political activity. Any employee would hereafter be permitted to play an active part in any campaign for any office, but would not be permitted to be a candidate himself while still employed in the civil service or in certain State agencies. In essence, the rights of full citizenship would be restored to these nearly 3 million American citizens so that they in their own good judgment can decide what role, if any, they wish to play in the American political process.

At the same time, it is necessary to protect the employee from political organizations seeking his support or financial contribution. This is the heart of enforcement. If the Civil Service Commission exercises its authority to investigate fundraising shenanigans or other prohibited activity, and vigorously prosecutes those who are responsible, the employee will be secure. It may be that further legislation in this regard will be required to insure that neither political parties or higher ranking authorities in the Government are able to influence improperly the political activity of any employee.

Mr. President, I ask unanimous consent that the bill be referred to the Committe on Post Office and Civil Service.

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

Mr. McGEE. Mr. President, I also ask unanimous consent that certain correspondence between the Senator from North Carolina (Mr. JORDAN) and me be printed in the RECORD at this point.

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

MARCH 3, 1972.

Hon. B. EVERETT JORDAN,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR EVERETT: Enclosed is a copy of the bill I mentioned to you the other day to amend the provisions of title 5 regarding political activities of Federal employees.

The bill would relieve any restrictions on Federal employees now subject to the Hatch Act of employees of state or local governments whose occupations principally call for the administration of programs financed by the Federal government to the extent that they may participate but may not be a candidate for any political office.

Under the Hatch Act employees cannot play any active role in the management of any campaign. For instance, an employee in the competitive service cannot serve as a member of a committee to plan the menu for a reception for a Governor, Representative, or Senator who is a candidate for reelection. Although the Hatch Act was upheld by the Supreme Court many years ago, I am convinced that it is an unfair and abhorrent restriction upon the rights of citizenship and should be modified substantially.

The Hatch Act was reported to the Senate in 1939 by a special committee of the Senate. The rules of the Senate do not seem to me to be perfectly clear, but because my bill involves the status and privileges of Federal employees in relation to their government I am inclined to think that it might be appropriate for our Committee. If you do not have objection to the referral of this bill to the Committee on Post Office and Civil Service, I shall ask unanimous consent that it be so referred. If you do have some further question in your mind, I will be happy to discuss it with you.

With kind regards.

Sincerely,

GALE MCGEE, *Chairman.*

Enclosure.

U.S. SENATE, COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., March 13, 1972.

The Honorable GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

DEAR GALE: This will acknowledge your letter of March 3, 1972, advising me of a bill you plan to introduce to amend Title 5 of the Hatch Act to relieve some of the restrictions on Federal employees, and specifically asking me if I would have any objection if you were to seek unanimous consent to have the proposed bill referred to the Committee on Post Office and Civil Service of which you are Chairman.

As you know, the Hatch Act was not originally considered nor reported by the Committee on Rules and Administration. It emanated from a specially created Senate committee. Since the Act's provisions do not affect elections per se, but only the activities of Federal employees in elections, I would have no objection to your proposal that the bill in question be referred to your Committee.

In passing, I might advise you that Senator Howard W. Cannon, Chairman of the Subcommittee on Privileges and Elections, does plan to hold hearings sometime later this year on a bill introduced by Senator Moss, S. 2032, to amend the Hatch Act. That bill was referred to the Committee on Rules and Administration but could have been referred to the Committee on Post Office and Civil Service since election laws would not be directly affected by the bill, but only the political activities of Federal employees.

I am taking the liberty of sending a copy of this letter to Senator Cannon for his information.

With all best regards,

Sincerely,

B. EVERETT JORDAN, *Chairman.*

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

S. 3375. A bill to convey to the Battle Mountain Indian Colony the beneficial interest in certain Federal land. Referred to the Committee on Interior and Insular Affairs.

Mr. BIBLE. Mr. President, on behalf of myself and my distinguished colleague, Senator CANNON, I introduce, for appropriate referral, a bill to convey to the Battle Mountain Indian Colony the beneficial interest of some 320 acres of land in Lander County, Nev., to be used for the benefit of these Indians.

The selected land is immediately adjacent to the present colony and includes the main cemetery used by the Battle Mountain Indians for the many years that the tribe has used this area as its home.

The enactment of the bill is necessary to provide a base for a viable economic community. In addition, it would permit the tribal members to construct their own homes and provide sanitary facilities and living conditions so necessary to their continued existence.

I trust that early approval will be secured from the administration and the committee will move with dispatch to take care of this situation.

I ask unanimous consent that Resolution No. 71–BM–2 of the Battle Mountain Tribal Council dated December 4, 1971, printed in the RECORD as a part of my statement.

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

RESOLUTION OF THE BATTLE MOUNTAIN COLONY COUNCIL

Whereas, the United States of America holds in trust, lands described as the NW¼. NW¼NE¼ of section 18, T. 32 N., R. 45 E., and the W½, NE¼ of Section 12, T. 32 N., R. 44 E., MDB&M, Nevada, for the Battle Mountain Indian Colony as set forth in Executive Order 2639, dated June 18, 1917, and

Whereas, certain Public Domain lands described as the SE¼ of Section 12 and the NE¼ of Section 13, T. 32 N., R. 44 E., are contiguous to those lands set forth in Executive Order No. 2639, and

Whereas, the addition of the Public Domain lands described as the SE¼ of Section 12 and the NE¼ of Section 13 to adjoining Colony property would consolidate Colony lands, and therefore enhance its potential use and economic development, and

Whereas, the main cemetery of the Battle

Mountain Indian Colony is located in a portion of the NE¼ of Section 13, T. 32 N., R. 44 E., surrounded by Public Domain lands, limiting the best use of the land by all others except the Tribe, and

Now therefore, be it resolved that we request the vacant Public Domain lands adjacent to the Battle Mountain Colony described as the SE¼ Section 12, and NE¼ Section 13, T. 32 N., R. 44 E., MDM, Nevada be withdrawn and added to the Battle Mountain Indian Colony to be held in trust by the United States of America.

Be it further resolved that the Nevada Congressional delegation is requested to introduce appropriate legislation that will convey those Public Domain lands to the Battle Mountain Indian Colony.

Be it further resolved that the Tribal Secretary is authorized to send copies of this resolution to the Superintendent, Nevada Agency; Inter-Tribal Council of Nevada; the Commissioner of Indian Affairs, and the Secretary of the Interior.

By Mr. BELLMON:

S. 3376. A bill to amend the Natural Gas Act in order to provide, after a 3-year period, for the termination of the Federal Power Commission's authority with respect to the fixing of charges for the production and gathering of natural gas, and to provide for a minimum charge for such production and gathering during such period. Referred to the Committee on Commerce.

Mr. BELLMON. Mr. President, on March 2, 1972, the Senate Committee on Interior and Insular Affairs concluded 3 days of hearings pursuant to Senate Resolution 45 regarding the natural gas shortage in the United States. Testimony was received from witnesses representing virtually every part of the natural gas spectrum. The committee heard from representatives of exploration companies, production companies, pipelines, natural gas distribution companies, environmental organizations, public policy, and regulatory agencies, and local, State, and Federal Governments. As a result, one fact was made dramatically clear—a severe gas shortage does exist in the United States.

Opinions expressed regarding the cause of this gas shortage, however, varied a great deal—from unrealistically low wellhead prices imposed by the Federal Power Commission, which preclude expanded exploration and production of natural gas, to inadequate distribution facilities for the transportation of this gas, to unfounded charges of government—industry collusion in restricting natural gas supplies in order to force higher gas prices. The recommended solutions to this present natural gas shortage were equally as varied and complex.

The vast amount of information gathered at these hearings will now be documented and become part of the official hearing record. Hopefully, this will help guide the Interior Committee in the formulation of a national fuels and energy policy. Unfortunately, constructive committee action will come too late to avoid serious gas shortages. They are already upon us.

The natural gas supply shortage is not new to us. It has persisted for several years, particularly during the winter months. It has resulted in temporary shutdowns of schools, commercial establishments, factories and even military bases. It has become more acute with each passing year. In my State of Oklahoma, an exporter of natural gas, we experienced severe regional gas shortages this winter. Concerned individuals continuously have urged action to remedy this critical situation, yet action has failed to materialize. Public awareness of this problem has been isolated to those communities where the gas shortages have been felt. Nationally, awareness has not reached the level needed to stimulate corrective action.

Unfortunately, the natural gas predicament is not an isolated case. This situation is only symptomatic of the far larger national energy crisis that exists today, which could bring grave peril to this Nation in the future. "Energy crisis" can be defined in many ways: it is the detrimental effect upon U.S. citizens brought about by the natural gas shortage; it is the increasing frequency of brownouts and blackouts in our large metropolitan areas that have created grave disruptions in our urban way of life; it is the continued dismantling of our self-sufficiency in the production of fuels that has ominous overtones of a threat to our national security; it is the increased pollution in areas where the supply of desirable fuels is far short of the need.

Our Nation's reserve electrical generating capacity declines year by year, while nuclear powerplants constructed to supply that needed capacity lie dormant, awaiting final court action and lawsuits brought by environmentalists.

Our oil import program, originally designed to provide this Nation petroleum self-sufficiency, has been continuously eroded, while our vast estimated petroleum reserves lie untapped, and pipeline construction projects such as in Alaska and our offshore lease sales are again stopped, subject to litigation in the courts. It is estimated by the National Petroleum Council that if these trends continue, we will, by 1985, import 30 percent of our total energy needs from foreign sources. This will include 57 percent of our needed petroleum products, which by some estimates will cost approximately $28 billion. Natural gas imports are estimated to reach 28 percent by 1985, all from highly insecure sources. I consider these estimates to be conservative unless immediate changes are made in our energy policy.

This is a degree of foreign energy dependency that will basically alter our role in world leadership. A nation that professes to be a world leader cannot afford and must not permit itself to be exposed to the dangers of political power plays fostered by large offshore energy dependence, over which it has little, if any, control.

To many, the solution to our energy shortages would appear to lie in increased imports, such as bringing in liquefied natural gas from potentially insecure sources like Algeria, and possibly even the Soviet Union. On March 9, 1972, the Federal Power Commission authorized, for the first time, long-term imports of large quantities of foreign liquefied natural gas—a precedent that will undoubtedly lead to the authorization of numerous other applications for the importation of LNG. This is in addition to applications pending for the establishment of synthetic natural gas plants that will depend in large measure upon foreign sources for their raw materials, such as crude oil, and naphtha. It will further mean long-term commitments of billions of dollars by U.S. industry, from which a reversal would be difficult indeed, unless industry is immediately given sufficient incentive to be attracted back to our shores.

In the case of petroleum, the export of capital, technology, and producing capabilities has already occurred. In 1970 the investment by American companies in foreign areas exceeded the U.S. domestic investment by 45 per cent. Last year approximately 26 per cent of our petroleum products were imported. The organization of petroleum exporting countries—OPEC—representing the major oil producing nations of the Middle East, Africa, South America, and Asia, which represent 90 percent of the world's non-Communist oil exports have developed ambitious plans for the control and distribution of this American-produced foreign oil to world markets. Just this past weekend on March 11, the American-owned Aramco oil consortium has agreed in principle to Saudi Arabia's demand for a 20-percent share of its operation. Algeria has already taken control of at least 51 percent of French and American interests in that country. Nor are these concessions to be the last. It has been clearly indicated by the OPEC nations that greater control of foreign petroleum firms, located on their soil, will be the goal of the future.

At the same time, we continue to see the mounting presence of the Soviet Union in the Middle East from expansion of its Mediterranean fleet, to its air operations out of the former U.S. Air-Force Base in Libra, to establishment of naval service bases in Egypt. In a March 4, 1972, article of "The Economist," its editorial staff stated:

> Russia's and East Europe's future oil requirements may dictate the Soviet Union's present moves in the Middle East.

The article goes on to say:

> There is evidence that even if Russian oil production reached the targets set for 1980, East Europe's consumption needs will still out-pace it; perhaps by a figure as big as 100 million tons a year. With this contingency not so far off, Russia could have an interest, diverting the established pattern for Middle East oil flow.

Mr. President, I ask unanimous consent that a copy of this article be printed in the CONGRESSIONAL RECORD.

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

[From the Economist, March 9, 1972]

WE DON'T HAVE TO LIKE YOU—WHAT IS MR. BREZHNEV PAYING SO MUCH ATTENTION TO MANY ARABS FOR? WELL, OIL, AMONG OTHER THINGS

A treaty, like beauty, is in the eye of the beholder and never more so than when it is between a strong power and a weaker one. A relatively short while ago, "progressive." Arab leaders were denouncing such treaties as crude imperialist tools designed to per-

petuate the influence of the stronger power—which, in one or two instances, is just about what they were. Their successors now seem to be discovering that a "treaty of friendship" with the Soviet Union is something that no respectable progressive (whatever that means) Arab state should be without. Egypt already has one; Iraq is about to have one; Syria may be lining up for one. So forget your old-fashioned memories of the western-inspired Baghdad pact and its various connotations; these new-type treaties, if the Russian-Egypt one sets the pattern, are remarkable mainly for how little they mean.

They hardly mean friendship. The Russian-Egyptian treaty—signed last May, immediately after President Sadat's pre-emptive coup against his rivals, who included some of Russia's strongest supporters—was a demonstrative signal that all was not lost between the two countries. But ever since there have been regular reports, as regularly denied, of Egyptian resentment at the inadequacy of the friendship offered; the Russians, while not indulging in public indiscretions, have from time to time allowed their impatience to hit surface.

Friendly or not, February has been a social month for Arabs. Mr. Saddam Hussein, who has various long titles but is indisputably the strong man in the Iraqi government, went to Moscow and came back with a communique promising that the good relations between the two countries would soon be embodied in a treaty. Comrades Brezhnev, Podgorny and Kosygin were all invited to, and accepted, a return visit; presumably this would also be the occasion for signing the treaty. The Syrians operated at a rather lower level: they still did not get Marshal Grechko, the Soviet defense minister, who had skipped them in December because of flu and last month restricted himself to Somalia and to Egypt. But they did get Mr. Kiril Mazurov, the Soviet deputy prime minister, who signed, of all things, a co-operation agreement between the Baath party and the Soviet Communist party.

The most curious visit of all was the trip to Moscow of a strong Libyan delegation led by Major Jalloud, the minister of economy and Colonel Qaddafi's deputy. What made this visit particularly odd was not only Colonel Qaddafi's recent attack on Russia as an imperialist power but the fact that, just while Major Jalloud was chatting in Moscow, back home "authoritative sources" were condemning the proposed Soviet-Israeli treaty as a violation of the Arab League charter and a throwback to the bad old days of the Baghdad pact. So what about the treaty between Russia and Libya's confederate partner, Egypt? It is a mad world for sure, but the dual reign of Qaddafi and Jalloud is one of its more improbable sideshows.

THE LOCAL COMMUNISTS AREN'T THE STAKE

A lot of visits, and what was in them for the Soviet Union? It is unlikely to make serious inroads into the internal political scene of most of the countries whose leaders, or deputy leaders, it has been talking to. The important exception could, just, be Syria. President Assad has already opened up his government to include non-Baathists; there are two communists in his cabinet but with the Baath firmly on top they have had even less influence than the token communists in Egypt's cabinet. Now there are reports of a new deal to provide senior posts for non-Baathists, including communists. The Baath is not famous for sharing power, let alone with its traditional communist enemies, and the armed forces will certainly remain under its sole control. But if that sturdy pro-Moscow Syrian old-timer, Mr. Khalid Bakdash, is in fact brought into the government at a high level the Russians could permit themselves a low-key cheer.

If Syria's communists climb back into influence, it would be a bonus for Russia. But the penetration of local political systems in the Middle East has not been Russia's prime interest: if it works, fine; if it doesn't do business with the national bourgeoise. The main business, so far, is that Russia has invested heavily in the development of Egypt, is now investing in Syria (on the lines of the Aswan dam saga, Russia stepped in when west Germany backed out of Syria's long-planned project for the Euphrates dam), and, among other good works, has helped Iraq develop some of the oil fields expropriated from the western oil consortium. It is also spending a very large, though undisclosed, amount of money equipping and training the armed forces of all three countries, particularly Egypt.

The return is less easy to pin down. One of the few points, obvious to all, is that Egypt's Mediterranean ports and airfields afford Russia immediate strategic advantages against the American Sixth Fleet and the southern flank of Europe. Syria, too, could be geographically useful; from northern Syria, Russia is well placed to survey Nato's southern flank across the border in Turkey. The improvement of relations with Iraq suggests that Russia may be interested in putting a spoke in the Shah of Iran's plans for making the Gulf his private sea. This conjecture, and dangerous at that: the Shah, over the years, has achieved reasonably civil, and economically advantageous, relations with his large neighbour to the north but the Gulf is his obsession. And Russian manoeuvring in Iraq, let alone points south in the oil-producing Gulf, is the move best calculated to create American and British edginess.

This leads to the potential economic return on Russia's investment. Although the Egyptians complain that they are made to pay through the nose, and sometimes in dollars, for Russian assistance, and Russia is both Egypt's and Syria's main trading partner, the Soviet Union is not going to make its fortune through either country. The assumption had been that Russia's economic ambitions were long-term: by establishing itself at the centre of the Arab whirl, it would be sitting pretty if and when the rich plums of the Arabian peninsula, plucked by revolutionary change, dropped into its lap. But the journeys to Moscow last month of Mr. Saddam Hussein and Major Jalloud suggest that the economic return may not, after all, be all that long-term.

The disputed question of Russia's and eastern Europe's future oil requirements is central to his thesis. Speculation is batted around in all directions but there is evidence that, even if Russian oil production reached the targets that have been set for 1980, east Europe's consumption needs will still outpace it, maybe by a figure as big as 100m tons a year. With this contingency not so far off, Russia could have an interest in diverting the established pattern of Middle East oil flow by taking at least some of the "untouchable" oil from the nationalised fields in Iraq and Libya. Iraq, after an unbelievable number of years spent in wrangling with the Iraq Petroleum Company over the fields it commandeered in 1961, is soon going to have to try to find markets for the oil from one of these fields, North Rumaillah. Libya is already searching for markets for the oil from the British Petroleum concession that Colonel Quaddafi (to Major Jalloud's dismay) nationalised last December in retribution for Britain's failure to prevent Iran taking over three Arab islets in the Gulf: BP has threatened to sue any customer who buys this oil. Not a bad moment for the Russians to step in, it might seem.

BUT EGYPT'S STILL THE CENTERPIECE

None of his sniffing around points to anything so dramatic as a break between Russia and Egypt. From the beginning Russia has tended to map its Middle East policy by watching what the west does and doing the opposite—and it was hard for the west to run a viable Middle East policy without Egypt. Although Russia may be able to look beyond the Arab-Israeli conflict, the Arabs still will not; this, in effect, means that continued diplomatic and military support for Egypt against Israel is a precondition for good relations with the other Arab countries that may be looking Russia's way—even if they, like the Iraqis, have their not-so-private thoughts about the Egyptians. Egypt may take all that it can get from Russia and give as little back as it can get away with, but it still has a strategic importance for the Soviet Union—in the Russian-American context now, maybe in the Russian-Chinese context sometime in the future. And then, don't forget, Russia and Egypt are bound together by treaty for 15 friendly years.

Mr. BELLMON. Mr. President, whether or not that is an accurate assessment, the fact remains that according to projections, the United States will depend on the Middle East to meet 48 percent of its petroleum consumption by 1985, unless a change in emphasis occurs now. It is disturbing to note this importation will occur from an area that is presently expected to be, in the foreseeable future, a diplomatic domain of an unfriendly power and that our foreign policy has not attempted to ameliorate differences throughout the region in the national interest. Additionally, as developed and developing nations require more oil for their industrial development, competition for petroleum will intensify. This, therefore, makes it all the more ludicrous to permit ourselves to become participants in a very costly world oil price war, and additionally, run the risk of a diplomatic or military confrontation with both friend and foe, while our own vast potential energy reserves lie largely untapped.

On Friday, March 17, 1972, the Wall Street Journal published a report that the Texas Railroad Commission has issued an order ending prorationing of all oil wells in the State. This action was taken because of "the low level of available above-ground inventories of Texas crude and the anticipated increases in demand for oil this year."

The Texas Railroad Commission action follows a report cited in the February 21, 1972, issue of the Oil and Gas Journal that Louisiana oil production is already at a peak and according to Commissioner J. M. Menefee:

> We have reached a point in time when we are no longer able to satisfy the market demand.

Mr. President, I ask unanimous consent that copies of these two articles be printed in the RECORD.

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

[From The Oil and Gas Journal, Feb. 21, 1972]

TEXAS YES, LOUISIANA NO ON MORE CRUDE

Texas boomed its allowable to 86% last week, an increase of 10.2 factor points. But purchasers were put on notice that problems are approaching.

In Louisiana, the ceiling of 75% remained in effect for producers during March. But by Apr. 1 some fields and wells may be allowed a higher factor to fill part if not all the extra demand, if they're capable of producing it.

Comm. J. M. Menefee, in holding production for March at the 75% level, said the

month's expected production will fall short of meeting purchaser demand by 123,847 b/d.

"To satisfy the March market as evidenced by the nominations would require approximately an 18% increase in depth bracket, or bring the depth bracket to approximately 93% of the July 1971 revised depth-bracket allowable," he said. Menefee pointed out that under the old depth-bracket formula, nominations would have to be 105%.

Nominations for Texas crude totaled 3,397,212 b/d, an increase of 96,790 over February.

Under the 86% factor, Texas is expected to produce 3,397,200 b/d.

Texas Railroad Commission Chairman Byron Tunnell noted that Texas crude stocks have dropped to their lowest point since 1966 at 87.9 million bbl for the week ending Feb. 11.

During the hearing, representatives of three companies testified they are having difficulty with crude supply. Coastal States Crude Gathering Co., Clark Oil & Refining Co., and Texas City Refining Inc. all said they sorely need more oil. Texas City's purchasers said short supply has reduced their plant throughput since the last 5 days of January. And spokesmen for Coastal and Clark spoke of rapidly depleting supplies of import tickets as well as oil. Both expect to be out of tickets by mid-year.

Nominations up. Humble Oil & Refining Co. posted the largest increase in nominations for March, up 54,000 b/d to 534,000. "This is true demand for oil," a spokesman said.

Other significant increases included Cities Service Oil Co. up 10,000 to 110,000 b/d; Continental Oil Co. up 11,100 to 38,100 b/d; Mobil Oil Corp. up 10,000 to 310,000 b/d; Shell Oil Co. up 20,000 to 240,000 b/d; Sohio Petroleum Co. up 5,125 to 33,680 b/d; Union Oil Co. of California up 3,600 to 83,000 b/d.

Companies registering demand for spot-market oil during March in addition to Coastal, Clark, and Texas City were Crown Central Petroleum Corp., 15,000 b/d; and Sohio, 50,000 b/d. Sohio's representative offered no statement during the hearing but was questioned privately by commissioners.

For February, Louisiana is producing at the 75% rate an estimated 1,766,123 b/d, or about 51,000 b/d under nominations by purchasers. For March, purchasers nominated 1,884,970 b/d, an increase of 61,829 over February.

"We have reached a point in time when we are no longer able to satisfy the market demand as evidenced by your nominations, and we are in a position worse than we were 30 days ago to accommodate your requests," Menefee told purchasers at the New Orleans meeting.

Menefee told purchasers the department will try to satisfy as much as possible of the market demand without injury to reservoirs or creation of waste "by allowing production at rates which would result, or tend to result, in reducing a quantity of oil or gas ultimately recoverable from reservoirs within the state." The statutes, he pointed out, require prevention of waste.

Increases coming. Louisiana's producing companies have been invited to submit information to the department on reservoirs and fields which they believe could efficiently produce at higher rates.

Menefee said the information would have to be well documented and—if higher allowables are granted—would have to be supported by experience. Otherwise, he said, the higher allowable will be withdrawn.

Still some excess. Another department spokesman says Louisiana still has some excess capacity. "We think some excess is still there, but we don't know where it is. We are going to find out," he said.

As for how much excess, he said he has no better figure than 300,000 b/d. Industry observers, however, put the figure at closer to 100,000 b/d, with some of this coming from offshore fields soon to fall under jurisdiction of the Department of Interior.

He characterized the ban on statewide increases as "a pause to get some compelling evidence that we can officially produce any additional allowable without hurting the reservoir. Most reservoirs apparently are producing all or more than they should be," he added.

As operators present evidence that certain reservoirs and wells can efficiently produce more oil, he said, the allowable will be methodically moved up "as we see we can do it without creating waste."

"We need to be certain that what we do is right," he said.

April target. Assuming that producers promptly supply information on Louisiana's remaining top wells, some additional allowable may be distributed for April production, a department spokesman said.

Plans are to retain the 75 allowable for all fields. The market for oil in excess of what can be produced at this rate will be equally divided among wells which can efficiently produce at higher rates in the form of a supplementary allowable.

Most wells, then, will be producing at 75%—and since they cannot really produce anymore, they are at an effective 100% rate. The top wells will have the 75% rate, plus a supplement which may or may not meet the balance of demand.

The supplementary rates, like the normal allowable, will be studied and set on a month-to-month basis with the change in nominations and as top fields are added or withdrawn.

No Texas lid. Although TRC chairman Tunnell reiterated previous statements that it will be a sad day for the nation when Texas goes to 100%, he said after the hearing that no statewide ceiling will be imposed.

Instead the commission plans to limit individual fields as they reach the maximum rate at which they can produce without damage. Some fields may be reduced below current levels.

"We may go to 100%, or even over 100%," he told the Journal. "But we will have very few fields at that level when we get through."

He said the commission staff has begun studies to determine which fields should be restricted and at what level. No limits have been imposed for this reason as yet, he said.

[From the Wall Street Journal, Mar. 17, 1972]

TEXAS INTERRUPTS 24-YEAR TRADITION OF OIL OUTPUT LID: BUT ABSENCE OF APRIL QUOTA ISN'T EXPECTED TO BRING BIG INCREASE IN PRODUCTION—ACTION MAY DOOM PRORATION

EL PASO.—For the first time since 1948, Texas will permit its 190,000 oil wells to produce at effective capacity next month.

But it doesn't mean a great deal to purchasers of Texas crude oil who are clamoring for more petroleum—perhaps only 150,000 to 200,000 barrels a day more of actual production in the nation's biggest oil-producing state.

The move, however, could signal the beginning of the end of the myths surrounding so-called market demand prorationing of petroleum in Louisiana and Texas, long a favorite target of Eastern politicians. Louisiana, second-largest oil producing state, already has acknowledged officially that its spare oil-producing capacity has all but vanished.

Texas officials conceded as much yesterday in the annual statewide hearing here of the Railroad Commission, the state's oil regulatory agency. The commission established a market demand factor of 100% for regulated wells in the state for April, up from 86% this month.

The commissioners cited rising oil imports, the low level of available above-ground inventories of Texas crude and the anticipated increases in demand for oil this year. But the commissioners didn't bother to announce the amount of permitted production the capacity rate will result in, nor the estimated actual output expected in April. The agency officials suggested, instead, that they won't know what the 100% rate will mean until they've operated under it for some time.

Under the current 86% market demand rate, permitted production in Texas is 4.1 million barrels a day. Estimated actual production, however, is 3.4 million barrels daily.

ACTUAL OUTPUT TRAILS

Actual output usually lags behind allowed production simply because many oil wells can't produce at their originally predicted highest on a statewide basis, the gap between permitted and actual output widens.

Of the 8,700 or so oil fields in Texas, about 8,300 are "prorated," and affected by changes in permitted production rates. Assuming that they would produce all they were allowed to at a 100% rate, these fields would turn out 4.4 million barrels of oil a day. In addition, there are 635,788 barrels daily of production from oil wells, largely marginal producers, that are exempt from prorationing.

This would indicate, at April's capacity rate, more than five million barrels daily of permitted production next month. But Byron Tunnell, chairman of the Railroad Commission, previously has estimated that at a 100% rate actual output would climb by only 150,000 to 200,000 barrels a day from the current level, thus indicating actual production next month of only 3.5 million to 3.6 million barrels a day at the maximum.

Mr. Tunnell yesterday expressed concern over possible premature exhaustion of Texas oilfields at this higher rate. "We're going to watch the reservoirs closely to see that they aren't being overdrawn, and we will cut back first and then call a hearing if we feel they are being drained too rapidly."

ANNUAL INDUSTRY-WIDE MEETING

Moreover, the capacity output will just barely keep up with requests for Texas oil by crude purchasers. The crude buyers had asked for 152,754 barrels a day more in April than they had requested for March, or a total of 3.5 million barrels a day next month.

Because it was an annual industry-wide hearing by the commission, 15 oil companies sent officials to discuss petroleum needs and the oil outlook with the Texas agency. M. A. Wright, chairman of Humble Oil & Refining Co., chief domestic subsidiary of Standard Oil Co. (New Jersey), forecast that total demand for petroleum this year will grow about 5%. This would be significantly higher than the 2.8% increase in 1971 largely because of a greater expansion in economic activity in 1972, he said.

Texas crude oil inventories as of March 10 were 91 million barrels, some of the officials noted. According to Wayne E. Glenn, president of the Western Hemisphere Petroleum division of Continental Oil Co., that is "approximately 20 millions barrels below what we consider to be desirable."

"SAD AND HISTORIC"

Mr. Tunnell called it "a sad and historic day for a decision (to go to the 100% rate) that could have been avoided." He cited, specifically, the need for improved economic incentives for exploration and development of oil reserves in the continental U.S. as well as the expansion of offshore drilling and the full development of Alaska's reserves. Petroleum producers long have argued they must have additional incentives, particularly higher prices, to finance any expanded search for additional oil reserves.

Mr. Tunnell also yesterday took issue with Eastern critics of Southwestern oil prorationing who contend that such regulation by the states is intended only to prop prices of crude and, consequently, petroleum products like gasoline. He suggested that the Texas move to capacity production will prove the untruthfulness of any allegations that market

demand proration is a scheme to maintain prices.

Market demand proration is the placing of a total limit on a state's monthly oil output equal to the estimated demand from buyers for that oil, and the proportionate sharing in the total output by all the state's producing wells.

Oklahoma issued the first market demand proration rules in 1914 to control output from the Cushing field, and it extended control statewide in 1928. Texas imposed statewide prorationing in 1931 after discovery of the vast East Texas oil field, where excesses of overproduction threatened to wreck the industry. The field had to be closed by National Guard troops, and then the state had to defend its prorationing authority in the courts.

Mr. BELLMON. Mr. President, these reports from our two largest oil producing States, the only States which theoretically have had shut-in oil producing capacity, should bring Americans face to face with the reality of our energy crisis. For years knowledgeable students of the energy situation have been forecasting these developments without gaining the attention of the energy-consuming public. As a result nothing has been done to remedy the situation. In fact Congress and Government generally have taken actions which have aggravated the situation.

Now the hard realities of the energy crisis are upon us. No longer do we possess shut-in oil and gas reserves or adequate stocks in storage. Instead, we face a rapidly rising dependency on insecure foreign sources.

It is time, therefore, that this Nation and its leaders address the issues. It is time that we concentrate on developing out still abundant coal, oil shale, gas and oil reserves. It is time we commit ourselves to develop these reserves to provide us with self-sufficiency in energy and the assurance that we will not become subject to political or economic coercion by unfriendly powers, which seems to be inevitable, if the present trend continues. It is time for this Nation to adopt a national policy of energy self-sufficiency. We have the resources—financial, human, and natural. All that is lacking is the national will.

Mr. President, as a first step I wish to introduce at this time a bill that would amend the Natural Gas Act of 1938 as amended by establishing a minimum wellhead price for natural gas contracted for on or after the date this bill becomes law.

This bill further provides for the graduated deregulation by the Federal Power Commission of natural gas contracted on or after the date this bill becomes law.

It is my firm belief that this bill will stimulate renewed interest in petroleum exploration and production activities within the United States, and hopefully provide increased supplies.

I urge speedy consideration of this measure and hope that passage will be possible without undue delay.

In the weeks and months to come I intend to pursue this matter and will be prepared to introduce corrective legislation as may be necessary to undo the wrong that has been wrought over the years.

I strongly urge, Mr. President, that all of us in the Congress thoroughly acquaint ourselves with these important energy issues and that we strive to encourage constructive and timely action that will be in the national interest.

By Mr. FANNIN (for himself and Mr. GOLDWATER):

S. 3377. A bill to extend the time for commencing action on behalf of an Indian tribe, band, or group. Referred to the Committee on Interior and Insular Affairs.

Mr. FANNIN. Mr. President, on July 18, 1968, there was added to the United States Code, 28 U.S.C., paragraph 2415, known as Public Law No. 89–505. This placed a statute of limitations which, except in the few circumstances stated in paragraph 2416, will prevent the United States from litigating certain claims on behalf of Indians which arose before July 18, 1966. This places a deadline on many types of actions which the Indians may have or already have, and after July 18, 1972, it will not be possible to litigate claims of certain claims which are 6 years old or older. For example, the 6-year limit will be applicable to the recovery of damages due from parties who have been in wrongful possession of land.

As far as my office has been able to determine, the Interior Department was not asked to comment upon the bill which eventually became the act of July 18, 1966. The legislation was handled in the Judiciary Committee, and also escaped notice by anyone else interested in Indian legal rights—primarily because the titles of the legislation would give no indication that any claims other than those of the United States were involved. Indian Tribes are covered by the statute because the United States has the power to sue on their behalf as trustee on the same basis as it would sue in its own right with respect to public lands.

On August 24, 1971, the Acting Associate Solicitor, sent to the Commissioner of Indian Affairs a memorandum which calls attention to the fact that the statute of limitations had less than a year to run. This information finally filtered down to the field in December of 1971, so that Indian Tribes in reality had less than 7 months left out of a 6-year period to bring suit thereon. I am sure we all realize that this is an impossible deadline, and an extension of the statute is essential if potentially valuable Indian rights are not to be lost through sheer inaction.

Another problem has been that due to the limited staff of the Bureau of Indian Affairs and the Solicitor's Office, it has not been possible to perform the necessary work in order to identify the problems and then put them into order so as to get litigation that might be filed.

In order to alleviate this problem a bill should be promptly acted upon so as to extend the time for filing actions at least for another 5 years. Mr. President, I call upon my fellow Senators to support this measure and bring forth a bill before July of 1972.

ADDITIONAL COSPONSOR OF A BILL

S. 2689

At the request of Mr. CHURCH, the Senator from Utah (Mr. Moss) was added as a cosponsor of S. 2689, a bill to promote development and expansion of community schools throughout the United States.

ADDITIONAL COSPONSORS OF A CONCURRENT RESOLUTION

SENATE CONCURRENT RESOLUTION 66

At the request of Mr. PEARSON, the Senator from Massachusetts (Mr. BROOKE), the Senator from California (Mr. CRANSTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Missouri (Mr. EAGLETON), the Senator from Michigan (Mr. HART), the Senator from Indiana (Mr. HARTKE), and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of Senate Concurrent Resolution 66, expressing the sense of Congress that the United States should negotiate for the use of foreign currencies to pay Peace Corps expenses to countries where these currencies are held.

EQUAL RIGHTS FOR MEN AND WOMEN—AMENDMENTS

AMENDMENTS NOS. 1060 THROUGH 1073

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

Mr. ERVIN submitted 14 amendments intended to be proposed by him to the joint resolution (H.J. Res. 208) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

MILITARY PROCUREMENT AUTHORIZATIONS, 1973—AMENDMENT

AMENDMENT NO. 1074

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

Mr. CASE submitted an amendment intended to be proposed by him to the bill (S. 3108) to authorize appropriations during the fiscal year 1973 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

ARMS CONTROL AND DISARMAMENT AGENCY AUTHORIZATIONS, 1973—AMENDMENT

AMENDMENT NO. 1075

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

Mr. CASE. Mr. President, I submit for appropriate reference an amendment to S. 3200, the Arms Control and Disarmament Agency authorization bill.

Together with a related amendment I am today submitting to S. 3108, the defense procurement bill. The purpose of my proposal is to transfer responsibility

for seismic research from the Defense Department's Advanced Research Projects Agency to the Arms Control Agency.

I ask unanimous consent that a statement explaining these amendments, prepared for delivery at the Senate Foreign Relations Committee hearings today, be printed in the RECORD.

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

SENATOR CASE PROPOSES TRANSFER OF SEISMIC RESEARCH FROM PENTAGON TO ARMS CONTROL AGENCY AS ESSENTIAL TO EFFORTS TO BRING ABOUT AN UNDERGROUND NUCLEAR TEST BAN TREATY

(Text of Statement by Senator Clifford P. Case, Prepared for Delivery at Senate Foreign Relations Committee Hearings on the Arms Control Agency Authorization Bill, March 16, 1972)

My amendment to the Arms Control Agency bill before this committee authorizes an additional sum of $9,995,000 for research and testing in fiscal year 1973.

A related amendment I have submitted to the Defense Procurement bill deletes an equivalent sum requested for the Advanced Projects Agency (ARPA).

The effect of these amendments is to transfer to the U.S. Arms Control and Disarmament Agency the seismic research program now conducted within the Defense Department by the Advanced Research Projects Agency.

The seismic research program is directed towards improving and developing those techniques by which the United States could monitor an underground nuclear test ban treaty.

The Defense Department's responsibility for what is essentially an arms control measure inevitably conflicts with its primary military role.

I do not believe that Congress intended that the Defense Department should be in the position of both controlling the development of the means by which underground testing can be ended and serving as the advocate of the military importance of continued testing.

For almost nine years, the United States and the Soviet Union have been deadlocked in the negotiation of an underground nuclear test ban treaty. One of the principal causes of this deadlock has been U.S. insistence upon, and Soviet resistance to, on-site inspections as a means of verifying compliance with such a treaty.

During this same period there have been great advances in the state of the art is seismic monitoring techniques. The potential of these discoveries is that the United States may be able to rely upon seismic means for verifying compliance and drop its insistence upon on-site inspections.

Has the Defense Department pursued and exploited the opportunities offered by these advances in a manner commensurate with our treaty obligation to do everything in our power to bring about an end to underground nuclear testing?

DOD JURISDICTION—AND ITS CONSEQUENCES

Seismic research was once a high-priority program.

In 1963, when a total nuclear test ban was the focus of widespread public attention, funds available for seismic research totaled $41.4 million.

1963 turned out to be the high point. Since then, the trend in funding has been straight down.

By 1966—$30.2 million.

1968—$20.4 million.

1972—$14 million, or slightly more than one-third the 1963 funding level.

For the coming 1973 fiscal year, the Defense Department's request is below $10 million, and reports are persistent that plans are under way to phase out this research program entirely.

Has this declining effort simply reflected reduced scientific promise of seismic systems to distinguish between underground nuclear explosions and earthquakes in the Soviet Union?

I think not.

Despite the attempts of some individuals in the Defense Department to suppress public knowledge of the potential advances in U.S. capability to monitor without the necessity for on-site inspections. Defense officials admit that significant improvements in our existing capabilities remain unexploited at this late date. Nonetheless, the Department has continued to request less and less funds for seismic research.

The ready availability of these means of improvement, together with the recognition that they as yet remain unrealized, was recently made the subject of specific mention by the Senate Armed Services Committee. Senator Henry M. Jackson, in his capacity as chairman of the subcommittee which maintains oversight over U.S. monitoring capabilities, had this to say about the U.S. seismic network.

It is in this area of research and development that highly worthwhile advances are still feasible and this work should be continued and enlarged. *Even at this time, a relatively inexpensive improvement of the semismic detection system could markedly reduce the number of events are not unambiguously identified. Such improvements and continuing research on seismic detection methods and systems are particularly desirable and necessary* in view of discussion of a possible comprehensive test ban, especially in view of the possibility that deliberate evasive techniques could be applied in clandestine testing. (Emphasis added.)

For the Defense Department, Dr. Stephen Lukasik, Director of the Advanced Research Projects Agency, said on June 30, 1971:

Improved seismic instrumentation is clearly needed to attain further advances below magnitude 4.5 and to assess the limits of teleseismic discrimination. . . . We have seen that to translate the greater scientific understanding of the identification problem into improvements in the seismic verification capability requires more sophisticated installations than currently exist.

On July 23, 1971, Dr. Carl Walske, Assistant to the Secretary of Defense for Atomic Energy, subsequently referred to these improvements as being "highly desirable":

Many of these improvements would undoubtedly require considerable time and they would represent a substantial capital investment. Much effort would have to go into determining where these additional facilities should be located in order to achieve maximum performance. (Emphasis added.)

But he also failed to offer any concrete plan of action which would realize these gains. Instead, he dwelled upon the cost and effort which would be required and then dropped the subject.

Defense officials have also referred to relocation of existing seismic stations to quieter locations where monitoring capabilities would be improved. As recently as October 27, 1971, this long-available means of improvement was still being offered as a "good idea": (Dr. Lukasik) "One should note that it is possible to improve some stations by moving them to quieter locations."

But again, this was not followed by any specific recommendation

Indeed, I understand that several years ago the Defense Department *on its own* decided that a project which would have substantially upgraded the performance of our worldwide existing seismic network, in part through relocation, should not be further explored. This decision was based upon the judgment that this task would be "politically difficult" and "might be unacceptable to the host countries involved". But should the Defense Department alone be responsible for policy decisions of this nature?

Should the Defense Department bureaucracy, in a matter bearing upon United States treaty obligations, determine the degree of effort to be put forth, and even decide what diplomatic initiatives are possible or not possible?

Last year, I attempted to track down a report that a Pentagon-sponsored conference of scientists had concluded that we now have the capability to identify explosions as small as one to two kilotons by seismic means alone.

Before I was able to confirm this report—and I finally had to canvass the scientific community myself to do so—I had to deal with censored documents, a series of contradictory statements, and generally a runaround from Defense Department officials.

Certain Pentagon officials even classified the previously unclassified summary of the conference itself. And when I protested this tactic, an unidentified Pentagon official told reporters that the summary represented the views of only one participant at the conference—a statement refuted by six of the seismologists who attended the conference.

It appears to me as one of the original cosponsors of the legislation establishing the Arms Control Agency that Defense Department jurisdiction over this arms control program was never intended.

THE ORIGINAL INTENT OF THE CONGRESS

Under the terms of Section 31 of the Arms Control and Disarmament Act of 1961, the Director of the Arms Control Agency is authorized and directed to exercise his powers in insuring, arranging for, and coordinating research in the following fields:

(a) the detection, identification, inspection, monitoring . . . and elimination of . . . armaments . . . including thermonuclear (and) nuclear . . . weapons.

(b) the techniques and systems of detecting, identifying, inspecting, and monitoring of tests of nuclear, thermonuclear and other weapons.

In testifying before the House Foreign Affairs Committee in 1961, former Deputy Secretary of Defense Gilpatric forcefully stated the need for and function of this agency:

. . . I think that the basic thought behind this legislation is to give this Agency a status, a position where it can build up a staff and can do a job that I don't believe can be done in Defense, with our primary emphasis on security, or State, which isn't equipped to do research work and many facets of this disarmament and controls business that require talents that are not in the State Department.

Later, in stating the Defense Department's support for the assumption of research responsibility by the Arms Control Agency, Secretary Gilpatric underlined the primary role expected of it:

The Department of Defense expects the new Agency to make its principal, biggest contribution in the area of policy formulation. Such policy formulation will be assisted by the provision in the proposed legislation enabling the new Agency to conduct and coordinate research in the disarmament area. Research in the disarmament field requires the greatest possible efforts and the use of the best minds of the country—foreign policy experts, scientists, and military strategists.

The legislative history is also unmistakably clear that the Arms Control Agency was meant to be fully in charge of developing the means for verifying compliance with such agreements as an underground test ban. In the following colloquy, Senator Humphrey specifically questioned Mr. John J. McCloy, the President's representative on this point:

Senator HUMPHREY. Is it not a fact that the disarmament agency, as it is suggested in the bill, particularly with responsibilities that the agency would have in its functions under title III, could accelerate research, exploration, and development in this field of detection?

Mr. MCCLOY. Oh yes.

Senator HUMPHREY. And control?

Mr. MCCLOY. Yes.

Senator HUMPHREY. Now, this agency could have the responsibility, and could be able to center attention upon these fundamental areas of research; is that not correct?

Mr. MCCLOY. That is right.

Mr. McCloy later referred to the post-World War II experience with disarmament negotiations which made Arms Control Agency reponsibility for this research of such pressing importance. As a general proposition, it remains as valid today as justification for the amendment which I have introduced to transfer jurisdiction over this research to the Arms Control Agency.

The experience in the disarmament negotiations which have been conducted since the termination of World War II shows the importance of research in the field of disarmament. *The problems of disarmament are highly complex, for they encompass not only technical questions concerning the reliability of inspection and control systems and techniques for their implementation, but also basic political questions concerning the maintenance of peace and security under various livels of disarmament. . . . For this reason research and study of the type authorized by S. 2180 must be a primary function of an agency dealing with disarmament,* not simply for the short term with respect to current negotiations, but especially for the long term. (Emphasis added.)

A DEPARTURE FROM CONGRESSIONAL INTENT

No doubt it will be contended that the Arms Control Agency has in fact exercised a measure of supervision over the Defense Department's handling of the seismic research program.

Even should this be claimed, the fact is that responsibility has been delegated to the Defense Department to such an extent as to defeat one of the very purposes for which the Agency has been established.

My investigation has led me to believe that the Arms Control Agency has not participated in even the most basic decisions regarding funding or program content. Typically, I am told, the Agency does not even learn how much money will be spent on seismic research until after the decision has been made and the budget information released to the public.

The blunt judgment of one scientist who is intimately aware of the history of this program was expressed to me as follows:

Although there has always been the fiction that the seismic research program was being conducted by the Defense Department in a manner responsive to the Arms Control Agency's wishes, the fact of the matter has been that the Agency has expercised no influence on program formulation or on specific content.

There never have been any discussions between the Arms Control Agency and ARPA (the Defense Department organization in charge of seismic research) as to major research results required or as to fund allocations, either to major program elements or to specific contractors.

Program outlines as regards research planned or contractors were not submitted to the Arms Control Agency either for review or as information.

In fact, the climate has developed whereby ARPA considers the seismic research program as theirs to conform and direct as they choose, with the Arms Control Agency constituting a minor irritant to be ignored.

In exercising real control over this program, the Agency itself would have to set the goals to be achieved and recommend the funding required to achieve them.

Had this been the case, seismic research would have had an obvious visibility which would have made its neglect less likely. And it would have been treated as what it is—an *arms control* measure—not as just another research program in the Department of Defense.

As visualized by John J. McCloy, when he testified in favor of the Arms Control and Disarmament Act of 1961, responsibility for this program would have been very specifically assigned:

. . . with such an organization as this . . . you would then know who was responsible (for this research). You would have an agency with a director that you would know was charged with responsibility, and you would know where the fault lay.

NOBODY'S BUSINESS

Neither the Defense Department nor the Arms Control Agency is solely to blame for what has developed. For it is clear that this state of affairs would not have obtained had the Congress sustained a high degree of interest over the years in doing everything possible to bring about a test ban.

This must be said because simply transferring responsibility for seismic research to the Arms Control Agency will not bring about the kind of major initiative which will be necessary if the prospects for an underground test ban are to be realized.

The U.S. negotiating position on the test ban has remained static since 1963. This has been so, as I have outlined, even though there have been enormous improvements in the past nine years in our ability to monitor compliance with such a treaty by seismic means.

In 1963, U.S. insistence upon on-site inspections was probably justifiable in view of our then-relatively primitive ability to verify compliance solely by seismic monitoring stations on our own soil or on that of countries bordering on the Soviet Union.

As we stated before this committee last year by Doctor Franklin A. Long, formerly Assistant Director of the Arms Control Agency, ". . . it was generally agreed (in 1963) that one could not, in any real sense, 'identify' underground nuclear explosions by national means alone". Earthquakes could not be distinguished from underground nuclear explosions by seismic means, and, in Dr. Long's words, the only way "to get at possible explosions (was by) a process of elimination".

Now the seismic state of the art has advanced so far that the controversy is no longer about whether we can tell the difference between earthquakes and underground explosions. Now the debate is over *how small* an underground explosion can be identified. Now even Defense Department officials admit that *in principle* we will be able to identify tests as small as one or two kilotons (by way of comparison, the yield of the Hiroshima bomb was 14 kilotons).

Contrast these enormous strides with the lack of any alteration whatever in the U. S. position on on-site inspections:

(Acting Director of the Arms Control Agency, Philip J. Farley, on July 22, 1971): ". . . we have not had occasion to review formally the precise number and have not either introduced or determined privately a new number since we last spoke of seven, I think it was in 1963."

But the roots of this stand-pat attitude extend beyond the Arms Control Agency. This was borne out by Mr. Farley's further remarks reflecting the apparent absence of any interest in even exploring the possibility of breaking the impasse in our negotiations with the Soviet Union: ". . . *we have not been required* to formally review our position as to the precise number of inspections we would require (emphasis added)".

GETTING BACK ON THE TRACK

There is presently disagreement among arms control experts as to whether any further improvement in our seismic monitoring capabilities is even necessary. Some contend that the United States can now begin serious negotiations of a test ban without requiring on-site inspections in the Soviet Union to verify compliance.

Others, especially within the Defense Department, argue that our seismic systems will never be sufficiently reliable and sensitive to deter covert underground testing.

The advocates of "negotiation now" are concerned that primary emphasis upon the technical issue—our seismic monitoring capabilities—can lead to interminable bickering among contending scientists and the construction of unnecessarily sophisticated and ever-more refined monitoring systems. They contend that in the final analysis entering into an underground test ban treaty is necessarily a political decision.

Whatever the outcome of that controversy, it presents no argument against the transfer of responsibility for seismic research to the Arms Control Agency.

All avenues must be explored in order that the prospects for an underground nuclear test ban can be realized. Reviving our seismic research effort is surely one step to that end. It by no means excludes a revision of our negotiating position.

There are compelling reasons to pursue this matter. I don't need to remind the committee that:

Since the date of the conclusion of the Limited Nuclear Test Ban Treaty, the rate of nuclear testing has actually increased.

The non-nuclear powers have become increasingly restive at the prolonged delay in ending nuclear testing. The Nuclear Non-Proliferation Treaty itself is further endangered with the passage of every day—and we have been specifically warned by nations who have not yet ratified it that time is running out.

The United States and the Soviet Union continue their inexorable competition to refine their warheads through this testing, with always the potential for a technical breakthrough by either side which would wreck our hopes for arms limitation.

As one step in the effort to resolve the impasse in which we find ourselves, I ask my colleagues on the Senate Foreign Relations Committee to accept this amendment which I have offered.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 999

At the request of Mr. CHURCH, the Senator from Montana (Mr. MANSFIELD), the Senator from Iowa (Mr. HUGHES), and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of amendment No. 999, intended to be proposed to the bill (H.R. 1), the Social Security Amendments of 1972.

ADDITIONAL STATEMENTS

WHAT IS AN AMERICAN?

Mr. ERVIN. Mr. President, each year the Freedoms Foundation of Valley Forge conducts a letter writing program in which Active and Reserve Armed

Forces personnel compete for George Washington Honor Medals and cash prizes.

Marine Gunnery Sergeant Berimer Nelson whose letter "What Is an American?" won an honor medal and $100 in the 1971 contest lives in Wilmington, N.C. He is currently stationed with the 1st Amphibian Tractor Battalion, 3d Marine Division, Okinawa.

It is refreshing to me, at a time when the negative aspects of the military are given a great deal of attention, to discover there still is dedication to the profession and love for America as is exemplified by this 17-year veteran who is a credit not only to North Carolina and the Marine Corps, but to the Nation as well.

I ask unanimous consent that Sgt. Nelson's award-winning letter and a biographical sketch be printed in the RECORD in order that many others may share his views.

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

WHAT IS AN AMERICAN?

(By Gysgt. Berimer Nelson, USMC)

An American is a person who strives to abide by all of the qualities upon which our great nation was founded. The qualities are the respect for human dignity, the respect for political and cultural beliefs of each individual.

An American is a person who enriches his country, community and himself by participating in our democratic system in a responsible and intelligent manner. He has an unwavering faith that its process will not fail him.

An American is unselfish. If called upon to serve his country, he willingly steps forward. He does so to help preserve that which his forefathers worked so hard to build. He is willing to sacrifice his personal freedom and even his life, to make a better nation for his own, and all future generations.

An American has compassion for the people of nations less fortunate than his own. He enjoys the blessings our freedoms provide and is ever ready to lend a helping hand to curb oppression. He will extend his hand to help defend his friends from outside interference and subversion.

An American understands that, in order to preserve the freedom of our nation and others, it is necessary to make sacrifices, some times even the supreme sacrifice, so that others may benefit.

An American is a person who worships his God, in the way of his own choosing. He cherishes this right. He knows that the peoples of many other lands are cruelly persecuted for practicing their religious convictions.

An American is the product of many peoples of many cultures and several races, of various political and religious beliefs. He strives to work in harmony with his fellow man and his willing acceptance of responsibility has been the key factor in achieving the greatness that our nation has gained in almost two hundred years of existence.

America is the greatest nation in recorded history and has become so because of the greatness of each of her citizens.

SUBJECT: BIOGRAPHY; CASE OF GUNNERY SERGEANT BERIMER NELSON 078 30 19 27/1833/3531 USMC

1. "Gunnery Sergeant Nelson, a veteran of seventeen (17) years of Marine Corps service, is presently assigned as a platoon sergeant with Company A, 1st Amphibian Tractor Battalion (—), 3d Marine Division (—) (Rein), FMF. He has served in a variety of billets in both the Amphibian Tractor and Motor Transport field. Born in Brooklyn, New York, Gunnery Sergeant Nelson and his wife, the former Miss Carolyn D. Pompey, presently reside in Wilmington, North Carolina. They have one (1) daughter; Angela Denise.

Sergeant Nelson has served in combat in the Republic of Vietnam, with the 3rd Amphibian Tractor Battalion, 1st Marine Division (Rein), FMF and is the recipient of the following awards: Purple Heart, Combat Action Ribbon, Presidential Unit Citation, Good Conduct Medal five (5) awards, National Defense Service Medal (with one (1) star), Vietnam Service Medal (with two (2) stars), Republic of Vietnam Armed Forces Meritorious Unit Commendation of the Cross of Gallantry and the Republic of Vietnam Campaign Medal. He is presently working towards attaining a college degree, having obtained thirty semester credit hours. He is majoring in sociology with a goal of becoming a social worker upon retirement from the Marine Corps.

R. D. DASCH
By direction.

PEDIATRIC RESIDENCY PROJECT

Mr. MATHIAS. Mr. President, much of the national concern over health care today has been focused not only on the shortage of health manpower, but on the maldistribution of those professionals currently serving the public.

The University of Maryland School of Medicine, with the aid of a Federal Appalachian demonstration health projects grant, has launched a most interesting program designed to bring qualified medical care to two rural Maryland counties. Under the leadership of Dr. Marvin Cornblath, head of the University of Maryland School of Medicine's Department of Pediatrics, the pediatric residency project has established, in only 3 short months, a Headstart program for more than 60 children, a weekly children's clinic, and an acute care clinic. Planning for further projects is underway.

Mr. President, I ask unanimous consent that Dr. Cornblath's letter describing this encouraging program be printed in the RECORD.

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

UNIVERSITY OF MARYLAND,
Baltimore, Md.

Hon. CHARLES MCC. MATHIAS, JR.
U.S. Senator,
Washington, D.C.

DEAR SENATOR MATHIAS: Thank you for your letter of January 7, 1972 and for your interest in our Department, in the goals of the University of Maryland School of Medicine and the Pediatric residency project in Garrett and Allegany Counties. The latter program has been active since November 15th when our first resident, Dr. John Payne, was assigned to both Garrett and Allegany Counties. His two and a half month stay in those counties has already had an impact on Pediatric care and the health of children as well as relationships between the health personnel in the counties and the School of Medicine.

In a relatively short time, our residents have established sound working relationships with existing service personnel and the community. I am more than pleased with what has been done and would be delighted to describe it to you in detail if an appointment can be arranged.

To list a few of the achievements that have occurred during the past three months may be appropriate: A comprehensive head-start program in Cumberland was begun, giving much needed service to more than 60 children and their families. Arrangements were made for families without private physicians to register and be seen at the Children's Medical Center in Cumberland where the resident has an all-day, weekly clinic. Similar head-start examinations have been initiated and conducted in the Garrett County townships of Grantsville, Kitzmiller, Friendsville and Oakland. An acute care clinic held once weekly at Grantsville has been established through the cooperation of the County Health Officer, the Pediatric resident and the public health nurse. The Pediatric resident, assisted by the public health nurse, sees all sick and well children there. The cooperation of the County Health Office, the public Health staff and the community has indeed been most exciting and gratifying thus far.

In addition to immediate programs, our residents in cooperation with the physicians in Garrett County as well as the County Health Officers and the State Health Department are making plans for future training of public health nurses to provide better care for children as well as adults. The programs will be self-sustaining and continued should this program be terminated. We must always plan for the possibility that federal funds will not be forthcoming or will be drastically reduced without notice. In view of this, we have made plans to transfer as many of the programs as possible to local health officials as well as physicians. In this way, the expectations of the population can be realistically achieved.

I would be delighted to meet with you at your convenience and bring Doctors Payne, our first Appalachia resident, Weaver and Khan, my co-workers in this program to discuss this with you in detail. We have been very fortunate in having Sister Mary Louise from the Sacred Heart Hospital in Cumberland serve as a most able and competent Principal Investigator of this program. We have also had the complete cooperation of Doctors Brodell, Dawson and Fleming of the Children's Medical Center in Cumberland, who have been the on-site supervisors of our resident in Appalachia. I would certainly want their contribution to this overall program acknowledged.

Please excuse the length of this letter, but our enthusiasm is great and the achievements in such a short time have been beyond our expectations. I trust that this is the information you want and would be glad to detail it for you at your convenience.

With all good wishes and personal regards,

Sincerely yours,

MARVIN CORNBLATH, M.D.
Professor and Head, Department of Pediatrics.

PEACE CORPS SAVED

Mr. ALLOTT. Mr. President, an editorial published in the Denver Post of Sunday, March 12, gives praise where praise is due for the President's action in saving the Peace Corps from devastating cutbacks.

The Peace Corps and other vital volunteer programs are tapping the spirit of volunteerism that still runs strong in the Nation. The Post is itself to be praised for its attentiveness in defining these programs. I ask unanimous consent that the Denver Post editorial be printed in the RECORD.

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

PEACE CORPS' NARROW ESCAPE

The Peace Corps has gotten a welcome, last-moment reprieve from President Nixon.

In signing an absolutely minimal $3.1 billion foreign aid appropriation bill, Mr. Nixon emphasized that money would be found—from other budget sources if need be—to keep the Peace Corps in full operation.

As it now stands, the Peace Corps' modest $82 million budget was chopped by $10 million by Congress. Without the assurance from President Nixon, Joseph H. Blatchford, agency director, might have been forced to reduce the overseas volunteer force of 8,000 by as much as a half.

This could have been disastrous for the Peace Corps, which since its creation in 1961 has been one of the most effective people-to-people ventures in the U.S. foreign aid program.

Ironically, the congressional cutback of Peace Corps funds came at a time when the agency was regaining momentum in attracting volunteers.

Although Louisiana Rep. Otto Passman, perennial critic of foreign aid expenditures, reportedly had a change of heart on reducing the Peace Corps budget, the appropriation measure still went through Congress with a $10 million cut.

Thus it remained for President Nixon to rescue the agency.

His pledge that the Peace Corps will remain in full operation was the shot in the arm that the agency needed.

The President's action was also a well-deserved vote of confidence in Blatchford and the way he has revitalized the Peace Corps.

RHODESIA ORE: HERE'S TO THEE, OH "CLUB 503"

Mr. KENNEDY. Mr. President, I wish to place in the RECORD an account of the events leading up to the arrival of the first shipment of Rhodesian chrome ore since the 1965 United Nations embargo on trade with Rhodesia.

As a result of Senate action last fall, the United States joins Portugal and South Africa as the only nations violating a United Nations resolution that was enacted to support Great Britain's struggles to seek reform of the rebel Rhodesian regime.

However, as Bruce Oudes has expertly described in the Washington Post, on March 19, the debacle over Rhodesian chrome is a shameful event in the administration of our foreign affairs.

Accordingly, I ask unanimous consent to have printed in the RECORD the article entitled "Rhodesian Ore: Here's to Thee, Oh 'Club 503,'" written by Bruce Oudes and published in the Washington Post of March 19, 1972.

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

RHODESIA ORE: HERE'S TO THEE, OH "CLUB 503"

(By Bruce Oudes)

"We love the people we are with, And raise a glass for Ian Smith . . ."

The words of the song rang out time and again through the holiday season and into the new year, not in Southern Rhodesia where Ian Smith is the prime minister of the white minority government, but here in Washington. Representatives of American industry and Rhodesian diplomats emptied their glasses to mark victory in a 6-year campaign to get the United States to violate the so-called "mandatory" economic sanctions against Rhodesia.

Those sanctions are being violated this week with the arrival in the United States of the first shipload of Rhodesian chrome ore. This makes this country the third U.N. member officially to sidestep the ban; South Africa and Portugal are the other two.

The alliance of Foote Mineral Co. of Exton, Pa., and Union Carbide with Rhodesia's white government extends well beyond the minimum necessary to protect their long-standing investment in that chrome-rich country. The two firms openly acknowledge they have been opposed to the U.N. sanctions from the start. Union Carbide actively worked to undermine it as early as 1966.

The Rhodesia-U.S. corporate clique informally is known as the "503 Club" commemorating the relevant section of the Military Procurement Act of 1971 allowing U.S. firms to import Rhodesian chrome, copper, asbestos, manganese, nickel, and dozen of other commodities, seemingly because of an overriding "national security" requirement. However, as a knowledgeable Union Carbide source privately concedes, the "strategic" label was simply camouflage to get Congress to authorize U.S. firms to break the U.N. regulations.

An excellent description of the alliance linking white Rhodesia, conservative congressmen, Union Carbide and Foote Mineral is in their victory song, "The Absolutely Tentatively Provisional Official Marching Song of 'The 503 Club.'" To the tune of "O Tannenbaum," the song roasts liberal Democrats and the State Department, but not the White House, which has remained silent on the sanctions question.

"MANY FINGERS IN THE PIE"

According to Margaret Cox-Sullivan, a Union Carbide consultant who is "blow(n) a kiss" in the lyrics, "a lot of people got their fingers in the pie" writing it. The song project was a topic of conversation at a party making the sixth anniversary of Rhodesia's unilateral declaration of independence at the International Club given by the Rhodesia Information Service, the Smith government's unofficial embassy here, on Nov. 11.

The ditty made its official debut at a Christmas party given by the RIS at its offices at 2852 McGill Terrace, NW, and since has been aired at numerous private affairs.

The song cites L. G. "Tony" Bliss, Foote's chairman of the board; John Donahey, Foote's public relations specialist; E. F. "Andy" Andrews of Allegheny Ludlum Industries, another warm supporter of "503"; Margaret Cox-Sullivan ("Margaret S."); commentator Fulton Lewis III, who has just visited Rhodesia a second time; and Kenneth Towsey ("Kenneth T."), RIS director, and his associate, John Hooper, among others. Bliss, Donahey and Union Carbide's Washington representative, Jerry Kenney, were among those present for the debut, Mrs. Cox-Sullivan said.

Sen. Howard Cannon (D., Nev.) is "a hit" in the song, presumably because of his support for "503" as well as his blocking a route administration bill that would have released excess chrome from the national stockpile. David Newsom, assistant secretary of state for African affairs, is named among the clique's foes.

The complicated story culminating in the deft use of corporate muscle in Washington started almost half a century ago, Rhodesia, then a British territory, was discovered to have high-grade chrome ore. As American investment flowed in, it turned out that except possibly for the Soviet Union, Rhodesia had the world's largest known reserves of the premium ore.

This, however, had little meaning in political terms until Rhodesia's white-minority government declared its independence of British constitutional harassment in November, 1965, a move designed to stifle the black majority's demands for political power. Rhodesia's 5 million blacks outnumber whites in an ever widening 20-to-1 ratio. Britain's Labor government, fearful that its troops might mutiny if ordered to quell a rebellion by Rhodesia's "kith and kin" government, announced six months before the event that it would not use force to bring down an eventual white Rhodesian "uprising."

A COMPROMISE

Instead, Prime Minister Harold Wilson—under the pressure of world opinion—chose a compromise strategy of asking the United Nations to impose economic sanctions against Rhodesia. The last time a world organization attempted such a step was in 1936, when the League of Nations tried to quarantine Italy for invading Ethiopia. Thus far, the U.N.'s Rhodesia sanctions have been about as seive-like as the League's.

The Johnson administration, rejecting suggestions that it urge Britain to use force to bring down the Smith regime, went along with Wilson. But when it became apparent that the majority of the world's industrial nations were secretly going to continue trading with Rhodesia, the United States decided that it would not vigorously protest, either publicly or privately, the violations.

According to a knowledgeable State Department official, Union Carbide began to undermine the sanctions in 1966 while the sanctions screws were not yet fully tightened. It hastily transferred dollars to its Rhodesian subsidiary to "pay" for 150,000 tons of chrome ore that had not yet left the quarantined country. This later became the basis for its claim that it should be granted an exception to permit import of the 150,000 tons. The Johnson administration, well aware of the ploy, rejected the claim, but the Nixon administration granted it in September, 1970, after extensive Union Carbide lobbying.

POWERFUL ARGUMENT

Meanwhile, Foote, which had not been that astute in 1966, began to think in terms of a permanent, legislated exemption from the sanctions. Rep. James Collins (D-Tex.) and Sen. Harry Byrd Jr. (Ind-Va.) introduced legislation a year ago which said that the President could not ban the importation of a strategic commodity from a "free world" country so long as it was being imported from a Communist country. In 1965, the United States imported about a third of its high-grade chrome from the Soviet Union. Since the sanctions, the Soviets have furnished more than half of U.S. high-grade chrome imports. Given the size of the U.S. stockpile and the relatively modest chrome needed for defense purposes, experts scoff at the thought that the Soviets could bring the United States to its knees by stopping chrome exports. But this was a powerful argument.

Union Carbide quickly associated itself with Foote's effort, and both testified before House Foreign Affairs and Senate Foreign Relations subcommittee hearings last summer in favor of the bill. Although they complained strenuously about sanctions violations by other nations, nowhere in the two firms' testimony did they suggest the United States begin blowing the whistle on violators—a step that would have made life rougher for the white-minority government but more equitable for the world's chrome users in sharing the burden of the loss of Rhodesian ore.

Instead they were foursquare against sanctions. Foote chairman Bliss told the Senate committee July 8: "The position of the Foote Mineral Company, and, I think the rest of the producers in the United States, is this: That it would be total chaos if indeed the sanctions or the embargo would be effective against Rhodesia, because that would eliminate their input into world markets and throw us all into the marketplace in Russia and Turkey, and I am exceedingly doubtful, as the statistics disclose, that those source materials would be adequate to take care of

world demand." A Union Carbide spokesman said that accurately reflects his company's position.

Andrews of Allegheny Ludlum, who testified in favor of the legislation as chairman of the critical materials committee of the Iron and Steel Institute, took the same position in a telephone interview. "I opposed the embargo the day it went on for business reasons," he said. "The social and political aspects (of sanctions) have been overemphasized to the detriment of the economic aspects." Andrews said he visited Rhodesia in early 1970 and attended the Nov. 11 Rhodesian victory party. But he denied knowledge of the song, in which he is hailed as being "true blue."

BYRD AMENDMENT

When the Foreign Relations and Foreign Affairs committees blocked the legislation, by now known as the "Byrd Amendment," Sen. Byrd took it to the sympathetic Senate Armed Services Committee, which reported it as section 503 of the Military Procurement Act. When it reached the Senate floor in a series of roll calls Sept. 23, 30 and Oct 6 the White House remained silent—as it had before and has since.

A White House aide maintains that it was preoccupied with other elements of the President's legislative program. But other sources suggest that corporate influence had carried the day in a fluid situation in which Henry Kissinger, the national security adviser, preferred not to focus on something as remote as Rhodesia.

One former White House staff member says that of the President's aides, speech writer Pat Buchanan was particularly receptive to Union Carbide's plight. Last week Buchanan said, "I was sort of involved two or three years ago, but I haven't been involved since."

A former Senate committee staff member said that now-Deputy Defense Secretary Kenneth Rush supported Union Carbide's case in private conversation in 1970 while in Bonn as U.S. ambassador. Rush, a Duke professor when the President was a student there, left the presidency of Union Carbide to join the administration.

In the Senate, Byrd stressed that the measure would effect only chrome. However, the administration more recently has allowed the import of some 72 products from Rhodesia, excluding tobacco, a major Rhodesian export but not a "strategic" one. That dividing line serves the interest of Virginia tobacco growers, who have prospered through the elimination of Rhodesian competition.

The Byrd amendment passed its last Senate test Oct. 6 with the assistance of key switches by Sens. William Roth (R-Del.) and Lee Metcalf (D-Mont.). Metcalf's office said later his switch was due to pressure from unspecified "Montana chrome-mining interests." The measure sailed through the House, 251 to 100, on Nov. 10.

While the corporations involved, the Rhodesians, and apparently the White House seem to share an unusual private coziness that has influenced U.S. Rhodesia policy during the present administration, it is only rarely that a candid remark seeps into the public record.

One such comment was made by John Moxon, who since then had retired as president of Carpenter Technology Corp. of Reading, Pa., before the House subcommittee last June. Moxon followed Andrews to the witness stand to testify as a consumer of chrome. The only thing he said he wanted to add to his carefully worded written statement was, "We also have in the back of our minds the apprehension that the same people that are upset about Rhodesia will become equally upset about South Africa and then we are in a mess . . ." He quickly added that he is "not in sympathy with an apartheid or any of these things." He called U.S. participation in the U.N. sanctions "a short-sighted decision."

One U.S. official who closely follows the influence of Foote and Union Carbide in American Rhodesia policy is philosophical. He notes that their mining subsidiaries in Rhodesia are still producing chrome which in turn is earning vital foreign exchange for the Smith government. "They've got a lot in common," he said thinking of Foote, Carbide, and Rhodesia. "You just don't work that closely together without getting involved."

THE ABSOLUTELY TENTATIVELY PROVISIONAL OFFICIAL MARCHING SONG OF "THE 503 CLUB"

Verse I: (To be sung with great joy).
Oh, 503; oh, 503
We gave our very best for thee.
Oh, 503; oh, 503
We celebrate our victory.
To Harry Byrd, we'll drink a toast
And sing his praise from coast to coast
Jim Collins, too, we'll honor thee
And hang you on our Christmas tree.

Verse II: (To be sung mournfully).
Oh, 503; oh, 503
You nearly were the death of me.
Oh, 503; oh, 503
The roll call votes were agony
We very nearly lost our wits;
Fulbright and Fraser gave us fits.
We frown upon you, Gale McGee
And dimly view Ted Kennedy.

Verse III: (To be sung with great sincerity).
Oh, 503; oh, 503
Rhodesia's future rode with thee.
Oh, Fulton Lewis Number Three,
We honor your tenacity.
We love the people we are with
And raise a glass for Ian Smith
Congratulations, we assume
Are due Lord Goodman, Alec Home.

Verse IV: (To be sung with wistful melancholy).
Oh, 503; oh, 503
We faced a mighty enemy.
Oh, 503; oh, 503
The State Department thwarted thee.
We ran afoul of David Newsom
Culver and Diggs—an awesome two-some.
The U.N. fought you mightily
And Harold Wilson censured thee.

Verse V: (To be sung lovingly).
Oh, 503, we'll blow a kiss
To Margaret S. and Tony Bliss
And Andy Andrews, you're true blue—
John Donahey, we hail you too.
Hey, Howard Cannon, you're a hit;
Sam Ervin—bless you for your wit.
Bill Brock, we greet you gratefully—
Defender of the 503.

Verse VI: (To be sung bravely, if hoarsely).
Oh, noble House, your Members there
Nailed down the victory with a flair.
Let songs of joy ring through the air;
We won the battle fair and square.
And so, tonight let's have some fun;
It's better to have fought and *won!!*
And you'll go down in history,
Our dear, beloved 503.

Verse VII: (To be sung diplomatically).
Oh, Kenneth T.; oh, Kenneth T.
Ambassador one day you'll be.
And may John Hooper follow thee
To posts of great authority.
Next winter may it be your lot
To spend your Christmas where it's hot.
Please raise a toast in Salisbury
In memory of 503.

"SAVE THE PROVO RIVER" CONFERENCE

Mr. MOSS. Mr. President, the Provo River in my State of Utah has always been considered one of our most delightful recreational rivers. It runs through a beautiful canyon, and it has been for years the scene of many picnics and campouts, and the mecca of fishermen from the heavily populated Wasatch Front Counties.

Recently the whole character of the Provo has been changed. Highway construction in the canyon along the river's banks has narrowed the channel, removed vegetation along the banks, covered pools and raised the water temperature by exposing more of it to direct sunlight.

The Corps of Engineers has dredged out the channel and improved it, but in so doing they have changed the character of the river by silting it downstream and by loosening gravel.

A series of upstream dams and irrigation canals diverts so much of the water in certain seasons, that the river runs very low, and in some places the streambed is dry.

All of this has resulted in the deterioration of one of the State's best fishing streams, and in a great recreational downgrading of the entire area.

Not long ago various individuals and groups in the State interested in the ecological welfare of the Provo River gathered at a special meeting in the Governor's board room to discuss what can be done. The problem is basically a local one—how to recognize and reconcile the various uses to which a river and a canyon must be put. Irrigation water is necessary for Utah's farms. A road of a safe width and good engineering is necessary to carry the traffic through the canyon. The stream channel must be improved to prevent floods. But all of these things must somehow be handled in a way which will protect the ecology and assure the continued recreational benefits for which the Provo is famous.

Mr. Hart Wixon, Rocky Mountain editor for Field and Stream, and environmental editor of the Deseret News, discusses the movement to "Save the Provo" in an article in the March 1972 issue of Field and Stream.

The article is based on a 3-year study by Dr. David A. White, an associate professor of zoology at Brigham Young University, as well as the efforts of the Provo River Chapter of Trout Unlimited, of which Dr. White served as chairman.

The article looks at the problems primarily through the eyes of a dedicated environmentalist, but there is recognition in it of the rights of those competing for the use of the water.

In the overall, it is a very eloquent plea for long-range planning in the development of our natural resources so that the ecology can be protected while the people are being served.

I ask unanimous consent that Mr. Wixon's article be printed in the RECORD.

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

SAVE THE PROVO

(By Hart Wixon)

The room was packed with old professors, young lawyers, county commissioners, TV cameras, engineers, biologists, at least one mayor, several state senators, newsmen, and heads of various Utah governmental agencies, including Gov. Calvin L. Rampton. It could have been a meeting to announce candi-

dacy for the U.S. Senate, or even President of the United States.

It was none of these. Instead, it was a meeting to save a river. The Provo River.

So far as could be determined by oldtimers in the Governor's Board Meeting Room, it was the first time a meeting had ever been held in Utah to discuss the ecological welfare of a river. The entire fate of the Provo River could be determined in this meeting—whether it was of greater public benefit in its streambed or out of it. Whatever happened here now could set a precedent for every other stream in the state. To that extent it was perhaps also a meeting to determine the fate of streams throughout the United States. Several Federal agencies were involved.

Probably in no other state of the Union have laws been set up to more rigidly protect consumptive users, those who leave the streambeds dry, than was done in 1921 in Utah's water law courts. If water could be allocated here in this meeting for nonconsumptive recreational uses, including fishing, wildlife habitat, esthetics, tourism, and increased real estate values because of nearby running water, then it could likely be obtained in any other of the United States. No state could have less protective stream laws than Utah—because Utah has none.

Checking with the state engineer's office in the early part of 1969, I was told that recreation was not even mentioned as a beneficial public use of water in the state law books. Utah does have a fish and game law which requires notification of stream diversion of game fisheries that could be affected. But after notification, for possible fish salvage, nearly anything can legally be done with the stream so long as it does not prevent water from reaching the irrigation canals. The canals themselves are usually constructed in the canyons, eliminating perhaps 50 percent or more of the possible recreational opportunities which might be enjoyed by the general public.

With no laws to prevent environmental destruction, the Provo River had for years been moved around by anyone who wanted to put a bulldozer into it. It was not particularly surprising, then, when the Provo River's lunker brown trout began to disappear.

Highway construction narrowed the channel, removed streamside vegetation, covered pools and banks, raised water temperatures by exposing the water to sunlight. And what they didn't do to destroy it below the canyon was accomplished by the U.S. Army Corps of Engineers. Invited by the Utah County Commission to "improve" the channel, the Corps managed to destroy three miles of trout fishery; so badly silted the downstream river that the walleye run from Utah Lake, a multi-thousand dollar investment of the Utah Fish and Game Division, was nearly annihilated; loosened gravel in the streambed so that it piled up downstream; diked what little of the river was left so you couldn't see it—and made thousands of local citizens vow it would never happen again. It did. The next spring, the third week of March, during the annual walleye run I watched Corps bulldozers in the river again. The Corps somehow missed the next year, but returned the year after that.

During the 1940's and 50's the Provo yielded browns up to 20 pounds in the annual Field & Stream Fishing Contest. Trout of 6 and 8 pounds were so frequent they drew little attention in local contests. Even into the '60's many anglers still caught limits of naturally propogating brown trout from 12 inches to 2 pounds. Rainbows were planted, but they seldom lasted two days beyond any major holiday. Brown trout then carried the load again.

By 1969 it became apparent that frequent diversions for irrigation and power, pollution, "stabilizing banks" with concrete slabs from construction projects, more "flood control," and highway projects would soon completely shut out the general public for most nonconsumptive recreational uses. A new four-lane highway, in addition to the present three-lane road, was under planning in the fore part of 1970. It called for alteration of the channel in one lengthy area heavily used by fishermen. If anything was to be done to safeguard the stream, as Save the Provo River's officers stated, it had to be soon.

For some sections of the Provo it was obviously already too late: the Olmstead Diversion Dam, about one third of the way up the canyon, had already dried the section below. Steven Penrod, president of the STPRA, and others, examined hundreds of dead brown trout up to 18 inches in the dry streambed there. When water was later released into the streambed, hundreds more brown trout were carried into the area. This time STPRA members got there in time to move most of them safely into the water far above the dam.

But water was then wholly diverted from the Murdock Dam downstream where small feeder streams had been maintaining a fishery. Illegally, no notification was given. Hundreds of brown trout there died. The reason? Members of the Provo River Water Users Association had decided to put the entire river out into their fields to make plowing easier. Conservationist groups had been accustomed to late summer drawdowns, but filling irrigation canals in early May had caught them somewhat off guard. There was no fish salvage.

A several-year study by Dr. David A. White, associate professor of zoology at Brigham Young University, turned up some large browns in the few areas where neither streambed nor bank had been altered or de-watered, including one 11-pounder. An interesting aspect of both the studies and STPRA salvage operations was the fact that browns outnumbered rainbows about 1,000 to one. In Penrod's first examination of the dry bed below Olmstead he found one rainbow; in the second, none. Yet rainbows had been planted by the tens of thousands there.

After attempting in vain to get more flow into the streambed, the STPRA called a meeting in downtown Provo for early April 1970. On hand were close to one hundred people: biologists from BYU, government officials, Provo River area home owners, fishermen, recreational users, and others determined to prevent total destruction of the Provo River. As one speaker stated, "Here is a stream that has been pictured in many national publications, attracting tourists from throughout the United States. And it has provided us here in this area with a rich quality-of-life resource right in our own backyard."

At this meeting the Provo River Chapter of Trout Unlimited was organized, with Dr. White as president, the second organization formed within a week to get something done.

More than two dozen people called for specific action to save the Provo River as rapidly as possible. Newspaper reports of the meeting were seen by actor Robert Redford in New York City. Owner of the Sundance Ski Resort near Provo Canyon, Redford had often admired the Provo River while driving to his resort. "I'd always thought of it as being an exceptional tourist attraction, a reason why nonresidents such as myself visited or located in Utah. But with the abuse it began taking, I wondered if people fully realized this river's value," Redford said. "It is human nature to take things close at home for granted. Perhaps this is what happened here.

"I've been many places in the world," Redford continued, "but I have never seen a more beautiful stream. Most of it still is. But we will have to start doing something about it soon, before it is too late."

Redford also indicated clearly that he understands the world of the fisherman. "The Provo is also a particularly fine brown trout stream—one that I think is worth keeping."

As environmental editor of the Salt Lake City Deseret News, I reported this telephone interview the next day. Many people called to say they agreed completely with him, and expressed a desire to help out.

But things were already being done, and on a national scale. As Redford had promised to do, he contacted Utah Sen. Frank E. Moss. Moss studied the situation and through the wire services expressed the opinion that "some sort of guaranteed minimum flow was needed down the Provo in behalf of the public interest."

Earlier, John S. Wood, assistant director of Trout Unlimited, had flown from TU Denver headquarters office to meet with Utah Chapter officers in Salt Lake City. In a tour of the Provo River, Wood and I happened to see several people loading sacks with dead brown trout. This was the result of a complete water diversion from the Olmstead Dam into a large pipe. Wood later wrote a letter to Utah Power and Light Co. officials asking for flows in the natural stream below Olmstead. Power officials returned a letter saying they would look into the matter. Since the power company purchased their water from the Provo River Water Users Association, the latter was contacted to determine if water above and beyond the power needs could be released from upstream Deer Creek Reservoir. The water users ignored this attempt to discuss the matter with them.

According to studies done by Dr. White, the pattern for years had been to hold back all water, except that committed for power, in the spring months. When Deer Creek filled, then excess water would be sent down to Utah Lake.

Why was flood control work also being done in the spring, when fish were dying from lack of water? Because as soon as Deer Creek filled, it had to be quickly shuttled downstream from the bulging banks. Hence what had been a dry stream-bed now needed flood control work from the Army Corps of Engineers. I checked the Olmstead and Murdock dams on June 22, 1970, and both were booming with water.

"Why," suggested Dr. White, "doesn't the water users association begin releasing water gradually from Deer Creek when it is obvious the dam is going to fill, giving a sustained flow of water?" This question was asked through the press in early May. By May 15, public interest in the environment of the entire Provo Canyon became even more evident. Hundreds of persons spent a day in the canyon cleaning up litter along the stream. Many of them were Boy Scouts, students, and people who said they never fished the Provo.

It was apparent that concern for the Provo River was widespread. Some conservation groups in the past had intermittently complained of abuse to the stream. But this was now more than one or two special interest groups. The public had not only become concerned, but determined to make up for previous apathy. Many letters were written, speeches made, meetings held, and pressure put upon those abusing the river to change their public-be-damned attitude.

It was no surprise, then, when Governor Rampton called a meeting for May 27 to determine if something could be done to save the Provo River.

But to understand exactly what happened at the meeting, it is necessary to know some Provo geography. Rising on the western edge of Utah's 13,000-foot-plus Uinta Mountains, the Provo cascades westward through glacial rock into ranch country. Here the stream's brook trout give away to cutthroats and browns. From Woodland to Heber City, the Provo courses through cottonwoods and fer-

tile meadows that once attracted fly fishermen from throughout the West. Browns averaging 13 to 16 inches were caught with such frequency that anglers took them for granted and concentrated on the larger fish. For some fifteen or twenty miles the Provo flowed through countless pools and riffles, spilling into Deer Creek Reservoir constructed west of Heber City in 1937. From there it flowed into what has often been termed the lower Provo River. The entire lower river and much of the upper was considered some of the finest brown trout water to be found anywhere in the U.S. Some six miles of the Provo immediately below Deer Creek still remain in their natural condition, and produce both browns and rainbows in the 5- to 10-pound class.

Among the first called on to speak at the Governor's meeting was Joseph Novak, general counsel for the Provo Water Users Association. Novak recounted the water users' engineering efforts to store up water for the irrigation seasons. Lakes at about 9,000 to 10,000-foot level in the Uinta Mountains had been "stabilized" by building dams. A tunnel was constructed through some seven miles of mountain to divert the North Fork of the Duchesne River into the Provo just before the stream spills from the Uintas. This extra flow meant more water than the streambed could handle, and even more water was added by connecting a canal from the Weber River across Kamas Bench into the Provo. This created a serious overloading of the streambed's natural capacity, so the water users contracted the U.S. Bureau of Reclamation at some $5 million to provide a channel capable of carrying the excess water.

Novak then stated that the "improvements" done to the channel, which consisted of dredging out the streambed and using the material to dike the Provo, giving it the appearance of a uniformly wide and deep canal, had "enhancd the stream for fish and wildlife use"! Later a physician-fisherman in Heber told me: "They may have spent $5 million, but they sure as hell ruined one of this country's most beautiful natural tourist attractions. They obviously cared only about getting water down on their farms. No one else seemed to matter to them." A veteran fish and game employee put it this way: "They gutted it all the way from Woodland to Deer Creek."

Although Novak said specifically that the water users had "taken special care" not to remove the streambed, disturbing it only in two or three places "where it couldn't be diked any other way," he could hardly have been more wrong. It didn't seem likely the statement was made deliberately to buffalo anyone. Even though the dredging took place about twenty years ago, the ripped bed can still be clearly seen. But the reason I knew the streambed was almost entirely removed was that I fished the upper Provo extensively in the early 1950's. After the dredging had all but annihilated the streambed and the fishing, I walked the river and noticed how few natural pools and riffles had been allowed to remain. Entire miles were changed from productive trout stream to gravel-lined sluiceway. I did not fish the upper Provo again for more than fourteen years, nor did any of the other fishermen I knew. What had been a natural fishery costing the state little for stocking, soon became an expensive put-and-take-hatchery rainbow proposition.

But this shift from natural to artificial trout was much more than an esthetic loss. Take 1969 as an example. A total of 48,620 rainbows were planted in the Provo from Deer Creek to a point just above Woodland. Figuring about three fish to the pound average, at 55 cents per pound cost (not counting hatchery houses, buildings, raceways, or any capital improvements) this section of the Provo cost license buyers some $8,924.85 last year. Multiplying that figure (number of fish planted has increased, but pound-cost has decreased) by the twenty years since the natural fishery was removed, and it turns out that heavy planting here has cost the license buyers about $178,497.

Obviously these are rough figures. But they are indicative. Some stocking was done, of course, to supplement brown and cutthroat during the 1950's. But the point is that the recreational losses here were economic as well as esthetic.

The thing that never can be measured is the loss in quality. Government flood control engineers may never understand the difference between browns and pallid, sickly, naive hatchery rainbows that swim toward the sound of human footsteps. When a streambed is removed, the engineers' response, rather than an attempt to prevent this biological depredation, is that the state will replant it with many hatchery rainbows.

This entire situation points up what is perhaps the conservationist's greatest problem: he must present both sides of the question at stake, then let the government officials in charge (and the general public) decide what course of action should be taken. But if those who oppose conservation are allowed to make false statements, presenting an incomplete or erroneous picture, then it becomes difficult indeed for the most conscientious of officials to render a fair decision.

Such was the case here on the upper Provo. It is quite possible the Provo River Water Users Association never did realize the complete fishery destruction wrought in this area. But whatever the problems of fish culture, Novak made it clear his clients hadn't worried much about it: "Water could be released down the Provo to prevent it drying up during the critical periods, if fish culture was a higher use of the water than agriculture. But we don't think it is."

At this point Governor Rampton interrupted to say there were many values inherent in running water: tourism, esthetics, real estate values, recreation of many sorts, and public health. The Governor saw dead fish as an indicator that human ill health might follow. Failure to carry adequate water down the streambed into Utah Lake, where the major portion of the eastern shoreline is already off limits to swimming or wading due to pollution, could only worsen the situation.

But there is here, too, something few fishermen fully understood. The water users had shown considerable financial courage during the early 1930's to contract for construction of Deer Creek Dam. The cost: $25 million, every cent of it to be paid back. To be sure, it was an interest-free loan, but even now at this meeting the water users still owed the Federal government $19 million. The money was being raised by sale of water shares, the majority being purchased in Salt Lake Valley. With this commitment hanging over their heads, the water users had not only appropriated all of the Provo River water, but they had in the words of Novak, "overappropriated it."

So precious was the water considered for farm corps by Utah courts in 1921 that this right to fully appropriate the Provo for agricultural uses was not only granted to the water users, but the entire river system was given over to them. They legally owned the entire Provo River!

Fishermen began using Deer Creek Reservoir—and also littering it. The job to police it fell to the water users. They figured fishermen were a careless, indifferent lot—which many of them were, judging by the shoreline, cans and bottles. The $8,000 annual costs of cleaning the lake were at least partially offset by sale of boat permits and concessions. Most of the Deer Creek water, said PRWUA officials was from the Duchesne and Weber additions. Therefore, both the reservoir and downstream Provo were "enhanced" by the project rather than hurt by it. That statement would be difficult to prove. Certainly the lower Provo would have water in the channel year-round (with one possible drought year perhaps every forty or fifty years) if they had left it alone. Novak's statement that "Utah needs no new legislation to protect recreational streams" was, of course, merely a move to keep absolute control of the Provo River—and to shut out those who might seek any type of multiple use.

Still, the fact that the Utah courts had legally given the entire Provo River system to the PRWUA in 1921 could not be disputed. No one in the meeting attempted to demand that water be taken outright into the streambed, even though that was now clearly in the general public interest. The argument that agricultural lands fed by the canals from the Provo were the "lifeblood economy of the state" could have been pursued in 1921. But not now. Penrod cited studies done in Montana which indicated the Big Hole River was worth twelve times more economically to the state in the streambed than out of it. Such studies done now in Utah have not been as complete as those in Montana, but it is not likely that 1970 agricultural uses could compete with the tourism, travel, and licenses sold to those who fish the Provo almost exclusively, along with cafe, resort, and motel business in this area. And with the case of importing food in this modern era, it cannot be said now that local economy is dependent upon lands irrigated by the Provo. In fact, agricultural income continues to drop drastically in Utah compared to recreational sources of income. A recent University of Utah study showed fishing-hunting-recreation third behind manufacturing and mining. It must also be concluded, to be consistent, that the state is justly concerned with obtaining water for manufacturing and mining. Considerable water is taken from the Provo system for these two major contributions to the state's economy, but they are taken mostly from Utah Lake and the Jordan River. Water is not diverted suddenly in wholesale fashion at any point on the Provo for industrial uses, as it is with agriculture.

Once the streambed is dried up for even two or three minutes, browns and their feed are gone with the finality that would result from a month's dry bed. And the longer the bed is without water, the greater loss in the "seal" which costs live streams and keeps water from seeping into the ground. Thus in their desire to get more water from the streambed into the canals, water users may actually be wasting it. Further water is wasted by using miles of uncemented canals, according to studies done by Dr. White.

Conservation representatives were so numerous at the meeting that many of them, such as the Sierra Club, Wilderness Society, women's conservation groups, Wasatch Mountain Club, Utah Chapter of Trout Unlimited, Audubon Society, did not have an opportunity to testify. However, several speakers stated feelings somewhat representative of the conservation groups. One of them was Dr. Thadis W. Box, Dean, College of Natural Resources, Utah State University, Logan. He emphasized that it is time to begin looking at the needs of today. "It is obvious," he said, "that a natural resource as valuable as a canyon stream should come under the multiple use concept. Such a stream as the Provo must be considered today as also belonging to the general public—and multiple use practices applied to it, taking all possible beneficial uses into consideration."

Dr. White had earlier stated that if the water, or a portion of it, were to be condemned for the public use and the water users reimbursed for it, they would lose no more than did the commercial fishery companies who relied on the river for sustenance far before the PRWUA was organized. The Provo at that time was a pristine cutthroat fishery, almost on a par with Pyramid Lake, Nevada, with spawners from 15 to 25 pounds

being taken by the score to commercial markets. As elsewhere in the United States, browns were later introduced and flourished in the Provo. When the water users association took over, the fisheries were granted no legal status.

Nothing said here is meant to be an indictment against any individual or organization. But inasmuch as the water users association made public statements in an open meeting which went out to many sources publishing their side of the story, it seems only fair that the entire matter be known. What is to be done about the Provo River rests largely with statements made by the PRWUA. For example, it was stated that only once in the past seventeen years has the Provo gone dry just below the Murdock Dam. This was refuted by many in the meeting, and was corrected by the PRWUA. But if the many people who had seen the dry streambed there, as I did myself while living in Provo during 1957–59, had not spoken up to correct the record, the impression would have been given that the spring of 1970 was just "one of those bad water years that occur occasionally." As a matter of fact, Gordon Harmston. Director, Department of Natural Resources, reminded the press just a few days before the meeting that the drying of the Provo was an annual matter occurring well before the 1970 fish kills were reported. It was a repititious problem that the water users had ignored in the past, and didn't seem to be planning anything about now.

What then is the fate of the Provo River? Like trout streams of magnificent history elsewhere, such as the low Truckee and the South Platte, the Provo may die. An antiquated water law ruling in 1921 may have killed all chances of applying the multiple use concept to its recreational potentials. Lack of present stream protection law may prevent future attempts to control pollution and all further tampering with the streambed. Anyone with a tractor can still do what he wants with the streambed.

But judging from the concern that has been shown by the people in Utah and their nonresident supporters, it isn't likely the Provo will ever be buried. As Governor Rampton told the May 27 hearing, "we have a serious problem here. We will see if we can get Federal funds from the Four Corners Project or the Dept. of Health, Education and Welfare to obtain a minimum flow of water down this river." The Central Utah Project, slated to construct another dam above Deer Creek, will bring additional water by the late 1970's and solve some low-water problems there. Water is not ear-marked in that project to flow below the Murdock Dam. But a final solution to the total problem on this stream rests with the people: Do they care enough to Save the Provo River?

If they care enough, they can do it. The public has proven that during the entire environmental movement of the past year. It was that concern, realizing finally that there is a limit on available natural resources, which has led the public to demand greater governmental concern for our irreplaceable environment. It has become so sweeping that even the tradition-hardened U.S. Army Corps of Engineers has begun figuring the costs of environmental safeguards in their cost estimates.

It is this kind of honest, intense concern, followed intelligently, which can save the Provo. Just as public concern led to the May 27 meeting, so can public concern get a constant flow of water down the Provo, and safeguard it against channel changes or pollution. The water users, who have committed themselves to an enormous debt, must be fully refunded for any flow put in the streambed taking money from their pocket. However, they might also recognize public benefit and welfare. State economy no longer depends on their getting water into their fields. Their own individual welfare may depend on it, but then the resort operators, fishing tackle stores, motels, cafes, and other concessionaires in the Provo area depend on the water too. Why should the agricultural uses be given priority over other economic and multiple uses? With the latter uses, everyone receives benefits rather than just a few.

It is a fact that if a person purchased water shares from the Provo, then put the water down the river for general public use, that water could be appropriated to someone who would consume it! This is standard operating procedure on the Provo and many other streams throughout the United States. Clearly, this sort of management is unfair and not in the public interest.

Perhaps the water users think the public will soon forget about the Provo and not bother them any longer. This is not the case. Their use of the Provo for their own purposes, and everyone-else-hands-off, cannot long continue coming to the attention of elected officials and legislators. Nor can their false statements about such things "enhancing fish and wildlife values," and "not drying up the streambeds except once in the last seventeen years" be taken seriously any longer by a public that can obtain the facts. Either the PRWUA and water users throughout the country who ignore the public decide to allow or provide water for multiple use, or a concerned public will ask its elected officials to condemn it and take it for the public welfare. This might require leaving some six or eight cubic feet per second flow at critical periods to keep the streambed from going completely dry and avoid killing the entire biological system. A stream can usually come back from a light flow—as the Madison River earthquake proved. Brown trout bounced back there from a mere trickle. But when the bed goes dry, all is lost.

With more and more people, more leisure time, and more resources diminished than ever before, the need for a running stream by the whole community, not just fishermen, increases. A stream is a place of therapeutic value, a place where man in a very real sense emerges clearer, fresher, and better because of his experience.

The next question is obvious. Why should this use of water not be considered fully as valuable—here and now—as that diverted into a field to create more crop surpluses?

THE PRESIDENT'S TRIP TO CHINA

Mr. DOMINICK. Mr. President, I was pleased to note that the Boston Herald-Traveller of March 8, 1972, published what it described as "Two Assessments of the President's Trip to China." One was an article by former Massachusetts Representative Laurence Curtis, with whom I served in the House of Representatives; and the other was the speech which I delivered on the Senate floor on March 3. Both the article and the speech emphasize the positive aspects of the Nixon journey, and, taken together, they provide the reader with what I consider to be a balanced analysis of both U.S. gains from the trip and our treaty commitments to the Republic of China. To afford Senators an opportunity to examine the two points of view, I ask unanimous consent that the article and the speech be printed in the RECORD.

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

TWO ASSESSMENTS OF TRIP TO CHINA

U.S. COMMITMENTS TO REPUBLIC OF CHINA HAVE NOT CHANGED

(By Senator PETER H. DOMINICK)

Since the release of the joint communique by President Nixon and Premier Chou En-lai on Feb. 27, some news media headlines, some broadcasting instant analysts, some persons in public office and some seeking to occupy the White House have labeled it as a sell-out of Taiwan.

As a long-time admirer of the people of the Republic of China, I have not only reviewed the communique carefully but have also studied our treaty commitments and our defense posture in the area. As a result of that study I can say that I see no sign of any change in our commitments to the Republic of China.

Any contrary view simply does not stand up, and the repetition of that concern simply encourages a feeling among all our allies that they should review their own positions and does no good service to Taiwan, the United States or the cause of the free world.

The communique simply advocates a peaceful solution of the Taiwan question between the Chinese peoples themselves, and we are not throwing up our hands and dismissing long-term commitments to the Republic of China.

Much of the emphasis has centered on that portion of the communique in which the United States states that it reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan.

"In the meantime, it will progressively reduce its forces and military installations on Taiwan as the tension in that area diminishes."

True, we have agreed to withdraw some of the limited number of U.S. forces stationed on Taiwan as tension decreases. However, we have no sizeable force on the island, and the small increases from 1964 to 1968 were involved in the Vietnam buildup, not as a protective screen against attack on Taiwan. As Vietnam winds down, those forces would be reduced in any event.

Furthermore, we have in no way abrogated our commitment under our Mutual Defense Treaty with that government signed in 1954. There were valid reasons for this country to enter into a formal treaty with the Republic of China in 1954, and the two major tenets which prompted a pact almost 20 years ago have not lost their validity today. In hearings before the Senate Foreign Relations Committee before the treaty was ratified, former Secretary of State, John Foster Dulles, said that it would serve two purposes:

"It would give the Chinese Communists notice, beyond any possibility of misinterpretation, that the United States would regard an armed attack directed against Taiwan and the Pescadores as a danger to its own peace and safety and would act to meet the danger—such an action to be in accordance with our constitutional processes.

"It would provide firm reassurance to the Republic of China and to the world that Taiwan and the Pescadores are not a subject for barter as part of some Far Eastern 'deal' with the Chinese Communists."

Under the Mutual Defense Treaty with the Republic of China, it is clearly stated that "Each party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes." It is significant to note that the treaty remains in force indefinitely, or until one year after either party has given notice to the other to terminate the agreement. And, of course, no such notice has been given or is contemplated.

Although we are embarking on a new and important era in U.S. relations with countries in Asia, it would be against our own interests and those of world peace to forget the economic and political contribu-

tions the Republic of China has made in that area of the world. In essence, our military commitments to the Republic of China are but a small part of a long and enduring friendship.

The United States has no intention of ignoring that most valuable, if intangible, commodity. Those who suggest that our initatives toward world peace through expanded communication with traditional adversaries will result in abandonment of our friends are doing no favors to the U.S., to our allies, or to the cause of peace.

We are standing by our treaties and continue to demonstrate to our allies that such mutual agreements and commitments are not taken lightly by our government, will not be tossed aside or invalidated by bettered relations in other areas, and remain the foundation for building a peaceful and prosperous world.

THE UNITED STATES RECEIVED MASSIVE BENEFITS FROM CHINA VISIT

(By Laurence Curtis)

The favorable results of President Nixon's Peking trip cannot be judged from the written words of the communique. To focus primarily on the communique is to miss the forest for the trees. A broader view discloses beneficial results and new directions of enormous importance.

1. The trip marked a starting change in relations between Peking and Washington, a change from 22 years of mutual recrimination to a new era of reasonableness.

To appreciate the immensity of this change, one must recall the vitriolic hostility which had constantly been shown by leading Chinese spokesmen against "the imperialists headed by the United States and their lackeys," their urging of "the oppressed nations and peoples of Asia, Africa and Latin America" to take up revolutionary struggle against the imperialists, and their thesis that "political power grows out of the barrel of a gun."

The new attitude toward America was conveyed to the Chinese people and the world by radio, TV and newspapers. The media showed the representatives of the United States being cordially received in Peking by Chairman Mao Tse-tung and having friendly discussions with other leading Chinese officials. Premier Chou En-lai even made available to President Nixon, as a stage for the TV drama, the Great Hall of the Peoples Palace in Peking and the Great Wall of China.

The effect of such a change can hardly be overemphasized. In China Mao has been almost deified. His "thoughts" are on the peoples' lips; and when he showed a friendly attitude to the American president, he sanctified the new relationship.

Americans are no longer "running dogs," but people who could be received on a friendly basis for reasonable discussions.

2. The trip created and dramatized the Chinese-American rapproachment. It started the process of building a bridge across a gulf of almost 12,000 miles and 22 years of noncommunication and hostility.

3. The trip defused the issue of Taiwan as a barrier against Chinese-American negotiations. The Chinese abandoned their refusal to engage in discussions with the United States so long as there was an embassy of Taiwan in Washington. And the trip ended China's fear that the U.S. was trying to detach Taiwan from China and use it as a military base.

4. The trip may be helpful in ending the war in Vietnam. A connection between the problems of Taiwan and Vietnam emerges from the communique. The U.S. asserts that it will progressively reduce its forces and military installations on Taiwan "as the tension in the area diminishes." The "tension in the area" may well include Vietnam. The U.S. could slacken its pull-out from Taiwan until a settlement in Indo-China approached a reality. This would give the United States leverage to induce Chinese interest in a war settlement.

5. The trip gave a new direction to foreign policy in the Pacific area, one pointed toward Chinese-held image of an aggressive and warlike America, and it blunted the American fear of Chinese Communism with its 750 million people.

6. Together with the entry of mainland China into the United Nations, the trip ended the dangerous isolation of China, and signalled China's emergence on the world scene.

7. The trip marked the end of the sterile and unrealistic American policy which had viewed Taiwan as representing the whole of China. It signalled a further thaw in the cold war and the lessening importance of the containment policy.

8. The trip opened the vista toward a new post-Vietnam balance in Asia between China, Russia, Japan and the U.S., and placed the U.S. in the position of being the only one of those powers which can deal on reasonably cordial terms with the other three.

9. The U.S. rapprochement with China may well improve the prospects of meaningful negotiations with the Soviets.

The conclusion is warranted that the benefits to the U.S. from the Peking trip were massive.

Theodore H. White's words of 1967 were prophetic:

"The most difficult task in the world is to reach the minds of men who hate you. We do not flinch from the immediate tasks: to guard our skies, defend our friends. We cannot flinch from tomorrow's task to reach the mind of China. We race today to reach the moon, to reach that mind is a task of equal difficulty and far greater urgency."

ECONOMIC CONVERSION OF SCIENTISTS AND ENGINEERS

Mr. KENNEDY. Mr. President, on October 26 and 27, 1971, the Special Subcommittee on the National Science Foundation of the Committee on Labor and Public Welfare held hearings on S. 32 and S. 1261, which would authorize the National Science Foundation to conduct economic conversion programs for scientists and engineers. In oral testimony and in statements submitted for the hearings record, officials of 25 scientific, technical, professional, educational, industrial, and labor organizations supported enactment of such legislation and, in a number of cases, offered specific suggestions for revisions to strengthen the bills. One of these organizations was the Scientific Manpower Commission which represents 11 scientific societies; and another was the Council of AFL–CIO Unions for Scientific, Professional, and Cultural Employees which represents 15 unions. Thus, the total number of organizations involved was 49.

One important technical group, the American Society of Mechanical Engineers, was not able to complete its review of the legislation before the hearings record went to press; but this society has since submitted a statement in support of the legislation. In addition, the National Loss Control Service Corp., an urban fire protection engineering firm, has recently submitted a useful statement in support of the legislation. Also since the hearings record went to press, a significant article analyzing scientific and technical unemployment has been published in "Science and Government Report."

I ask unanimous consent that the letters from the American Society of Mechanical Engineers and the National Loss Control Service Corp., and the article from "Science and Government Report" be printed in the RECORD.

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

THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS,
New York, N.Y., January 19, 1972.

Hon. EDWARD M. KENNEDY,
Chairman, Special Subcommittee on National Science Foundation, U.S. Senate, Washington, D.C.

DEAR SIR: We have reviewed Bill S. 32, its Amendment A. 469, and Bill S. 1261 and are submitting our comments herewith in accordance with your invitation of November 5, 1971. Also, as Mr. O. B. Schier, II, expressed in his November 19th letter to you, although we could not meet the November 22nd deadline, we hope that our comments will receive the attention of the Senate subcommittee on the National Science Foundation.

First, I want to say that ASME concurs with the bills generally. There is no doubt that engineering and scientific know-how is one of the Nation's greatest resources, if not the greatest. The Nation would be remiss in wasting or misapplying any part of it. You are to be commended for taking steps to prevent this mistake by the introduction of the Conversion Research, Education and Assistance Act of 1971, S. 32; the New Cities Research and Experimentation Act of 1971, Amendment No. 469; and the Economic Conversion Loan Authorization Act of 1971, S. 1261. These bills not only propose to establish a much needed policy for effective utilization of science and technology in the solution of the Nation's urban problems, but propose means to implement the policy. The legislation should go a long way toward keeping the scientific and engineering know-how intact.

With respect to implementing the policy, Bill S. 32 provides for retraining of scientists, engineers and technicians but not management. However, we think there is a definite need for management retraining; in particular first line science and engineering supervisors. We suggest that provision for retraining such people be added to S. 32.

Bill S. 32, as noted above, provides for retraining of technicians, an important part of our know-how. However, Bill S. 1261, which authorizes loans to sustain scientists and engineers during their training period, does not provide means to sustain technicians during their conversion from defense related to civilian activities. If technicians are to be retrained as provided for in S. 32, and we think they should be, we suggest that S. 1261 be amended to include the technicians.

Finally, for two reasons we are very much in favor of Amendment No. 469. First, it authorizes programs which will develop sorely needed solutions to urban problems; and, second, it provides for utilization of the retrained scientists, engineers, and technicians where they are most needed.

Very truly yours,

KENNETH A. ROE.

NATIONAL LOSS CONTROL SERVICE CORP.,
Long Grove, Ill., March 13, 1972.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: I understand Executive sessions will be held shortly by the Special Subcommittee on National Science Foundation on S. 32 and Amendment 469.

As President of the National Loss Control Service Corporation and as a professional fire

protection engineer, I want to express my support of S. 32 and Amendment 469. I urge your Subcommittee to report S. 32 to the full Committee on Labor and Public Welfare.

Successful passage of this Bill will provide the necessary funding to utilize available scientific and engineering manpower to tackle the critical environmental and urban problems facing our society in the years ahead.

NATLSCO is a loss control and risk management consulting firm with heavy orientation in urban fire protection engineering. In 1971, fire killed 12,000 Americans, injured approximately 250,000 persons and caused an estimated $2.845 billion in recorded property losses. Surely, with increased efforts generated by S. 32 and Amendment 469 this useless waste can be greatly reduced.

We see three principal problem areas in urban fire protection to which solutions must be found:

1. *The State of Our Public Fire Defenses:* Increasing costs, reduced manpower, outmoded firefighting tactics and equipment have caused a continual decline in the capability of most urban departments to control fires that occur in their cities.

2. *Occupant Safety From Fire:* The attention being paid to this area today is most primitive with most building codes strongly emphasizing property protection rather than the effects of combustion products spread which is what endangers occupants.

3. *Significant Knowledge Gaps in Our Basic Understanding of Fire and Its Behavior:* Fire protection is still more of an art than a science due to a complete lack of uniformity and completeness in reporting of fires and more importantly, extremely poor quality in the fire reporting data which is provided.

Your Bill and Amendment will help to provide the initiative, the incentives and the funding necessary to make meaningful inroads in solving at least these three serious problems. And if these problems can be overcome, a reduction in loss of life, in injuries and in property losses can be achieved which will repay many times over the expenditures suggested by the Bill.

Cordially,

GERALD L. MAATMAN, *President.*

SCIENCE & GOVERNMENT REPORT

Unemployment among scientists and engineers is far worse than government figures indicate, and it is getting still worse.

That is the conclusion that emerges from an effort by SGR to pin down the source of the "50,000 to 65,000" that administration officials routinely cite as the range of current professional unemployment in the research and development community. Whatever the realism of the numbers, their durability cannot be faulted, though the period over which they have been stated has been characterized by a continuing deterioration in the employment situation. The debut of 50,000 to 60,000 took place last February when the Department of Labor's Division of Labor Market Information issued a special study. Though the information that went into that study was a bit stale at the time, the Division has not returned to the subject, and officials there still recite the sturdy numbers when asked about unemployment among scientists and engineers.

The next appearance apparently was in March, when Malcolm R. Lovell, Assistant Secretary of Labor for Manpower, addressed a meeting of science advisers to state governments. This time, however, technicians were added and the scope was narrowed to aerospace and defense employment. "Our best estimates," Lovell said, "are that these cutbacks have resulted in unemployment for 50,000 to 65,000 engineers, scientists and technicians who formerly worked in defense and aerospace jobs."

Then, on October 27, NSF Director William D. McElroy, apparently talking about scientists and engineers everywhere, but not technicians, told a Congressional committee, "Our current estimates are based on a variety of information which includes Bureau of Labor Statistics (BLS) information and our own just completed surveys. We estimate that there are now about 50,000 to 65,000 unemployed scientists and engineers . . ."

In response to an inquiry, a BLS official said the Bureau does not compile figures on scientists and engineers. "We just cover professional, technical, and kindred personnel in our monthly surveys," he said. "The only detail we have is on engineers, but that's only for administration use. We never publish it." It was learned, however, that the BLS figure for unemployment among engineers is approximately 3 percent, as compared with the 3.4 percent that NSF found in the survey referred to by McElroy. Based on a study conducted for NSF by the Engineers Joint Council, the survey drew a 65 percent response last June and July from 100,000 engineers, which constitutes a 20 percent sampling of a mailing list of members of major engineering societies. Into the figure of 3.4 percent unemployed went only those who were out of work and who wanted work. Not included were the 6.9 percent employed in non-engineering work; of this percentage, it is significant to note, about one-third had accepted non-engineering employment since March 1970. In any case, the engineer driving a taxi does not show up in the figures as an unemployed engineer. Nor do the figures cited in October by McElroy reflect the difficulties that recent graduates have encountered in finding employment. According to the November Engineering Manpower Bulletin, published by the Engineers Joint Council, 9 percent of engineers at the bachelor's level were without job offers or "firm plans" at the time of graduation last June. "Although this may not appear high in absolute terms," the publication observes, "it is about double the figure for 1970 and in sharp contrast to the boom years of 1965–1969 when practically every graduate was employed." It also noted that bachelor degree graduates entering military service totaled 14 percent of the group—the highest figure since placement surveys began, in 1958. "If this number of graduates had not gone into the armed forces," the Bulletin states, "they would probably have had to join the group with no job offers."

A far grimmer picture is found in the results of a survey conducted by the American Chemical Society following last June's graduations. "Unemployment among new graduates was the highest reported by the Society in the last twenty years," according to the ACS analysis. "In chemistry, unemployment doubled—from 5.1 percent in 1970 to 10.3 percent this year. Among new chemical engineers, an alarming 12.8 percent were unemployed in 1971. This situation may be one reason why the largest number of chemical engineering students in ACS history (10 percent) reported that they had entered military service."

NSF's study of scientists, drawing on an 85 percent response to questionnaires sent to the 300,000 scientists listed in the 1970 National Register of Scientific and Technical Personnel, was tabulated May 25, and therefore misses out on the fate of last June's graduating class. In addition, the figure that it cites of 2.6 percent unemployment among scientists does not reflect any of the 5.6 percent holding down non-science related jobs. Of these, 1.6 percent had accepted their positions since March 1970, which may fall within the normal order of things, but in science as in engineering, the Ph. D. cabbie doesn't show up in the tabulations of unemployment.

Where, then, does the 50,000 to 65,000 come from? The suggestion of one White House aide is that "it comes out of people's heads"—which may be the case. Working with figures derived from NSF's studies of unemployment among scientists and engineers, one finds the following: NSF put the scientist population at 500,000, and found that 2.6 percent, or 13,000 were out of work; the engineers were estimated at 750,000, which means that with a 3.4 percent unemployment rate, 25,500 were jobless. Grand total: 38,500.

The most realistic estimate of the situation was provided October 26 by Betty M. Vetter, executive director of the Scientific Manpower Commission, in testimony before the Senate Labor and Public Welfare Committee. Mrs. Vetter's numbers and forecasts were indeed grim:

"As nearly as I can determine," she testified, "there are about 60,000 scientists and engineers, including 1971 graduates at all degree levels, who are literally unemployed. Using the generally accepted ratio of seven technicians for each 10 scientists, an additional 40,000 technicians may be jobless.

"There are perhaps half again as many who are employed part-time, temporarily or permanently, at some activity totally unrelated to their scientific training. The majority of these are seeking employment in their fields, or would be seeking such employment if they thought there was any chance of finding it.

"A third group of unknown magnitude are under-employed, in the sense that they are performing work in some way related to their training, but which could be done by persons with lesser training."

Mrs. Vetter concluded that the groups she had described had almost doubled in a year "and there seems little indication that we have yet reached the peak unemployment level in this population."

SCORECARD ON JOB PROGRAM

Last spring, President Nixon called a press conference at San Clemente to announce that the Department of Labor was establishing a $42-million Technical Mobilization and Re-employment Program (TMRP) to assist unemployed scientists and engineers. What has happened since then? Not much.

As of November 26, a total of 24,013 persons had registered with the program. Of these, 2713 later found employment, presumably with the assistance of TMRP. "Job search grants," providing a maximum of $500 each, have been given to 1670 persons, and "relocation grants," up to $1200 each, have been given to 438.

Little is now heard of the once-touted computerized "Job Bank," in Sacramento, Calif., which was intended to match up the jobless and jobs. As of September 10, the Bank had registered 12,500 applicants and had notifications of 2200 job openings. Referrals to jobs totaled 9700. Placements: 22.

POW'S AND MIA'S IN SOUTHEAST ASIA

Mr. ALLOTT. Mr. President, I have just received a moving and intelligent letter from Miss Ann E. Dickenson, of Colorado Springs, a student at Mitchell High School there.

She speaks from the heart, and she speaks for all Americans on the subject of our men—POW's and MIA's in Southeast Asia.

No one who reads this letter can fail to be persuaded by Miss Dickenson's conviction. In addition, no one who reads this letter can fail to feel a surge of pride and confidence in the rising generation of American citizens.

Mr. President, I ask unanimous 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:

MARCH 1, 1972.

DEAR SENATOR ALLOTT: As our troops withdraw from Vietnam, and as all America looks forward to the end of this tragic war, the plight of our missing men becomes increasingly more urgent.

We must never again repeat the shocking tragedy of having not demanded a full accounting of our men prior to the cessation of hostilities as we did in North Korea. To this date our government is still attempting to secure information on the 389 men whom they had evidence were prisoners from that conflict. For 18 years the Communists have steadfastly refused to discuss the fate of these men.

This time we must have a full accounting of our men, via a neutral international inspection team such as the International Red Cross, to determine which men are prisoners. In the event of death the next of kin must receive full official information on the circumstances, cause, burial and grave identification.

Although we as Americans may hold many varied personal views on the purpose, morality and terms of settlement of the war in Southeast Asia, we are strongly united in our mutual concern for the men we have sent overseas.

To this end we would like to make clear that whatever course a settlement of the war may take we will not be able to accept any final ending that does not include neutral and acceptable methods which will account for those men whose fate is otherwise unknown.

Sincerely,

ANN E. DICKENSON.

WISCONSIN POLL FAVORS MASSIVE REDUCTION IN U.S. TROOPS IN EUROPE, EXCEEDS U.S. TOTAL

Mr. PROXMIRE. Mr. President, recently the Public Broadcasting Service program "The Advocates" debated the issue "Should the United States Reduce Its Troops in Europe? The program originated in Cologne, West Germany, and was seen over the 219 public broadcasting stations in the United States.

Of the 2,657 votes received on the issue, 2,116 or 79 percent favored drastic cutbacks. The sentiment, as PBS points out, was very strong.

WISCONSIN SENTIMENT OVERWHELMING

In Wisconsin, the viewers who expressed an opinion favored reducing our European troop strength by an overwhelming 88-percent margin.

I think it is time that Congress woke up to the fact that the American people are overwhelmingly opposed to our present strength in Western Europe. It is excessively costly, estimated by the military itself at $14 billion a year.

But the main problem is that Western Europe, which is now as strong as we are economically, which is much stronger than the Russians economically, and which has a larger population than either the United States or the Soviet Union, has failed to do its share. Why should the United States shoulder an excessive proportion of the load for the defense of Europe, in both money and manpower, if the Europeans, whose security is most at stake, are unwilling to make a major sacrifice?

It does not make sense, and the American people know it.

EUROPEANIZE DEFENSE OF EUROPE

We should continue to provide the strategic umbrella and the naval defense for Western Europe. But the time has come for the Europeans to provide the bulk of the manpower and for the United States to cut back its strength from about 300,000 troops to 150,000 troops.

The American people agree with that view overwhelmingly. The citizens of Wisconsin agree with it even more. The time to act has arrived. We should Europeanize the defense of Europe just as we have Vietnamized the defense of Vietnam.

Mr. President, I ask unanimous consent that a breakdown of the respondents to the Public Broadcasting Service poll and the Public Broadcasting Service release on this subject be printed in the RECORD.

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

DRASTIC CUT FOR U.S. TROOPS IN EUROPE VOTED BY VIEWERS OF ADVOCATES

Strong sentiment for drastic cutbacks of U.S. armed forces in Europe was expressed in the 2,657 votes received following a recent debate by the Advocates.

A total of 2,116 viewers voted for massive reductions in American troops stationed in Western Europe. The program which probed the issue was produced from Cologne, Germany with the cooperation of Westdeutscher Rundfunk.

The Advocates is seen each week over most of the 219 stations of the Public Broadcasting Service. (PBS).

State breakdown of mail response:

State	Pro	Con	Other
Alabama	2	2	0
Alaska	15	4	0
Arizona	32	7	1
Arkansas	4	3	0
California	389	102	5
Colorado	39	6	0
Connecticut	22	8	0
Delaware	4	0	0
District of Columbia	9	8	0
Florida	110	19	0
Georgia	4	3	0
Hawaii	12	3	0
Idaho	3	2	0
Illinois	93	15	0
Indiana	24	14	0
Iowa	15	3	0
Kansas	7	1	0
Kentucky	3	1	0
Louisiana	9	3	0
Maine	12	3	0
Maryland	18	2	0
Massachusetts	167	49	0
Michigan	35	12	0
Minnesota	46	7	1
Mississippi	7	2	0
Missiouri	0	1	0
Montana	6	0	0
Nebraska	11	3	0
Nevada	6	1	0
New Hampshire	21	7	0
New Jersey	66	18	0
New Mexico	11	2	1
New York	210	47	2
North Carolina	39	7	1
North Dakota	1	0	0
Ohio	40	9	1
Oklahoma	26	10	0
Oregon	76	13	0
Pennsylvania	135	31	1
Rhode Island	11	6	0
South Carolina	6	0	0
South Dakota	9	0	0
Tennessee	11	7	0
Texas	63	22	0
Utah	5	0	0
Vermont	3	0	1
Virginia	26	16	0
Washington	90	28	2
West Virginia	12	2	0
Wisconsin	58	6	2
Wyoming	4	1	0
Unknown	88	8	0
Foreign	1	0	0

THE VIRGINIA OUTDOOR PLAN

Mr. BYRD of Virginia. Mr. President, as Congress considers a number of pieces of legislation dealing with open spaces, historic preservation, and land-use planning, I should like to call attention to one of the programs being engaged in by the Commonwealth of Virginia.

In an article published in the Richmond Times-Dispatch, of March 12, 1972, Marian Marsh Sales describes the implementation of the Virginia outdoor plan of 1966. This program, which has been administered in part by the Virginia Historic Landmarks Commission, has been responsible for preserving much of the scenic and historic environment of Virginia, without the expenditure of Government funds.

The scenic easement program has much to commend itself to every Member of the Senate.

I ask unanimous consent that Miss Sales' article be printed in the RECORD.

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

SCENIC EASEMENT PACT PRESERVES VISTAS, LANDMARKS FOR POSTERITY

(By Marian Marsh Sale)

Without cost to the public for acquisition, protection or maintenance the Commonwealth of Virginia is laying up land treasures for the future through an environmental protection law known as the "open space easement."

By its adoption of the Virginia Outdoors Plan in 1966, the Virginia General Assembly officially recognized change as big business where land use was concerned. Every year change was known to be eating away roughly a million American acres of farms and fields and woodlands, as well as historic sites and buildings not separable from the landscape.

To the blitzes of change Virginia was losing its proportionate share as the greenness was turning to asphalt and concrete. Landmark properties were overnight framed by visual pollution.

A year earlier, the report of the Virginia Outdoor Recreation Study Commission had told the story of the dwindling Virginia outdoors, and the story had been a catalyst to action in the form of the sweeping package legislation of 1966.

Part of the package was the Open Space Land Act, directed at encouraging local governing bodies to plan and acquire open space. Out of the package too came the open space easement. Created either by purchaser or gift, it is proving to be a persuasive device for voluntary open space and landmark conservation. Soon after the plan became law, the Commonwealth and other public bodies began accepting and administering open space easements on assorted parcels of the Virginia countryside.

The "open space easement in gross" is the technical name of the device, sometimes referred to as a conservation or scenic easement. Actually, it is a legal agreement between a public body, such as a state agency, and the owner of the property qualifying for the easement. Under the agreement the property owner promises to protect the essential character of the property, and the agency assumes guardianship of it. The agreement is perpetual, becomes part of the title to the property and remains in effect throughout all future transactions.

The donor retains title to the property and continues to use and enjoy it, according to the standards set up by the agreement. Except in special instances, the land cannot be used for industrial or commercial purposes, and it is further restricted concern-

ing development for residential uses. Subdivision restrictions may be altogether forbidden or determined on the basis of preserving the senic or historic integrity of the particular property.

Since the values worth saving vary from property to property, so do the terms of the easements vary. Once they are worked out in discussions between donor and agency, however, only an act of the legislature can change them.

The first grant of easement under the act was made in 1968 to the Virginia Outdoors Foundation by the owners of two properties bordering historic Oatlands estate in Loudon County. It was a gift involving tracts of 54 and 184 acres adjacent to Oatland and a nearby 15-acre tract. More importantly, it carried perpetual rights of perservation of the natural setting and atmosphere of the prestigious National Trust property.

The most recent transaction of easement, completed in late January after two years of negotiating, made permanent what might easily have become a white elephant for the developer—Richmond's Kent-Valentine House. Located on the northwest corner of First and Franklin Streets across First Street from Linden Row, the landmark property has been bought subject to easement to the Virginia Historic Landmarks Commission by the Garden Club of Virginia for use as the club's headquarters and reception center.

Years away, when properties equally significant but less protected have been sold or otherwise lost to change, the three-story stuccoed brick mansion with the porticoed, columned front and the towering magnolias will still be there in its quarter-block, parklike setting. And the whole—mansion and setting and magnolias—will be like a time capsule lending visual appeal in an area reflecting little of its former historic character.

Under terms of the easement, the exterior of the house and the four rooms on the first floor may never be changed. The rooms are part of the original house, which represents the only identified standing residential structure designed by Isaiah Rogers. Rogers, a Greek Revival designer, also planned Richmond's now demolished Exchange Hotel and Exchange Bank. What if the magnolias die? Others are guaranteed to replace them.

Owners taking the open space easement route to preservation chose it for two reasons: to perpetuate what they have loved and to give the future something to love, according to J. R. Fishburne, assistant director of the Virginia Historic Landmarks Commission.

"Those without heirs decide quickly," he said. "Those with heirs take longer, since tying up property is a major step involving others besides the donors. It takes an unselfish person—unselfish and imaginative too—to give an open space easement."

There is always the double return, he added, of personal satisfaction and the tangible benefit of stabilized or lowered real estate taxes. Since property under open space easement can no longer be "developed," the Virginia law requires that the owner's assessment be based "on the fair market value of his land."

The tax benefits go further. The gift of an open space easement to the Commission of Outdoor Recreation, the Virginia Historic Landmarks Commission or—when it is funded—the Virginia Outdoors Foundation will qualify as a "charitable deduction for federal and state income tax purposes." The value of the gift is measured by the drop in the estimated fair market value of the property before and after the gift of the easement. Finally, open space easements can effect substantial decreases in federal estate taxes and state inheritance taxes.

Proof of landowner imagination gets easier to find as the concept spreads. Intent on preserving the natural beauty of the land along the shores of the Potomac, below the river bend, owners of properties in the area gave open space easements to 13 separate tracks in Fairfax County. The easements, given to the Northern Virginia Regional Park Authority last year after four years of negotiating, provided a 235-acre scenic defense against environmental assault.

Last year, through easements by the owners, the Virginia Historic Landmarks Commission became custodian to two historic natural-resource properties. One is historic Lowland Cottage in a 79.96-acre natural setting on the bank of the Ware River. On largely unspoiled Ware Neck in Gloucester County, it survives as one of a handful of Virginia frame structures dating with certainty to the 17th century. It was built in its earliest portion by a prosperous merchant planter whose opposition to Nathaniel Bacon's rebellion brought some of the rebels to his door for "stock, Provision, Armes, Ammunition, Mrchts Goods & considerable Quantityes of Strong Liquors."

The other property, Brooke's Bank, is a classic Tidewater plantation setting of 52.4 acres with a Mid-Georgian house in the Loretto vicinity in Essex County. Protected from hurtful modification, the house stands like a sophisticated monument to the woman who supervised its construction and to others responsible for restoring it after the Union gunboat USS PAWNEE shelled it. The riverfront looks out on greenery terraced down to the Rappahannock and, across the river, to a broad marsh backed with hills of the south side of the Northern Neck.

Earlier, the Virginia Historic Landmarks Commission had accepted an easement on an Italian Revival house and its 50-acre wooded setting in Henrico County. During the Civil War the property was visited by a squad of Dahlgren's calvary, who emptied the smokehouse but left everything else undisturbed.

Before 1966, the "scenic easement" was used to protect the open land adjoining Virginia highways, a case in point being the Blue Ridge Parkway. None was employed, however, to protect historic structures or sites or open spaces generally, especially those privately owned.

Since the signing of the Oatlands easements, open space easements have been placed on entire estates, portions of estates, flood plain lands, historic sites and structures, land adjacent to existing and proposed public parks, national forests, scenic highways, trails and rivers. Properties under easement sometimes cover hundreds of acres, sometimes less than a city block.

Because of the high cost of land for recreation and the need for increased acquisition and development, R. R. Blackmore, new director of the Commission of Outdoor Recreation, sees the open space easement as an important means of protecting open land. "Even land that doesn't qualify now but that may qualify for recreational use in the future," he said.

Certain of its future after a long period of doubt, imposing Lansdowne, in the center of Urbanna, is in itself justification for use of the easement. Said to have been built about 1700, Lansdowne in 1701 became the home of Arthur Lee. Lee was the uncle of Robert E. Lee and a controversial Revolutionary politician. Now privately owned, the estate, which includes the home and approximately three acres of land—all that is left of the one-time 1,000-acre estate—is under easement to the Ralph Wormley Chapter of the Association for the Preservation of Virginia Antiquities. The APVA would have to approve any changes made.

In the space-shy future, it may not be easy to find a 104-acre tract of land left in its natural state in a metropolitan area, but there is sure to be one, with a creek running through to boot. Located roughly half a mile from the University of Richmond, it was given to the university subject to easement protecting it from all use not related to the study of biology or ecology.

Already, those properties pledged to the future make a wide and irreplaceable assortment. Under perpetual easement to the Virginia Historic Landmarks Commission is 128-acre Old Mansion in Bowling Green in Caroline County. Notable as one of Virginia's best preserved 17th century dwellings, the estate is also famous as the site of America's first race track and as a social center.

It took only 40 acres under easement to the Landmarks Commission to permanently insure a blufftop house setting and a view at Rock Castle Estate in Goochland County. The protected area includes a historic 18th century cottage and a Normandy manor house adaptation separated by a walled garden and, in addition, a view of the James River bottom lands.

A developer could hardly pass by the half-acre house setting on South Lee Street in Alexandria without wishfully subdividing it into 13 house-building lots of 20 x 60 feet each. But he would only be wasting his time. A hundred years from now and after the handsome Vowell-Snowden-Justice Black House (now up for sale) will still sit in its pleasant green garden opposite the row houses common to the area. The property is under easement to the Landmarks Commission.

Since 1969 the Historic Alexandria Foundation, in conjunction with the Association for the Preservation of Antiquities, of which the foundation is a chapter, accepted easements to two prized historic properties. One, known as 711 Prince St., began as a flounder but grew in architectural grace to become one of seaport Alexandria's great houses. The other—the La Fayette-Lawrason-Cazenove House at 301 S. Asaph St.—is a three-story brick federal home that kept adding names and eclat as time moved along. The future may know it best as the house procured in 1864 for the accommodation of the much feted marquis during an official visit in which Alexandria outdid itself for celebration and show.

Because of the grant of an easement on 59.327 acres of land adjacent to Gunston Hall in Fairfax County, the unmatchable view of George Mason's boxwood, gardens, sloping pastures and the Potomac River beyond will never be lost to the tourist. Meanwhile the donors continue to live on the land they have protected against subdivision.

And so, by one bold, new legal thrust—the open space easement—the state looks to those citizen-owners of properties worth perpetuating to help win the tug of war with the future shock of overdevelopment.

BILINGUAL EDUCATION

Mr. MONTOYA. Mr. President, on February 28, 1972, the distinguished Senator from California (Mr. CRANSTON) offered an amendment to S. 659, the Higher Education Act. Joining me as cosponsors of the amendment were Senators TUNNEY, WILLIAMS, and KENNEDY. I am glad to say that the amendment was accepted unanimously by the Senate. Among other things, the amendment gave increased status to the bilingual education program in order to preserve its integrity. The U.S. Commission on Civil Rights has told us that bilingual-bicultural education must have a higher priority not only in the Southwest but also across the Nation. Bilingual education needs increased visibility rather than subversion under the education renewal program that the Office of Education recently has undertaken.

As I stated in the RECORD our concern is that there is apprehension that funds allocated by Congress for bilingual-bicultural education are not being used for purposes for which they were designed. The amendment attempts to guarantee that no diversion of these funds is made.

On the day before the Senate adopted the amendment unanimously, the distinguished Senator from California (Mr. TUNNEY) addressed the opening general session of the 1972 Convention of Teachers of English to Speakers of Other Languages. I ask unanimous consent that his timely remarks be printed in the RECORD.

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

REMARKS OF SENATOR JOHN V. TUNNEY

I am pleased to be with you this evening. When I see so many educators who are dedicated—as I know you are—I have a renewed sense of hope. America is beginning to care about the very special problems of its non-English speaking citizens.

For years, those needing bilingual-bicultural education were among the most neglected people in this country.

Although the English and Spanish speaking signers of the California constitution originally provided that California was to be a bilingual state, the second constitution was changed to make English the only official language. It was not until the 90th Congress that our country, as a whole, recognized and accepted its responsibility of providing bilingual education.

In 1968, when the Senate and the House passed the Bilingual Education Act, we began to move forward. Since then community support and involvement have grown tremendously. Expertise in methods and quality of materials has significantly improved. And your efforts have contributed to this improvement.

In short, the concept has been accepted and it is now time we expand and develop its scope.

As teachers of English to speakers of other languages, you are a vital and key part of our commitment to non-English speaking Americans. Your role is a great one. One which has, and will continue to contribute to equality of educational opportunity in America. With your help and knowledge, our education system will become more relevant and responsive to this country's diverse educational needs.

With the overwhelming crisis today facing the quality of American education, no other endeavor by our Government is voiced with more rhetoric—nor challenged with more concern—than Federal aid to education. But let us examine carefully our performance. Does that performance and commitment correspond to the pledges and promises we so often hear being made to compensatory education? Especially those promises and pledges around election time?

In 1967, I voted for the original Bilingual Education Act and I have continued to support that legislation.

I find it a real tragedy that while we spend literally millions for the SST's and ABM's of defense, we have spent, on the average, only several dollars a year for the ABC's of bilingual education.

Obviously, this will not do. The need is clear. In the Southwest it is estimated that over 80 percent of the Spanish speaking children enrolled in elementary and secondary schools would benefit from the bilingual and ESL education experience.

It is indeed deplorable that appropriations for Title VII, the Bilingual Education Act, have never come near to the authorizations envisioned by the sponsors of the original legislation. In fact, in the first year of the program, while enthusiastic proponents of the Bilingual Education Act were still celebrating their victory not one cent was appropriated for 1968—even though 15 million had been authorized.

The next year, Congress appropriated $7½ million—enough money to fund adequate programs for less than one percent of the three million children estimated to be in need of special bilingual programs.

To this day, a dismal and appalling 22 percent of the 400 million that was authorized for bilingual education has been signed into appropriations.

The present Administration tells us we should look to what it does and not to what it says. But that Administration has asked Congress to appropriate only 30 percent—less than one third—of the 135 million that is authorized for 1973 for bilingual education.

Even if Congress were to appropriate the entire 135 million this year, the average appropriation for the 5½ years would still be less than 56 percent.

I share the hope of Yeshiva University's Professor Fishman and others like him, that language scholars and teachers will rise to more active lobbying efforts on behalf of not only bilingual education, but all education legislation. You must educate yourselves on how to influence and strengthen education acts and on how to put their funds to better use. You must make consistent efforts to make your views known to chairmen and members of appropriations committees so that funds mentioned in the initial authorization legislation will be granted in the following years.

As activists, you can help hasten the day when bilingual education is to come.

As realists, you can see that it should be made available to all those who want it, regardless of income.

As educational planners, you can help make bilingual education become an integral part of the variegated picture of American education.

Bilingual education needs—and deserves—more than the crumbs it has been getting. It cannot be a mere promissory note to the poor nor a sectional matter.

Until this program is adequately funded—until the United States Congress and this Administration show that they intend to manifest their commitment to the non-English speaking children and adults in this country, this tragedy of the American school system will remain.

In the five Southwestern states alone there are at least 1.75 million children with Spanish surnames. I simply cannot understand how some political leaders cannot see—or in some instances choose not to see—the correlation between appallingly inadequate program funds and a dropout rate of those children three times higher than their Anglo counterparts. Constant underfunding has not only thwarted the purposes of Title VII, but it also represents the worst form of economics. Millions of school age children speak a first language other than English. Millions of others, at the time they start school, have a knowledge of English which is minimal or non-existent. Yet these non-English speaking children are expected to understand and respond to academic instruction in English. For these children, little or no learning results and the potential value of knowing a language other than English remains instead a terrible handicap. It is no accident that for years children of limited English speaking ability have been plagued with frustration, low achievement, personal shame, and high drop-out rates.

For years, Congress has heard that inadequate education in the early years of life has a high correlation with underemployment, unemployment, and poverty later in life. Perhaps less well recognized is how costly it becomes to try and recitify an inadequate education in later life. Los Angeles, California, is one of the cities with the largest population of Spanish speaking Americans in the country. A recent survey of the L.A. Unified School District revealed a total adult education budget for 1971 in excess of 30 million dollars. According to a School District spokesman, the adult education budget is so extraordinarily high because over 50 percent of the age 18 and over population is without a high school diploma or salable job skill. Failure to educate a person in his youth is not cheaper to society when one city spends over 5 million dollars more than the entire 1971 bilingual appropriation in order to cope with the problem of inadequate education among its adults. It seems that we have not yet learned that the problem with cheap education is that we never stop paying for it.

Underfunding of the Bilingual Education Act might be justified if it were proving of dubious value, but all evidence indicates that the exact opposite is true. According to the Office of Education, the majority of education programs employing the non-English language in instruction have improved academic achievement, prevented retardation, and decreased the drop-out rate. In addition, many bilingual evaluations report that native English speakers have also educationally benefitted from the bilingual experience. Unfortunately, because of limited funds, only 54,000 of the estimated 5 million children in need of bilingual services received such assistance in 1971. Approximately 80 percent of all bilingual project requests in 1971 were turned down by the Office of Education due to insufficient funds. And of the 20 percent of the projects that were funded, the districts received only 50 percent of the actual cost of the project, again due to insufficient funds.

But because Congress couched its innovative legislation in support of dual language schooling in terms that permit both the ethnocentrists and the cultural pluralists to see what they want in Title VII, we must keep in mind that ESL programs, though unquestionably essential, constitute only one part and one kind of dual language education. In referring to ESL programs, many of the Spanish speaking in the Southwest say that:

"In the past, Chicanos dropped out of school speaking some Spanish . . . now they are dropping out of school, but speaking some English."

Thus, it must be made clear that ESL is a vital phase of the bilingual program, but it is not bilingual education as such. Bilingual education also means that programs are designed to impart to students a knowledge of the history and culture associated with their language.

The ideal bilingual education program would include instruction in all subjects and is conducted both in English, and in the mother tongue—whether it is Japanese, Spanish, French, Chinese, or Navajo. Since an important objective is the development of the child's self-esteem and cultural pride, study of the history and culture associated with the mother tongue should become an integral part of the program.

On a more general level, American schools will have to move further away from their traditional monocultural attitude that sometimes prevents objective, unbiased IQ testing.

When I found out that Chicano children in California, largely as a result of the inability to speak English, were being assigned to classrooms for the educably mentally retarded, or EMR classes, I realized that the experience my wife and I had with the nursery and elementary schools in Washington, D.C., was not confined to the East coast.

I had recently been elected to the House of Representatives and was in the process of moving from California to Washington, when

my wife, Mieke, and I attempted to enroll my son, Teddy, in a nursery school. We took Teddy to a school for a series of IQ and other admission tests.

He failed the tests.

I don't think I'll ever forget the afternoon when Mieke told me. The teacher had tried to be kind, but what she had to say could not be said kindly. "I'm afraid your son isn't up to our standards," she said. "He's weak in vocabulary, and he's slow to respond to questions."

My son? I was shocked, incredulous. This is the kind of news no father can accept easily even if it is true, but I was certain that it was not true. I knew this bright and happy little boy. And I knew he was not slow.

Then why weren't his IQ test results better? I tried to analyze the problem as he and I walked around Washington that afternoon, but wasn't getting anywhere. Then, abruptly, Teddy solved the puzzle for me.

He suddenly grasped my hand and said, "Papa, kijk! De Brug!" He was speaking Dutch. ("Daddy, look! The bridge!") This was not surprising. Mieke is Dutch, and she had recently taken Teddy on a six-week trip to the Netherlands to visit his grandparents. For a long while before the trip, to prepare him, she had spoken Dutch with him.

Now I began to see what the problem was. Mieke and I had assumed he was learning English as well as Dutch: learning it from me, from playmates, from our friends. We were wrong. His three-year-old brain was apparently doing much or most of its thinking in Dutch. Confronted with an intelligence test in which all the symbols of thought were expressed in English, he had been defeated.

Mieke and I started a crash program of teaching Teddy to talk, read, and write in English. We worked with him at home. We got him into another nursery school, which had less demanding admission standards, but which stressed language skills as part of its curriculum. Today, this boy who was once called slow brings home report cards of which his parents can be proud.

Partly as a result of that personal experience, I feel that our schools must open themselves to an acceptance of racial and cultural pluralism. This change in curriculum and testing methods will not be an easy one—but it must be done.

Many of us—in government as well as in education—fail to recognize what our society has done to the cultural identity of our minorities. From the beginning of the educational process in this country, it has been the goal of our school system to homogenize its pupils, to serve the tradition of America as the great melting pot. It has been long thought that given enough time and pressure, all students would emerge from our schools with similar goals. At least, this is what was supposed to have happened. In fact, it has not. Many of America's students leave the schools totally unacculturated to life in America. And because the schools totally have failed to meet their specific learning needs, these students have not been able to survive either socially or economically in this country.

With our preoccupation with the melting pot, we have forgotten the value of cultural pluralism—to *all* Americans, whether Indian, Puerto Rican, Oriental, Chicano, Black, or eighth generation Anglo Saxon.

In New York City, very few of the Puerto Rican children go on to receive academic degrees. Fifty percent of American Indian students never complete elementary school. We cannot ignore the judgings of Silberman, Palomares, and others that in many instances the public schools are damaging rather than encouraging the intellectual growth of even our most privileged children.

Findings of the U.S. Commission on Civil Rights indicate that minority students in the Southwest—Chicanos, Blacks, and American Indians—do not obtain the benefit of public education on par to their Anglo classmates. This is true regardless of the measure of school achievement used. Without exception, minority students achieve a lower rate than Anglos:

At the time of high school graduation, only 60 percent of Chicanos are still in high school in the Southwest.

The reading achievement of minority students is lower than Anglo students.

Their repetition of grades is more frequent.

Their participation in extra-curricular activities is even less encouraging . . .

Obviously, the non-English speaking student is one who has failed to blend into the American mainstream. He has instead been an exile in his own land. America has punished him for cherishing his language and his culture. And because he is different, because he speaks little or no English, he has been excluded from participating in the advantages of American life.

But, as you are all aware, he has not been the only loser. America, too, has lost. She has lost because she has failed to recognize the potential of her ethnic and racial minorities. As a country, we have much to gain from our non-English speaking people. Obviously, we can grow through an exposure to the culture and the language of the people with whom we live. For too long we have secluded ourselves in our own ethnocentric world. With the help of dedicated teachers like yourselves, and with the continued growth of your commitment, we will develop a more diverse, relevant, and responsive system of education.

As language scholars, you have told us that language is one of the most important manifestations of the human personality. Therefore, when the school rejects a child's mother tongue, the consequences are profound. The child's concept of his parents, his home, his way of life, and his self may all be tragically affected.

I believe that one of the primary responsibilities of our schools is to deal with the language problems of the Chicano and the American Indian. For as we know, no one can progress far in this country without a working knowledge of English. Bilingual education offers a resolution of those problems, and the child of the barrio or of the reservation stands only to gain through his knowledge of English and his native language. Some studies have shown, for example, that children who are equally educated in both languages are superior in both verbal and non-verbal intelligence to monolingual children. The bilingual do have a special gift.

But language is only one problem that confronts the non-English speaking student. He is also plagued by a confusion about his own identity—the traditions of his family and his friends contrast glaringly with the Anglo culture that surrounds him. He feels tied to a foreign country, but because the heritage of Chicanos, Boricuas, and Indians has often been denigrated, the child may also wish to reject his non-Anglo aspects. Because society, for so long, has not accepted him as an equal human being, it is inevitable that a child begins to doubt eventually his own worth.

The schools are faced with a formidable job. Teaching a child a foreign language is not difficult provided there are the educational expertise and a sincere commitment on the part of the staff. But changing attitudes and building positive self images is a far less tangible, more arduous task. It is the goal of bilingual education to fulfill both of these needs of the Chicano student. First to simultaneously teach him English and improve his native language. And second, to inculcate in him a respect for his unique heritage. And as a school teaches the non-English speaking youngster self-respect, it must also teach his Anglo contemporaries to accept and appreciate non-English speaking people with their own individual culture.

I have faith in the ability of America's schools to accomplish these goals. I look at all of you and I feel certain that we can change. We are changing. We can undo the wrongs that have in the past been perpetrated against the non-English speaking people. With your help, this country can meet its responsibility of safegarding and augmenting the cultural and linguistic resources that our government has so often ignored.

Increasing and developing the linguistic abilities of our non-English speaking students will certainly contribute to a decrease in ethnic isolation enrollment . . . a goal well worth realizing.

If America is to become a society of true educational opportunity for all of its people, if truly innovative bilingual schooling in American education is to succeed, it must have a close and encouraging attention from all sides. Only then will it be available to my children and to yours. Let us hope this is not the impossible dream.

BUSING AND EQUAL EDUCATIONAL OPPORTUNITY

Mr. KENNEDY. Mr. President, I am opposed to any busing which risks the health or significantly impinges on the educational experience of school children. That statement places me on the same side of this explosive issue as the Supreme Court, school superintendents of a thousand school districts and President Nixon.

But, Mr. President, I also see nothing inherently wrong with the fact that since 1960, the increase in the busing of children has barely matched the increase in total student enrollment, despite the addition of court-ordered desegregation.

Nor, Mr. President, do I consider the yellow school bus that carried most of those children to be the agent of evil social planners. In seeking quality integrated education, I presume I stand on the side of the Supreme Court, and the superintendents of a thousand school districts; but I apparently do not stand with the President.

For in a wholly emotional and transparently political television address, the President sought to identify himself with the thousands of Americans who are frightened by the changes accompanying an end to school segregation in this land.

He chose neither to educate nor to encourage them; he chose; instead, to exploit their fears.

It is that aspect of the speech beyond all others which represents a belittling of the Presidency.

And there is little in the specific proposals which would justify the passion of that address—whether the listener was one who opposes busing or one who wants to see more money pumped into inner city schools.

Unless one expects the Supreme Court to void every decision since Brown against Board of Education, then the proposals offered by the President cannot take effect. For in their ultimate form, they would combine to perpetuate segregated educational systems where they may continue to exist and to permit to those districts who have tried to desegregate the forlorn hope that they too might return to the separate but equal

system of the past—a system, which while separate, had never been equal.

The President, despite the rhetorical nod toward equal educational opportunity for all children, offered nothing beyond what already is being done to accomplish that goal.

In a real sense, he duped the American public. Most viewers thought the President was proposing to add $2½ billion in new money to the funds now being spent to improve the education of disadvantaged children.

For the President said:

> The act I propose would concentrate Federal school aid funds on the areas of greatest educational need. That means directing over two and a half billion dollars in the next year mainly toward improving the education from poor facilities.
>
> This proposal deals directly with the problem that has been too often overlooked. We all know that within the central cities of our nation there are schools so inferior that it is hypocrisy even to suggest that the poor children who go there are getting a decent education, let alone an eduction comparable to that of children who go to school in the suburbs.

But when he sent his message to the Congress on the very next day, it became obvious he was shucking the disadvantaged of this country. The $2½ billion turned out to be $1½ billion already being spent to add disadvantaged students under title I of the Elementary and Secondary Education Act and another billion dollars that is contained within a bill that already has passed both the Senate and the House and is now in conference.

Let me repeat, the President is requesting money the Congress already has given him. Congress appropriated $1.56 billion in fiscal year 1972 for title I. I also should mention that we have authorized close to $6 billion for that same program but the President never has requested more than a small portion of that sum. And also, he has vetoed two education appropriation bills that contained more than his requests.

Thus, the President was not recommending the expenditure of one thin dime more than the Congress already has indicated a determination to spend.

If the President truly were convinced that gilding ghetto schools would provide equal education, then he should have been talking in terms of massive new Federal funding each year, and he should have outlined his plans to end housing discrimination which continues to deny the poor and the black and the Spanish-speaking Americans the opportunity to live near a decent neighborhood school.

But surely, it is very close to Presidential deception to state that $2½ billion will be made available to disadvantaged children and then to do nothing more than juggle funds already being spent or already scheduled to be spent.

In another assertion, the President said:

> For the first time, the cherished American ideal of equality of educational opportunity would be affirmed in the law of the land by the elected representatives of the people in Congress.

Yet we did just that 8 years ago, in the Civil Rights Act of 1964.

And again, in the Emergency School Aid and Quality Integrated Education Act passed by the Senate and now in conference, we have reaffirmed the national commitment to equal education.

Both of those measures contradict the President's assertion that Congress would be setting the goal of equality of educational opportunity for the first time.

If there is one purpose apparent in the President's proposed legislation, it is neither to insure equal educational opportunity nor to end segregated schools. But it is to sharply restrict the Supreme Court of the United States.

The President's proposal conflicts with his own past praise of the role of the Supreme Court. He said on announcing the names of his new Supreme Court nominees last year:

> We have had many historic, and even sometimes violent, debates throughout our history about the role of the Supreme Court in our Government. But let us never forget that respect for the Court, as the final interpreter of the law, is indispensable if America is to remain a free society.

Yet now he has precipitated a potentially serious challenge to the authority of the Supreme Court. He has carefully crafted legislation that, if passed, would not avoid presenting the Court with the choice of accepting a severe limitation on its authority to endorse the 14th amendment or of declaring a law unconstitutional in the face of a highly emotional electorate.

The challenge to the Court's authority is contained in both bills presented by the President.

First, he proposed that Congress legislate a moratorium on all new busing orders for up to 15 months. This means regardless how flagrant the act of discrimination, or how clear the effort to pursue a policy of segregation, the Court could not issue an order to desist such activities, if it meant a single student would be bused. Presumably, even if a school district had been busing to maintain segregated school systems, as many districts did in the past, the Court would be prohibited from acting to remedy that evil if it required any busing at all. This section, by affecting only new Court orders, represents mainly further delays to an end to segregation in the North.

Second, a corollary piece of legislation would establish a 5-year time period on desegregation Court orders that now exist if they require busing. Once again, if the Court has determined that a district has unconstitutionally denied equality of education in the past, then the decision will be automatically voided 5 years from now if it includes busing.

At the least, it would mean a wholesale renewal of litigation in communities which finally had accepted the judgment that dual school systems violated the Constitution of the United States.

Third, these districts, most of whom are in the South, would be offered still another fragile hope that they might go back on the plans they have agreed to by seeking a reopening of their cases. Thus, a district which has come to terms with its responsibilities and slowly is trying to understand the complexity of providing quality education to both black and white students or Anglo and Chicano students, now will be rocked with anxiety again. The extremists could point to the Presidential edict and to his legislation and demand that local districts break previous agreements to desegregate. They could point to the busing of a single sixth grader as a reason why they should reopen their cases and seek through litigation to once more delay the compelling mandate of the Constitution to abolish segregation root and branch.

Clearly, these are the gifts the President is bearing to the South. First, the tenuous hope that their cases could be reopened and, second, the promise that existing requirements to desegregate will be voided in 5 years, if they have required busing.

Both fall short of what he is willing to promise the North, where the largest number of segregated school districts remain. The moratorium means a delay until after the election for northern districts faced with orders to end de jure segregation.

And the President also has promised that the Departments of Health, Education, and Welfare and Justice will not be entering the courts on the side of the citizen who has been discriminated against. Instead, their role will be to operate on the side of the discriminator.

These are the major elements of the President's message to the Nation. And they are confused and contradictory. The President speaks of equal educational opportunity and an end to discrimination and then orders a moratorium on all court decision to enforce integration where any busing is required. Not only busing which is excessive and unreasonable but any busing. And he also does not even make the slightest gesture of providing the necessary funds to racially isolated schools when he does not produce a single new dollar of Federal spending beyond what was spent last year and is on the way to being spent next year.

What is perhaps lost sight of is that parents and students and teachers and administrators in a thousand towns have gone through a painful and difficult process of debate, deliberation, and decision to prepare plans for an end to segregation.

In Jackson, Miss., a biracial committee has adopted a unique plan that groups elementary schools in educational parks, a plan that has met the requirements of the court, a plan that has met the demands of the community.

Although the plan includes some busing, there was no uproar until the city was told of the President's decision last August not to permit any Federal funds to be available for the costs of busing.

But they went ahead and were committed to making the system work, despite the added financial burden.

In Hoke County, N.C., where there had been triple systems for black, Indian, and white students, the administrators talked with parents and reassured them and established a single system for all children. It is a system that worked. They knew what the law said and they were ready to obey the law. The result is an integrated system that is working. Other communities can be cited like Baldwin, Mich., Hillsboro County, Fla., and

Berkeley, Calif., where men and women decided that it would take patient efforts by parents, teachers, students, school administrators, and community organizations to give life to the constitutional requirement for equal educational opportunity. And they have set their goal as quality integrated education for all students.

Now in these cities in both the North and the South, all of that heart rending and difficult work by conscientious men and women could unravel into the hysteria of the past, because of this latest action by the President.

As I indicated at the outset, in no sense can it be said that I am in favor of massive or indiscriminate busing that risks the health of children or significantly impinges on the educational process. I recognize that in particular cases, a number of which are now awaiting appellate review, particular lower courts in particular communities may well have ordered excessive busing.

But I also recognize that in many situations, busing has been, and still is, the only possible device to end outright segregation and discrimination in the public schools of certain communities.

I reject entirely the President's suggestion that, because some busing is excessive, the answer to the problem is to end all busing. In effect, the President has diagnosed the illness, but his remedy would kill the patient.

It is clear to me that Congress has a legitimate role to play in the present controversy. Congress has its own responsibility to act, but the Congress must act responsibly. The Supreme Court has already attempted to distinguish the legitimate busing that may be required by the courts to end segregation, from the illegitimate busing that would endanger the health or safety of children, or interfere with the educational process. The Mansfield-Scott proposals, which I supported and which passed the Senate 3 weeks ago, were a reasonable attempt by Congress to define the proper limits of busing orders. But now we face a starker threat—the threat that Congress will now respond to the insidious new pressure generated by the President, and will take the extreme and unfair and probably unconstitutional step of banning all busing, good and bad alike.

I believe that Congress must set its face firmly against that pernicious view. To do less is to abandon the noble cause of racial justice for which a generation of brave men and women have fought, to say that those who gave their lives for that cause have now died in vain, to kill the dream of Martin Luther King.

Not for a hundred years, not since the era of Reconstruction, not since the fraudulent election of 1876, not since Rutherford B. Hayes, the Republican candidate of the biggest business interests, made a deal with a handful of regional leaders and won the Presidency by promising that the North would ignore the rights of blacks—not since then has a President of the United States so seriously abdicated his responsibility to be the President of all the people. We betrayed the dream once before in 1876, and now, a century later, another Republican President, a 20th century Rutherford Hayes, is betraying the dream again.

Perhaps there is one last thought that should be expressed. The President did not use the word "integration" once during his address to the Nation nor once during his 8,000-word message to Congress.

In fact, he referred to it only in the most distorted way, citing:

> Some social planners concept of what is considered to be the correct racial balance—or what is called "progressive" social policy.

I believe that this Nation finds it difficult enough to permit the groups and religions which comprise its citizenry to live in harmony without this snide reference to the efforts of those seeking to prevent the Kerner Commission's dire predictions from coming true.

Is it wrong to want black and white Americans to be able to live in integrated neighborhoods and go to integrated schools? I do not believe so. But I am no longer sure how the President would answer that question, and the answer relates to whether this Nation can find ways to promote a society where the different races and ethnic groups can add their talents together to help build this country, instead of permitting the erection of two rival camps, one black, one white, both hostile and afraid.

To all those who value equal justice under our laws, it is their responsibility to urge the President to examine more closely the path he has chosen for otherwise their silence suggests consent to a policy which may lead this Nation toward the abyss.

PROPOSED EXTENSION OF THE WEST FRONT OF THE CAPITOL

Mr. PROXMIRE. Mr. President, I am greatly concerned about the unfortunate decision of the Commission for the Extension of the Capitol to begin planning extension of the west front. Not only does such a decision treat with indifference the wishes of Congress, but, more important, it represents a great waste of the taxpayers' money.

On December 12, 1969, Congress passed a legislative branch appropriation providing $2,275,000 for planning an extension of the west front but prohibiting the expenditure of these funds until a restoration study had been made. The bill provided that extension planning would then be undertaken unless certain conditions having to do with cost, permanence of repairs, and the like, were fulfilled.

Well, the study was performed. In the words of a letter accompanying the report of the study team:

> Based upon a detailed investigation of the west front walls, we conclude that under conditions indicated in the report, restoration of the west central front of the Capitol is feasible. Further, the restoration can be accomplished within the general guidelines set forth by the Congress as a directive to the Commission for Extension of the Capitol.

Mr. President, I ask unanimous consent to have printed in the RECORD at the end of my remarks the entire report on the feasibility and cost of restoration, as prepared by the firm of Praeger, Kavanagh, Waterbury, consulting engineers and architects, in January 1971. Their comprehensive study easily satisfies the five prime conditions the Commission has required for restoration.

Briefly, restoration of the west front would fulfill esthetic and safety standards. It need not take longer nor require more vacation of Capitol space than the extension plan. The methods for restoration can be designed for regular fixed-price construction bids, and eventual costs in 1968 prices are anticipated not to exceed $15 million.

These are the conditions which Congress itself has set, and they have all been met. The Praeger study, after thorough examination of the Capitol building stated that—

> The many cracks and surface flaws do not significantly impair the ability of the west central front to continue to support the loads imposed on it.

This conclusion, complemented by the recommendations of the American Institute of Architects, seems quite explicit.

Our Nation's Capitol is more than the seat of Government and more than a national monument. It represents the great heritage of our Nation. The indiscriminate alteration of its facade would be a violation of history. We are not creating another mammoth, nondescript, Federal office building; we are preserving an edifice of magnificent design. Once the extension began, there would be no second chance for restoration. The great work of William Thornton, Benjamin Latrobe, and Frederick Law Olmstead would be lost forever.

Therefore, I submit this restoration report for study by Senators. I urge that hearings be held to consider its recommendations and to reconsider and reverse the Commission's decision in favor of extending the west front of the Capitol.

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

INTRODUCTION

A. BACKGROUND OF REPORT

The United States Capitol (Frontispiece and Figure 1) is a unique structure with strong and direct ties to the foundation of our Republic. Throughout its long history it has been the subject of continued interest and concern. It has been changed extensively and enlarged as new conditions and usages required. It has been the subject of numerous inspections, reports and discussions. Most recent of the reports are those of Moran, Proctor, Mueser & Rutledge published in 1957, made in anticipation of "extension, reconstruction, and replacement of the central portion of the United States Capitol", and the Thompson & Lichtner report of 1964 with a critique by Locraft in 1966.

The Moran, Proctor, Mueser & Rutledge report was primarily a soils investigation, but it included a survey of the physical construction of the walls and an opinion on the lack of evidence of settlement. The Thompson & Lichtner report was a detailed examination of the West Central Front, including test cores of the walls, test pits and soil borings, as well as laboratory tests of materials. The Thompson & Lichtner study resulted in the general conclusion that the "exterior walls of the west central portion of the Capitol are distorted and cracked, and require corrective action for safety and durability." The report recommended that the west central exterior

wall be retained "as an interior wall of an extended building" which would provide it with lateral support. Shoring of the west portico and the old terrace screen walls followed publication of that report.

As a result of the deliberations of the Congress concerning the extension of the west central portion of the Capitol, an additional study and report was authorized under Public Law 91–145.

B. OBJECTIVES OF REPORT

Praeger Kavanagh Waterbury was retained to provide data, estimates, schedules, findings, and evaluations as necessary to enable the Commission for Extension of the Capitol to make a special determination with respect to its directive under Public Law 91–145:

"* * * That after submission of such study and report and consideration thereof by the Commission, the Commission shall direct the preparation of final plans for extending such west central front in accord with Plan 2 (which said Commission has approved), unless such restoration study report establishes to the satisfaction of the Commission:

"(1) That through restoration, such west central front can, without undue hazard to safety of the structure and persons, be made safe, sound, durable, and beautiful for the foreseeable future;

"(2) That restoration can be accomplished with no more vacation of west central front space in the building proper (excluding the terrace structure) than would be required by the proposed extension Plan 2;

"(3) That the method or methods of accomplishing restoration can be so described or specified as to form the basis for performance of the restoration work by competitive, lump sum, fixed price construction bid or bids;

"(4) That the cost of restoration would not exceed $15,000,000; and

"(5) That the time schedule for accomplishing the restoration work will not exceed that heretofore projected for accomplishing the Plan 2 extension work: *Provided further*, That after consideration of the restoration study report, if the Commission concludes that all five of the conditions hereinbefore specified are met, the Commission shall then make recommendations to the Congress on the question of whether to extend or restore the west central front of the Capitol."

In order to develop the information necessary to evaluate the feasibility of meeting these conditions a detailed study was made of the recorded history of the construction of the Capitol, structural analyses were prepared and site inspections and tests were made.

THE REPORT

A. Description of Structure

1. Structural System

The Capitol is a vaulted masonry structure with each of the three sections forming the west central front having a different structural arrangement, as indicated in Figures 2 through 6. The North Wing (Senate Side) consists of barrel and groined brick vaults supported on brick and sandstone walls (Figure 7). The Central Wing consists almost entirely of groined vaults supported on brick pilasters, which are presumed to be bonded into rubble-and-sandstone walls (Figure 8). The second and third floors of this wing, which are of brick groined vaulting, were not constructed until 1902 when the Library of Congress moved into its own building. The South Wing (House Side) consists of vaulted construction only at the basement and first floor levels (Figure 9). The upper stories, contiguous to Statuary Hall, are supported on steel beams, except at the corners where there is brick vaulting. A steel trussed arch spans over the "Liberty" statue in Statuary Hall supporting the dome above, and springs from a location about 25 ft. inside the face of the west wall.

A fundamental characteristic of an arch or vault is that it imposes a lateral thrust on the supporting structure. A groined vault is an intersection of barrel thrust at its four corners (Figure 10). Most of the floor construction along the west front wall involves vaulting, but since the thrust from a barrel vault acts away from the curve of the vault, not all adjacent walls are subjected to a lateral force. Along Wall 6(1) there is no lateral thrust applied to the wall because of the orientation and width of the barrel vaults which are adjacent to it, and which keep interior vault thrusts from reaching it. This is also true of the two floors below the Portico on Wall 4. Wall 2 has no thrust applied to it at the upper stories where floors are supported by steel beams or at the basement and attic where barrel vaults are oriented normal to the wall. The pattern is not the same at each floor level, as can be seen by comparing the plans in Figures 2 to 6, where the directions and relative magnitudes of the maximum horizontal thrust forces are indicated. The critical points occur at the corners.

The foundations are rubble masonry walls with rubble infilling. In some cases they have been given a degree of continuity through the use of inverted arches. To a significant degree, the interior foundation walls adjoining and normal to the exterior walls, participate with the exterior walls in carrying load to the soil below. Walls 1, 2, 6 and 7, and sections of Walls 3 and 5, have been underpinned in the past.

2. Physical condition

A survey record of the major cracks and deterioration in the West Central Front is presented in Figures 12 through 17. Similar surveys by others, made in 1957 and 1960, and on a regular basis since then, are generally confirmed. All indicate the same cracking pattern with minor changes since 1957.

A review of reports published over the years indicates that evidence of deterioration was observed early in the life of the structure. The walls were painted in 1817 to arrest weathering. A report of dropped keystones was made in 1826, and reference to settlement, fractures and displacements was made in both the Mudd Report (1849) and Meig's Report (1856).

Exterior wall cracks occur typically within a vertical swath roughly located between the window jambs, in every bay. The preponderance of the open cracks is vertical, most of the horizontal cracks being hairline fractures connecting vertical ones. Substantial portions of the entablature, balustrade and second floor band course are spalled or eroded.

The areas most severely flawed are the presently shored screen wall sections at the two old terraces. These walls are a nonstructural veneer over the rubble foundation wall that would otherwise be exposed.

Elements of the portico entablature have failed structurally and are presently shored.

Many of the keystones over first floor windows have dropped, a condition which tends to grow over the years because of thermal expansion combined with wedging action.

B. Investigation

To analyze the structural problems an investigation has been made of the loads imposed on the structure by use and construction as well as the many environmental phenomena to which it is exposed.

1. Loads

Under the terms "loads" all external forces and environmental influences on the behavior and safety of the structure are considered. These include static loads, such as the dead load of the structure itself and the relatively stationary applied load, as well as dynamic loads such as wind, moving occupancy, earthquake and sonic boom. Environmental loads include temperature effects that cause relative movements of structural elements which, if restrained, produce stresses. Environmental loads also include the effects of volume changes due to moisture absorption as well as the consequences of foundation settlements.

(a) Static (Live plus Dead)—Critical bays have been analyzed for dead and live loading through the full height of the building. The results indicate that the walls, as originally built, are stable and the masonry is subjected to compressive stresses of the order of 100 pounds per square inch with a maximum of 236 pounds per square inch. These stresses are relatively low for the materials involved. Horizontal and vertical shear stresses are in the 10 pounds per square inch range. Since the strength of the sandstone averages about 6,000 pounds per square inch and the fieldstone about 14,000 pounds per square inch, compression failure of the stone should not occur. The lime mortar has a compressive strength varying from 100 pounds per square inch to 2000 pounds per square inch and is therefore the critical material. Under the maximum stress indicated it is possible that there has been local failure of the mortar with subsequent redistribution of stress to the stronger materials.

A reasonable criterion for the design of masonry construction is that the section be proportioned so the resultant of the loads remains within the kern of the section so that tensile stresses do not occur. As can be seen in Figure 11, analysis indicates that the resultant is within the kern, but in some cases is close to the boundary.

(b) Wind—The Uniform Building Code[2] prescribes a design wind pressure of 15 pounds per square foot for the height zone from 0 to 30 feet above ground, 20 pounds per square foot for 30 to 49 feet, and 25 pounds per square foot above 50 feet. The Building Officials Conference of America Basic Building Code[2] prescribes 15 pounds per square foot for the height zone from 0 to 50 feet above ground and 20 pounds per square foot above 50 feet. These are generally accepted building codes, and the Uniform Building Code criterion, which is slightly more severe, was adopted as the basis for analysis.

The wind analysis indicates that stresses in the walls are negligible, generally less than 1 pound per square inch.

(c) Earthquake—Earthquakes produce impulse loads which can cause structural damage. Buildings, whose dynamic characteristics produce resonant response to the disturbance are particularly vulnerable.

Washington is in a geographic area which experiences infrequent seismic events of low intensity. The U.S. Coast and Geodetic Survey Seismic Probability Map of the United States places Washington in Zone 1, which is associated with minor damage.

The Earthquake History of the United States, Part I, prepared by the U.S. Coast and Geodetic Survey (1958), shows no major earthquakes in the Washington area, but records minor shocks on: February 4, 1828, March 9, 1828, April 29, 1852, August 31, 1861, January 2, 1885, and April 9, 1918. The only record of shock intensity observed in Washington was measured as 5M.M.[3] in 1918. The Earthquake History summarizes the seismic record as follows: "Although no earthquakes are listed as definitely occurring within the District of Columbia, several shocks of uncertain origin have been felt there."

For the analysis of earthquake effects on buildings in areas where seismographic records are not complete, the lateral force provisions of the Uniform Building Code,[4] which are based on the recommendations of the Structural Engineers Association of California, are widely accepted. These determine separate values of the lateral force for the building itself, and for elements of the building, such as an exterior wall. As applied to the Capitol these values are computed as follows:

Footnotes at end of article.

(a) For the building:

Total lateral force at the base is 1.25%W, where W is the total dead load.

(b) For the west front bearing wall the lateral force is 5.0% Wp, where Wp is the weight of the wall element.

Criterion (b) controls the magnitude of force to be used on the walls, and an analysis was made of the stresses induced by this lateral force at the exterior and interior faces of a typical bay of the west wall. Earthquake forces are reversible and therefore additive, acting to augment lateral thrusts from the vaults.

The analysis demonstrates that earthquake stresses are relatively small as compared to dead and live load stresses to the structural integrity of the west wall.

(d) Sonic Boom—Sonic booms is a pressure differential resulting from a shock wave induced, among other things, by aircraft flying at supersonic speeds. It is affected by controllable factors, such as speed, altitude and maneuvers of the aircraft, as well as by non-controllable factors, such as meteorological conditions, topography and ground level air turbulence.

The sonic boom curve is often called an N-wave and its peak pressure intensity, or "overpressure", is the pressure above normal ambient atmospheric pressure. The push-pull characteristics of the N-wave have been related to secondary structural damage to buildings on the flight path, and regulation of flight operations is necessary to limit overpressures from aircraft operating too close to the ground. The intensity of sonic booms at ground level resulting from aircraft at normal operating altitudes is seldom above 1 millibar (2.0 pounds per square foot), and rarely as high as 2.5 millibars (5.0 pounds per square foot). Structural damage caused by sonic booms of these intensities is usually limited to non-structural elements of buildings, and results from the interaction of the impulse-type loading and the resonant frequencies of the affected element. When the duration of loading exceeds the natural period of the structural element, amplification of the static effect of the overpressure result. When the duration time is less than the natural period, smaller amplification may occur.

A simplified approach to the analysis of a structure under dynamic loading utilizes the concept of an equivalent static load which produces the same stresses and strains as would be caused by the dynamic loads. The ratio of the equivalent static load to the dynamic load is called the dynamic amplification factor and depends on the element's stiffness, natural frequency and damping, as well as the type and duration of applied loading. The dynamic amplification factor can be measured by experimental tests, such as those which are part of the National Sonic Boom Evaluation Project undertaken at Edwards Air Force Base. These tests furnish plots of amplification factor versus natural frequency, for each type of loading as related to types of planes at various Mach numbers and altitudes. Characteristic values lie between 2.0 and 3.0.

The fundamental natural frequency of the Capitol is in the order of 1 to 2 cycles per second, while that of the individual wall elements considered as plates is about 48 cycles per second. Though the building as a whole is little affected by dynamic amplification, an amplification factor of 2.0 is assumed. Wall elements are assumed to have a factor of 3.0. Even with these conservative values, and the rare occurrence of a free-field sonic boom intensity of 2.5 millibars (5.0 pounds per square foot), the corresponding lateral pressures of 10 or 15 pounds per square foot are lower than those associated with wind.

The effects of sonic boom associated with planes flying at supersonic speeds and present altitude restrictions will not adversely affect the west central front walls.

2. Foundations analysis

Consideration has been given to the possibility that the observed cracking and displacements of the walls constituting the west front of the Capitol might be due to some foundation inadequacy.

For this purpose borings were made to confirm soils information previously obtained along the west front and to recover soil samples for laboratory test. The soil profile, inferred from the new borings and from those made in 1957, and the laboratory test data, are presented in Appendix A, Section 3.

Failure of a foundation generally may occur in two ways. One is a shear failure of the supporting soil, in which the soil under and around the foundation is ruptured and a relatively sudden collapse ensues.

The second mode of foundation failure is by excessive settlement as the soil supporting the foundation is deformed by the imposed loads. As long as deformations are not excessive, the building accommodates itself to the deformation without serious damage, though some cracking may occur. If the deformations are excessive, wide and long cracks result and the building tends to separate into pieces. The definition of "excessive" settlement is a function of the type of building, the rate of deformation, the degree of uniformity of settlement and other factors. Fixed numeric values are not applicable. For example, there are buildings in Mexico City which have settled upwards of five feet and remain in sound condition and continue in use. As a rule, designers endeavor to proportion foundations for a building of heavy masonry construction, not occupied by sensitive equipment, so as to limit the settlement to about 2 to 4 inches.[5]

(a) Shear Failure of Soil—The ultimate bearing capacity of the several soil strata supporting the foundations for the west front have been calculated. The principal soil strata are:

(1) A layer of sand and gravel directly underlying the footings, extending about 20 ft. below the lowest footing level and underlain by

(2) a layer of stiff to very stiff red-brown clay, averaging about 40 feet in depth and, in turn, underlain by

(3) a layer of compact sand, approximately 25 feet thick which is underlain by

(4) a hard gray clay, averaging about 30 feet in depth. This stratum is underlain by

(5) a compact sand and silty clay of undetermined depth.

The calculated ultimate bearing capacities of these strata are indicated in the following table, together with the calculated pressures imposed by the foundations. The ratio of the two is the safety factor.

Designers normally proportion a foundation to achieve a factor of safety of from 1.5 to 3 against a bearing capacity failure. Table 1 indicates that a minimum factor of safety of about 2 exists under the present circumstances. The corresponding soil pressure is relatively high, but far less than that required to produce a bearing failure. Further, the computed pressure is conservative since the calculated value represents a maximum condition, occurs only locally and is based on the assumption that there is no contributing support from adjacent interior foundation walls.

TABLE 1.—BEARING CAPACITY VERSUS IMPOSED PRESSURES

Soil stratum	Ultimate bearing capacity (tons per square foot)	Imposed pressure (tons per square foot)	Factor of safety
Sand and gravel	9.7	4.8	2.04
Red-brown clay	17.2	2.5	7
Sand	>10.0	.3	>10
Gray clay	>10.0	.2	>10
Sand	>10.0	.1	>10

Footnotes at end of article.

Loss of strength of the clay soil due to long term strains is a secondary phenomenon occasionally encountered. However, calculations indicate that the shear stress intensity in the clay soil is too low to produce this effect.

Clearly, the wall has stood for the past 150 years. The computed factors of safety indicate that, barring some grossly changed condition, there is no danger of a bearing failure.

(b) Settlement Failure of Soil—For the soil profile which occurs beneath the foundations of the walls of the west front, settlement would occur in three stages. The first would consist of an almost immediate compression of the sand and gravel strata, followed by a somewhat longer-term (about 20 years), slow, progressive consolidation of the clay strata, conventionally known as primary consolidation. This would be followed by a longer term consolidation of the clay strata, known as secondary consolidation.

An empirical estimate of the compression of the sand and gravel, based upon the resistance to penetration of the sampling device, is in the order of one to two inches. Except for minor additional displacements due to alterations in the building which may have added more load, this displacement took place over one hundred fifty years ago.

The primary consolidation of the clay strata has been calculated from the data provided by laboratory tests. These computations indicate a total settlement of about one and one-half inches and this, too, occurred over one hundred years ago.

Secondary consolidation continues today at a very slow rate and is of limited magnitude: Calculations indicate that a total of about one-half inch has occurred in the past, and that a somewhat smaller amount will occur over the next one hundred fifty years.

It is estimated that the total settlement of the walls of the west front, to date has been about 3 to 4 inches. These settlements are on the high side of normal but they are not unreasonable or alarming. Future movements due to settlement will be very minor.

(c) Field Observations—Because of the complexities of the construction of the Capitol's foundations and the heterogeneity of the soil profile, the application of the theoretical analysis described above has been checked against field conditions, with the following results:

(1) There is no indication that a bearing capacity failure has occurred. This is in consonance with the computations which indicate that there is a substantial margin of safety against such a failure.

(2) It appears that the observed cracks in the walls of the West front are not due to excessive settlement. Evaluation confirms the report by Moran, Proctor, Mueser & Rutledge, dated May 1957, Volume 1, page 81, which indicates that a thorough inspection of the walls of the west front led to the conclusion that cracking did not relate to foundation settlement. The pattern of cracking and the general conditions and deformations are not indicative of a foundation problem. This confirms the computations, which indicate that the existing walls should not have suffered seriously from settlement of the foundation.

(3) Prior to this study a level survey was made which indicated that about ¼-inch of settlement occurred over a period of about 2½ years. This is inconsistent with the calculations, which indicate that whatever settlement of the foundation continues to occur is inconsequentially small. Accordingly, an independent check of the level points utilized by the previous survey was made. This most recent survey indicates that there has been no detectable settlement over the past two years.

3. Causes of damage

(a) Environmental Changes—The structural integrity of a building may be affected

each time there is a change in the original structural arrangement or an environmental condition change. The extent to which past changes have caused a present threat to the safety of the structure must be evaluated. Table 4 is a list of such events which deserve special consideration.

The history of the Capitol is one of continuous change. Before it was occupied, faulty construction in the North Wing foundations had to be repaired by Dr. William Thorton, the designer of the Capitol. Parts of the South Wing foundations were torn down and rebuilt under Latrobe's direction. As soon as the South Wing was completed, the North Wing was practically dismantled and reconstructed to accommodate the Supreme Court and Library of Congress, in addition to the Senate. Roof leaks were reported in the North Wing before it was ten years old. A number of arch failures occurred, with subsequent reconstruction.

The British burned the Capitol in 1814, subjecting its materials to severe extremes of temperature. The construction which followed involved a complete structural change from timber to masonry vaulting for all floors, except the roof.

Around 1830, the Bullfinch Terraces were built and the North and South Wings were underpinned. More underpinning was done when the "new" Senate and House Extensions were built in the 1850's. Parts of the Central Wing walls were underpinned to make room for construction of heating furnaces. Underpinning may have resulted in some loss of vertical support with accompanying strain in materials which produces cracks.

The floor of Statuary Hall was once used as a mixing chamber for a hot air heating system, which caused volumetric expansion and contraction of an unusual nature. Hot air heating was replaced by steam, gas was installed, followed by electricity and, finally, the building was air-conditioned. In 1874 the first elevator was installed. Each change required new cuts into the structure and consequent readjustment of structural elements; see Plate 3.

In 1851 there was a fire in the Library of Congress, which had been moved from the North Wing to the Central Wing, and in 1898 another fire occurred, following a gas explosion in the North Wing.

When the Library of Congress moved into its own building, two new floors were installed in that Central Wing. About the same time, the timber Lantern Domes over both wings were removed and replaced by steel construction.

The sequence of construction is a significant determinant of differential settlement. The North and South Wings were built about 30 years before the Central Section was completed and the present cast iron dome replaced a wooden dome in 1863, thirty-three years later. As a result, the supporting soil strata under the three parts of the building were subjected to different loading intensities, hence different soil consolidation and settlement patterns. Evidence of articulation at the intersections of the three wings is probably in part due to differential settlement.

The building has adjusted itself to these changes or has been repaired to accommodate them as they occurred. This study indicates there is no observable threat to the structure due to past changes.

(b) Quality of Construction and Materials—In 1795, Dr. Thornton reported poor masonry work on the North Wing. A remedy was applied, but the suspicion has persisted that the Capitol foundations are of inferior quality. The notion was reinforced in 1804 when work on the South Wing had to be reconstructed. Assertions that these walls are merely two minor walls with the area between filled with loose rubble and mortar were contradicted by Dr. Thornton who referred to good bond stones intermingled throughout.[6]

Arch failures during construction were fairly common in those days and Thornton took occasion to remarks on Latrobe's poor luck in this field.[7] Several failures were reported in the history of the Capitol's construction, and in each case repairs were made. One may wonder if, based on this history, other arches might be on the verge of failure. This study indicates that such fears are unfounded.

The Capitol in its present form is over 100 years old and most of the vaulting is over 150 years old. During that period the building has been subjected to high winds, shocks of seismic origin, an explosion, and numerous structural incursions to accommodate new facilities.

Wherever it can be seen, the brick valuting is solid and firm with good mortar bond. There are many examples where vaulting has been cut and remains firm. Bricks exposed at the edge of openings in vaulting made for air-conditioning ducts, are supported solely by mortar bond and are not easily removed (Plate 3). Observed arches and vaulting have adjusted to change or were properly repaired to form a safe and strong structural element.

Interior damage to exterior walls is shown on Figures 16–17 but the evidence of damage is inconclusive because of the high standard of maintenance. Nevertheless, there are signs of water intrusion. Except for rooms H227 and S231, all interior wall cracks are minor, probably limited to the plaster.

In Room H227 a series of vertical cracks appear at a point corresponding to the junction between the South Wing and the Central Wing. Since the Central Wing was abutted to the South Wing, some 20 years after the latter was built, these cracks may be the result of an imperfectly bonded joint.

Some plans of the building in this area suggest that there are flues in the walls and these could be responsible for the damage.

In Room S231 the concentration of expansion and contraction activity which is typical at the corners of a building is evidenced by vertical cracks on the interior surface.

Cores of the upper walls show voided areas which may have resulted from the reported construction technique of infilling the walls with loose batches of stone and mortar. Condensation may keep lime mortar soft and some may leach out, causing voids or enlarging existing ones (see Figure 22). Grouting done under the Exploratory Work conducted as part of this report indicates that the foundation wall cores have an overall void ratio of about 5% and as high as 20% locally. The void ratio of the upper wall varies from 5% to 10%.

It is suspected that a serious error in construction occurred because masons at the time did not cut and lay exterior sandstone with careful observance to the orientation of the bedding plans of the stone. Sandstone, though porous, will weather well if permitted to drain properly. If the stone is laid without regard to grain, there will be stones in which water will be trapped long enough to freeze and cause surface deterioration. The pattern of deterioration observed is consistent with this possibility since many stones are in good condition. Full confirmation of this theory cannot be obtained unless the entire surfaces of the walls are cleaned of paint and the sandstone is examined.

Painting the surface of stone is a reasonable method of preventing the intrusion of water, but there is a danger that it can become a cause of deterioration by permitting intrusion of water at some points and causing entrapment at others. Painting records are not available, but this aspect of building maintenance apparently was neglected between the years 1830 and 1850, according to Mudd,[8] who states his understanding that the Capitol had not been painted for 17 years.

Painting can have other deleterious effects. Components of the paint may penetrate the pores of the stone and react chemically with it. It will generally stain the stone, and attempts to remove the paint can cause further unsightliness as well as inadvertent removal of stone particles.

While painting has discolored the stone it appears to have provided protection more often than it has caused damage. Sandstone which has been painted has weathered better than much of the nearby marble which is not as old.

(c) Temperature—Most of the cracking and deterioration of the west wall can be explained by the effects of weathering and temperature. Structures adjust to temperature change through volumetric expansion and contraction. This process can be complex, taking account of building configurations, inside-outside temperature differential, the ability of the materials to transmit the imposed forces and the effects of water intrusion followed by expansion when it freezes.

The ways in which a masonry wall can be cracked by temperature changes are depicted in Figure 18, which demonstrates the fundamental action of expansion and contraction. With a rise in temperature, the wall lengthens. When the temperature drops, it tends to shorten. Because masonry is weak in tension it does not recover its original length if there is any restraint to this shortening. Instead, it fails at the section where the least amount of material is available—at door and window openings.

The manner in which this is compounded by structural configuration is demonstrated by Figure 18(b). When two parallel walls are linked by a third wall, the movements just described tend to distort the linking wall and cracks form at the locations shown.

These effects are compounded because of the restraint provided by floors and walls, shown in Figures 18(c) and (d). If the inside temperature is different from the outside, a warping effect results and the structure assumes the shapes indicated in the sketch. Since expansion and contraction occur vertically, as well as horizontally, the actual pattern is complex, but cracks tend to form as shown.

Generally, this effect would not be large enough to cause cracks, but it is continually reversible and becomes a determining factor when additive to one or more of the previously described forces. Once the stone has cracked, the wall does not return to its original position and a natural process of growth sets in. If the crack is filled with dirt, or patching mortar, or if a dropped keystone closes the gap, the wall becomes still longer upon expansion and the crack opens again when contraction occurs.

In the case of the Capitol walls, the described action is compounded by the great thickness of the wall and its 3-layer construction. The inner part of the wall is thermally stable while the exterior is exposed to the temperature extremes. The existence of a void behind the sandstone suggests that the sandstone may have some behavior independent of its backup wall. To the degree, that its internal geometry will permit, the exterior wall responds to temperature, and forms its own expansion joints by cracking in the manner shown in Figures 12–15.

(d) Settlement—Differential settlement of the foundations of a structure produces a characteristic cracking pattern in the supported masonry walls. These usually take one of the forms illustrated in Figure 19:

(1) If settlement acts to tilt or rotate one portion of the wall with respect to another,

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cracks will develop, as indicated in Figure 19(a), and the size of opening increases as it travels up the wall in vertical cracks or joints.

(2) More commonly, one portion of the wall drops with respect to an adjacent part and the openings occur in horizontal joints (Figure 19(b)).

Close inspection discloses relatively few crack patterns that could be related to foundation behavior. By themselves cracks are not evidence of settlement, and in the case at hand are explainable by weathering and temperature phenomena.

4. Exploratory Program [9]

As part of this study, plans and specifications were prepared for "Exploratory Work In and Adjacent to the West Central Portion of the United States Capitol", and a contract to carry out the work was awarded to Layne-New York Co., Inc. The purpose of the work was to determine the practicality and limitations of some of the restoration methods under consideration and their costs, as well as confirmation of data developed in earlier studies and reports. Determinations were sought for the following specific items:

(a) Drilling and Grouting—The primary purpose of the exploratory program was to determine the practicality and effectiveness of grouting the walls, using different techniques and materials. Underlying this work was the unknown degree to which the walls actually are voided, so an effort was made to determine the void ratio as well as the degree to which voids can be filled.

In 1964 some 63 cores were drilled in the west front wall. These were well distributed, were described and photographed in the Thompson & Lichtner report, and the cores are presently stored in the basement of the Rayburn Building. For the exploratory program, Layne-New York Co., Inc. drilled an additional 45 cores in much greater concentration in two test areas of wall. Because dry drilling tends to pulverize the core and wet drilling tends to wash out lime mortar and sand, good clean cores are seldom obtained and judgment is required to establish a void ratio. Additional information provided by the drilling process is obtained when there is a sudden change in the drilling pressure or the drill "falls through" a void.

When the wall was grouted, a careful record of the volume injected was kept as another indication of the existence and extent of voids. This record does not detect voids that are not filled, nor is there any way to determine exactly how far the grout traveled in the channels it found. Therefore, the indication is limited. It proves that voids exist, but it cannot prove that they do not exist or the degree to which they are filled.

At Wall A [10] there were 4 inclined grout holes and 14 test holes which were drilled after the grout was injected. In the test holes, a determination of the extent of voids, as compared to the extent of grout in the cores, was made to evaluate both the void ratio and the effectiveness of grouting. Logs of all drilling and grouting were kept, and a profile was recorded for the test cores.[11]

Of the 14 test cores taken in Wall A, 12 contained evidence of grout filled voids. The other 2 contained none, but also showed few voids. If a core contains a void not filled by grout, some conclusion can be drawn about the effectiveness of grouting. However, if there are no voids which might have been filled, no conclusion can be drawn except as to the degree to which it tends to indicate a solid wall.

In Wall B, one vertical grout hole and 8 horizontal grout holes were drilled. The holes were grouted and 18 test cores were taken.

Wall B turned out to be not typical [12] of the rest of the west wall since it did not have the extent of loose rubble in filling discovered in other areas in the 1964 investigation. The masonry units were large and the proportion of joints was, therefore, small. Out of the 18 test cores, 9 contained evidence of grout.

Wall A was grouted with Monomer, Epoxy, Neat Cement and Sand Cement in four different grout holes spaced about 7 feet apart. Altogether over 420 gallons, or 56 cubic feet of material was placed in the wall. This indicated that a considerable volume of voids existed and was filled; and it implied a void ratio of about 10%, if a normal distribution of voids existed around the grout holes. A normal distribution apparently does not exist, however, since over 50% of the total grout was placed in one of 4 holes and it traveled as far as 6 ft. in one direction and 12 ft. in another. Test holes also pierced many areas in which no grout was found and few voids were observed. The inference is that there are large voids, several inches in diameter, located in clusters, rather than a general distribution of fine voids. There are channels or seams through which grout can travel a great distance but these do not necessarily interconnect the larger voids.

The void ratio in the foundation wall, based on examination of the cores, is estimated to be 5% generally and 20% locally.

In Wall B, only cement grouts were used, and about 315 gallons of grout material were placed in the pier. Apparently, the only void in this wall was detected by the driller when the drill "fell through" consistently at about a depth of 2 to 3 feet from the face of the wall. The indicated volume would be equivalent to about a 5% void ratio. A 2½ inch continuous seam would also produce a 5% void ratio. What appeared to be this seam was observed as a ¼ inch crack when the wood paneling was removed to exposure the wall near the window jambs.

In Wall B, 1 inch diameter horizontal grout holes, using about 20 pounds per square inch pressure, were as effective as was the larger vertical hole. With both grouting procedures, the conclusion was reached that the wall at this location is very solid. From examination of the 1964 cores, it is estimated that the void ratio for the upper walls is generally less than 10% and most of it is in the vertical plane, immediately behind the sandstone face. These can be best filled by grouting through horizontal or slightly titled grout holes drilled through the face.

Of the four grouts tested, three proved superior: neat cement, sand cement and epoxy.

Monomer, an acrylic plastic, is a promising material with good laboratory test results, but the test program indicated a lack of field experience with the material, which restricts its applicability in a major structure. While the material soaks into the grouted wall quite effectively, its rate of cure was indeterminate. It also gave off an objectionable penetrating odor that cannot be tolerated in a building which is to be occupied during construction. It also is flammable and has a low flash point in the liquid state.

Sand cement grout was used with two different gradations of sand, and was pumped both with and without pressure through 1 inch diameter holes and 3 inch diameter holes. With 3 inch diameter holes and well graded sand, it proved adequate. Since its prime virtue over neat cement grout is economy, it is not suggested for use in the foundation walls, where it would be less likely to seek out and flow through small channels which interconnect the voids. In the upper walls, it is recommended for use in conjunction with epoxy. To avoid damage to pumps and obtain good flow characteristics, the sand gradation must be rigidly adhered to.[13] The best mix for neat cement grout was 1.5:1 [14] and for sand cement grout 1.5:1:2.[15]

Grouts of the suggested mix ratios did not generally bleed through the wall joints. When they did, a self-sealing characteristic was evident. Bleeding quickly stopped and is easily retained by slight obstructions to flow.

Epoxy is very strong in tension, compression and bond. It is also effective in permeating a finely voided material, but relatively expensive. It should be used as an adjunct to sand cement for grouting the upper walls, where good bond is a desirable characteristic. After the wall has been grouted with sand cement to fill the large void behind the sandstone, a second stage grouting of the same areas with epoxy would result in a strong wall.

Solidification of the wall will affect its thermal properties. Air spaces at voids in the rubble core offer practically no resistance to the transmission of water vapor but are effective insulation against transmission of heat. When the voids are filled with grout the transmission rate of water vapor is decreased and that of heat is increased. The result is a 10% net increase in heat loss or gain for a solidified wall.

Condensation in the wall will not occur during the summer. During the winter there are conditions under which condensation occurs for both the existing wall and a solidified wall. Grouting will not produce much change in this effect (see Figure 22).

(b) Soils and Settlement—Three soil borings were made and one-dimensional consolidation tests were performed on three undisturbed samples. In addition, three unconfined compression tests, and three sets of liquid and plastic limit determinations were made by Woodward-Moorhouse & Associates, Inc. Laboratory results are given in Appendix A, Section 2, and a general discussion is included in Part B2 of this report.

(c) Paint and Paint Removal—Efforts to remove old paint, which has a thickness of 90 to 115 mils, from the surface of the west central front wall were not encouraging. The methylene chloride base remover specified, was at least as effective as other removers which were tried, but none succeeded in producing a completely clean stone surface. Application of a hydro-silica jet, using 600 to 700 pounds per square inch pressure, did remove the remaining paint but it also removed a portion of the stone surface. The jet treatment was too harsh for use on carved stone. On flat areas, it would be effective but would require a follow-up rubbing and sanding to restore the surface to a reasonable plane. The removal of soft decomposed stone forms a sound base for bonding of applied protective costs, so plain water jetting should not be rejected as a removal technique unless extreme erosion occurs.

Several manufacturers and paint consultants were contacted and the consulting service of Mr. Arnold J. Eickhoff was retained. There was general agreement that chemical removal would have limited success. Other techniques suggested include flame, hydro-silica jet followed by sand blast using walnut shells, and mechanical removal using pneumatic tools.

Paint removal resulting in a perfectly clean exposed sandstone does not appear to be practical. Removal to permit inspection of sandstone and effective use of stone preservative can be obtained using conventional hand labor and chemical remover.

Present painting practice requires the use of paint meeting Federal Specification TT–P–102a. This is a paint particularly adapted to exterior use on wood. Use of a stone preservative or conditioner as a base coat for a latex binder paint should be considered. Laboratory tests of paint samples indicate that latex binder paints were used in recent paint applications on the west front wall (see Appendix A, Section 5).

(d) Stone Preservative.—The existing stone is soft and porous. Its life could be effectively extended if it could be hardened and/or waterproofed. Two commercially available products were applied to test por-

Footnotes at end of article.

tions of the wall and smaller specimens which were sent to the National Bureau of Standards for testing. Their report is included as Section 3 of Appendix A. Complete protection of the stone surfaces should combine caulking of cracks and joints with the plastic material, followed by application of stone preservative and two coats of paint.

(e) Source of Sandstone—As an adjunct to the exploratory work, two field trips were made to the Aquia Creek area in Stafford County, Virginia, from which the original sandstone reportedly had been obtained. One of these trips is documented by Mr. Thomas W. Fluhr, Engineering Geologist, in Appendix B. Old quarries were discovered, but the findings were no more successful than similar efforts undertaken by Latrobe between 1805 and 1819. If good stone is there, it is well beneath the surface and expensive exploratory work would be required to discover it, with no guarantee of results. An even more expensive quarrying operations would then be required to uncover it. That would also be a gamble because it has been stated that blasting has been used in the area for the extraction of gravel. Such blasting may have shattered what otherwise might be acceptable sandstone.

What stone was visible on the surface during these inspections at the quarries had considerable quartz pebbles or was badly decomposed. An area visited on the second trip to the Aquia Creek area was possibly quarried in the 1930's, judging by the vegetation over the cut; see Plate 4. Here the volume cut was relatively small and the quality apparently ran out.

C. Conclusions

The many cracks and surface flaws do not significantly impair the ability of the west central front wall to continue to support the loads imposed on it. There are voids in the walls which do affect its strength.

Materials are of a quality and strength in excess of that required for safety, with the exception of the lime mortar cementing agent which ranges from fair to poor. The poor material is generally in the central core of the wall, which can be assumed 50% efficient without causing overstress in the remaining portions of the wall.

Because there have been so many environmental changes during the course of the Capitol's history, there is no way of being certain that the building has all the characteristics of the original structure or those assumed in the computed structural analysis. Therefore a structural restoration program is required. Also, maintenance policy should require that all future installations of mechanical equipment, devices, chases, etc., be preceded by a structural analysis of affected elements.

If the wall voids were filled, exterior cracking would be inhibited by transfer of stress to interior portions of the wall. Generally, however, cracking will continue to occur as the wall adjusts to temperature change. A series of control joints must be provided to insure that these cracks occur at preselected points. Control joints must be caulked with plastic materials, which will stop the intrusion of water. With these measures future cracking should occur at a much reduced rate.

The following are specific conclusions and restoration procedures which apply to the different parts of the building, considered from the standpoints first of structural restoration, and then of architectural restoration and preservation.

1. Structural

(a) Soils [16]—Laboratory tests of soils beneath the Capitol indicate that the imposed loads are carried safely with a very small amount of anticipated future settlement.

In the past, settlement has occurred and since the three wings of the Old Capitol were built at different periods of time, there undoubtedly was differential settlement. The cracked vertical joints at the intersections of the three wings may be the results of this effect. Present settlement is negligible.

Neither underpinning of foundation walls nor chemical injection of soils is necessary.

(b) Foundation Walls—Foundation wall masonry is laid in lime mortar bedding of varying strength in a low range. The interiors of the walls were reportedly not laid in regular courses but filled with mortar dropped on the stones. Drilling conducted in the field test program indicates that this condition might exist locally rather than generally.

It is desirable to solidify the interior of the foundation walls to remove discontinuities and provide a relatively monolithic condition. The walls should be pointed. Then grouting can be accomplished with cement grout followed by epoxy. Use of epoxy grout would provide cohesive strength to existing mortar.

Experience in the exploratory program indicates that for foundation walls a first stage cement grout should be injected under pressure. Holes should be 2 to 3 inches in diameter, slightly off vertical, and spaced at about 3 feet on centers. Second stage grouting with epoxy should be in 2 to 3 inch round holes located between the first stage holes. To obtain a positive tie, steel rods would be inserted in the holes immediately upon completion of each grouting operation.

(c) Screen Walls—The screen walls at the lower old terraces are out of line and at some points could buckle despite present shoring. Although this veneer is non-structural it does provide protection against the weather for the rubble foundation wall behind it. Because this protection is important, and because the wall is unsightly, the screen wall should be rebuilt.

Earlier investigations showed that the veneer is generally six inches thick, with a three to four inch air space behind it. Rusted remains of ties were found, indicating that some attempt to bond the veneer to the wall behind it had been made.

To restore the screen wall it should be removed and the stones cleaned and trimmed. Broken stones should be repaired or replaced. Before replacing the screen wall, the rubble wall should be grouted (see Figure 20). Using the original stones, the wall should then be replaced plumb and true with bonding ties located at each course and doweled into the rubble wall and the space between veneer and rubble wall should be filled with cement mortar as each course is laid. The wall should be treated with preservative and painted, in consonance with the main walls.

(d) Terrace Walls—The old terrace walls, located about 20 feet forward of the screen walls, are gravity retaining walls founded on stone bases about two feet below the adjacent ground. Cracks in the terrace floor slab indicate that these walls have moved an inch or two forward of their original position.

To restore the walls, they should be dismantled and rebuilt on a concrete footing founded below the frost line. The stones should be repaired, cleaned and treated with preservative.

(e) Upper Wall Repairs [17]—Cracks in the walls are generally due to thermal effects. This has been aggravated by the freezing of intruded water and other environmental effects.

Unless expansion joints are provided, cracking will continue. Studies made to develop an expansion joint detail did not succeed in eliminating the possibility that difficulties would be increased rather than relieved. However, cracks can be minimized and progressive growth can be inhibited by solidifying the walls with grout and providing caulked control joints between window heads and sills as indicated on Figure 21, at the locations shown on Figure 3.

To strengthen the wall it should be grouted. This should be done in two stages; an injection of sand cement grout under pressure through 2 inch diameter horizontal holes to fill the largest voids, followed by an injection of epoxy grout through 2 inch diameter inclined holes. Holes would be spaced at about 3 feet, on a grid, but would be located after paint removal to arrange, to the extent possible, that they occur in stones scheduled for repair.

To tie the wall together and to add strength, ½-inch diameter steel reinforcing rods should be inserted in grout holes immediately upon completion of the grouting operation in each hole. When interior walls abut the west wall at pilaster lines, ties should be extended into them (Figure 20).

The building corners are the location of the most severe stone damage. Corners can be stabilized by cross ties, as shown on Figure 20. An alternate method for accomplishing this would require the vacation of corner office space during construction. Under this alternate, existing flooring and sand fill would be removed and a structural slab, tied into the walls, would be poured. This would stiffen the corners to make them strong buttressing elements.

Surface deterioration is due to weathering and freeze-thaw of entrapped moisture. Though unsightly it is of minor structural importance. Some stones are so far eroded that they should be replaced but others, less seriously deteriorated, may be tolerated as an expected sign of age. Future damage by intrusion of moisture or paint can be controlled by the application of a stone preservative and joint sealant, a procedure which should be applied at regular intervals.

Faulty face stone can be removed by saw cutting, line drilling and chipping, then replaced with new stone. Carved stone, unless basically faulty, can be repaired in place. Entablature elements can be removed by cutting and chipping, as shown on Figure 20. To avoid removal of elements above it, and subsequent dangers to vaulting below, entablature pieces should only be removed back to the approximate facestone line and replacement pieces installed using reinforcing anchors with epoxy cement.

(f) Portico Repairs—Spanning members in the Portico have failed and must be repaired. The entire balustrade and entablature over the Portico should be removed down to the column capitals.[18] Broken lintels may be pieced together and made strong by using post-tensioning techniques. All members should be cleaned, treated with preservative and replaced with a new reinforced concrete backup wall (Figure 21).

Columns and their bases can be replaced by sister elements from the East Face stored stone. East Face members are monolithic and are in better condition than the West Portico columns which are made up of varying length drums. East Face column bases are also in better condition and should replace those in the West Portico.

(g) Window Lintel Repairs—Broken lintels should be removed, repaired using post-tensioning methods, cleaned, treated with preservative and replaced (see Figure 21). Where eroded edges make this impractical, new stone must be used.

(h) Window Keystone Repairs—Many window keystones have dropped. Old mortar repair material at the top of the stone should be removed by saw cutting and chipping. Adjacent stones should be removed to the extent necessary to gain access to the sides of the keystone (Figure 21). Then the keystone should be jacked into its original position and supported there on steel stubs inserted in the sides. Access holes would then be closed with new stones.

Footnotes at end of article.

2. Architectural

"Restoration, used architecturally, means putting back as nearly as possible into the form it (a building) held at a particular date or period in time." [19]

The initial construction of the North Wing was completed in 1800, the South Wing in 1808 and both had an exposed sandstone finish until the structure was damaged by fire in 1814. During repairs subsequent to the fire all exposed stonework was painted. The Central (Portico) Wing was not completed until 1829 and it is assumed that the stonework was painted as part of the construction process to match the adjacent wings. The entire west central front has remained painted ever since and has been repainted many times. There may be some question whether true restoration in this case should result in an exposed sandstone surface or a painted surface. Both approaches are treated in the following discussion and are included in the cost estimate as Schemes 1 and 2, for painted sandstone, and exposed sandstone, respectively.

As a practical matter, Scheme 1 seems most attractive. Those portions of stone which were uncovered during the exploratory work proved to be badly stained and a good portion of it was of relatively poor quality. There is the possibility that a greater portion of stone will need replacement than survey of the painted surfaces would indicate, in which case the supply of East Face stone could be insufficient. Scheme 1 is preferable for these reasons and because, in this case, a painted finish seems to most faithfully fulfill accepted standards for restoration.

(a) Scheme 1—Painted Sandstone—If a painted stone surface finish were elected, the color quality of stone used for repairs would not be important. Repair methods would follow procedures outlined below for exposed stone finish, but replacement stone would not have to be Aquia Creek standstone.[20] Equivalent surface texture could be achieved by prefabricating stones to the required dimensions. Carved stonework elements could be replaced in part by doweling in new parts when deterioration was limited, or a whole block would be used in more severe cases. Details of Figure 20 would apply.

Upon completion of repairs the joints would be sealed and the whole wall surface would be treated with preservative and painted.[21]

(b) Scheme 2—Exposed Sandstone—Paint would be removed from the existing surfaces by chemical and/or mechanical means.

A detailed inspection would then determine what stones are visually and structurally unacceptable. These would be removed by sawing, line drilling, and chipping to a depth of about 6 inches. A "new" stone [22] would then be cut to precise dimensions and inserted in the space on an epoxy mortar base and anchored with ties into the backup wall against epoxy mortar backing. The process would be repeated stone by stone, avoiding the removal of adjacent stones at the same time, or a quantity that would imperil the structural integrity of the wall.

When all faulty stone was replaced, joints would be struck flush and treated with plastic sealant. The entire surface would then be treated with preservative, a treatment which would have to be repeated at about ten-year intervals as standard maintenance.

The stored stone from the East Face (Plate 2) is generally 12" to 24" in depth. Its back portions could, therefore, be cut for face stone inserts, leaving the carved forward portion with ample depth to be used as replacement for deteriorated West Face carved work. That supply would, therefore, provide 3 to 4 times the square footage of wall that its cubage would imply.

Deteriorated balusters would be replaced in whole. Broken cornice elements would be tire top surface of the entablature would be replaced as shown in Figure 20, and the encapped with flashing in fashion similar to that used on the Senate and House Buildings.

It is not suggested that stone elements, such as cornice members or column caps, should be replaced simply because a leading edge or some of the decorative carving has eroded. The Capitol is 150 years old and should give an impression of venerable age, not a crisp newness that denies its historical background.

Effective grouting will require relatively close spacing of drill holes vertically and horizontally in the upper walls. This would increase the need for the replacement stone required to obtain an unflawed surface, possibly in excess of that available in the East Face storage piles. For Scheme 2 this would mean either some proportion of artificial replacement stone, or toleration of a pockmarked appearance on a fairly regular grid. Under Scheme 1 this would be of no concern, since patch marks would be painted over.

3. Other restoration methods

Other approaches to restoring the West Wall were considered and abandoned upon evaluation. In particular, the following deserve mention:

(a) Marble Facestone—Thomas U. Walter, Architect of the United States Capitol Extension and designer of the Capitol Dome, described this proposal in 1850: "I may venture further to suggest that it would by no means be impracticable to remove all the facing of the present building and substitute marble, without interfering at all with the stability of the structure. If, therefore, the work is commenced by facing the new part with marble, the day will no doubt come when we shall have a marble Capitol upon which time can work but little change." [23] Procedures would follow a pattern similar to that for Scheme 2, except that replacement would be marble and replacement would be entire. This would be accomplished by using a checkerboard pattern of removal and replacement stone by stone. Upon completion, the building would look exactly like the existing building, except that it would have a marble surface and would look new. Details would be similar to those in Figure 20.

The concept is considered to be reconstruction rather than restoration and, it is estimated that it would cost $31,053,000.

(b) Marble Veneer—To reduce the cost of the preceding scheme an extremely placed marble veneer was evaluated. This concept would involve application directly to the existing surface of the wall following removal of projecting elements. Dimensional problems are produced which violate the principles of restoration, and the additional weight of 5,000 lbs. per foot of wall creates foundation problems. This procedure is judged a poor bargain at a high cost.

(c) Buttress Wall—In this concept a new wall would be constructed in front of and bonded to the existing wall to reinforce it. It would rest on its own foundation and be constructed of reinforced concrete faced with sandstone or marble to replicate the wall behind it.

The technique was set aside because it imposes dimensional changes to the architectural elevations which would not be simple to conceal, because it is neither "restoration" of the structure nor preservation of an historical monument, and because, structurally, an adequate, less expensive solution is available.

(d) Replacement Wall—The existing wall could be dismantled and replaced by a new wall incorporating reinforced concrete construction faced with sandstone or marble to the exact dimensions of the existing building. Again, this would mean the obliteration of the historical monument and replacement by a replica. It would also necessitate abandonment of offices along the wall for an extended period of time.

The most telling objection to this concept, however, is the complicated construction methods and tight control that would be necessary to accomplish the actual construction. A complex shoring system put in place as dismantling proceeded would require an intricate sequence of operations to prevent collapse of the work immediately involved and damage to interior spaces. Complicated construction means expensive construction. This and the hazard justify setting aside the technique.

D. Implementation

1. Structural repairs

If structural repairs are made, they should be carried out as a continuous operation proceeding from Wall 1 to Wall 7,[24] as indicated on the Projected Progress Schedule, Table 2. Walls 1 and 2 would be completed before proceeding to Wall 3, etc., so that the architectural restoration work could follow as soon as structural repair was accomplished, and a regular sequence of progress maintained. Walls 1 and 2 are chosen for initial work because fewer offices are in the South Wing adjacent to the west front wall. This would permit practical methods and procedures to be developed by the contractors and would achieve a smooth running operation before the work proceeded to the busy areas.

It is not anticipated that any rooms would have to be vacated, unless it was decided to adopt the poured slab technique for corner offices as previously described. This technique is unacceptable because its use disqualifies restoration.[25] Economy and certain structurally desirable characteristics accrue to the poured slab method of tying in the corners, but a structurally adequate alternative is available.

Working access to the walls would be via temporary ramps and bridges from a work and storage area in the southwest Capitol lawn (see Figure 1). The public would thus have unobstructed access to the Capitol and its terraces at all times.

2. Architectural restoration

Concurrent with structural repair operations a careful inspection must be conducted to establish the extent of necessary restoration and the proper sequence of operations. All dimensions necessary for shop drawings and models would be made and when structural repairs were finished the stonework operation would begin.

The experience gained by the test removal of paint, performed as part of this study, indicates that it will not be possible to completely remove the paint and paint stain without some damage to the stone. If, however, a degree of removal which results in an acceptable surface can be accomplished, restoration Scheme 2 could be adopted. Contractual agreements for the work could be written to permit a change to Scheme 2 if in the judgment of the responsible authorities the results of cleaning provide an acceptable finish.

3. Work scheduling

It is estimated that, with proper timing and phasing, the work can be accomplished in about three years with no single wall section being scaffolded for more than one year. The Projected Work Schedule, Table 2, indicates the general sequence and timing for the various operations.

The schedule shown is only one of many possible variations. Separate work operations can proceed concurrently and more than one wall can be operated upon at one time. This would be a matter of manpower and coordination; the final contract should include a network schedule. The schedule shown is presented as a reasonable approach.

A lead time of at least 6 months would be required for the preparation of plans and specifications, advertisements, and awarding of contract.

Footnotes at end of article.

E. COST ESTIMATE

Table 3 is a tabulation of estimated quantities and costs for Schemes 1 and 2, summarized as follows:

Scheme 1—Painted Sandstone $13,700,000.

Scheme 2—Exposed Sandstone $14,500,000.

Included are amounts for replacement of all windows, repair of existing roof slabs and old terrace walls, bird proofing, delays, funds for emergency repairs, and a contingency of 15%. Unit costs include an escalation factor. A liberal amount is included to cover full-sized trial method experiments which will be necessary to establish the best procedures during the early stages of the work, as well as retention of stone artists and experts to measure and make models for special carving and repair work.

The third Commission condition stipulates that "restoration can be so described or specified as to form the basis for performance of the restoration work by competitive, lump sum, fixed price construction bid or bids". A cost plus contract with an "upset price" seems more realistic and could be obtained on a competitive basis.

FOOTNOTES

[1] Figures are not reproduced in RECORD.

[2] 1967 Ed., Sec. 7140.

[3] The M.M.=Modified Mercali Scale, is a measure of ground shaking, a value of 5 representing a shock felt by most people, with breakage of dishes, windows and plaster.

[4] Ibid., Sec. 2314.

[5] See *"Design of Foundations for Buildings"*, by S. M. Johnson and T. C. Kavanagh, pages 135 and 136.

[6] Glenn Brown, *"History of the Capitol,"* page 37.

[7] Ibid., pages 42–43.

[8] Mudd Report, (1849), *"Documentary History of the Capitol."*

[9] See Appendix A for field reports, and data developed from this work.

[10] A rubble foundation wall. See Appendix A, Section 6 for contract plans which show exact locations of grout holes and test cores.

[11] Ibid., Section 1.

[12] Including the fact that one of the face stones was granite rather than sandstone.

[13] See Specification, Appendix A, Section 6.

[14] Water: Cement, by volume.

[15] Water: Cement: Sand, by volume.

[16] See Appendix A for computations and soils data.

[17] Damaged areas are shown on Figs. 12–15, and repair details are shown on Figs. 20–21.

[18] In this case, removal of upper elements will not endanger vaulting below.

[19] Orin M. Bullock, Jr., A.I.A., *"The Restoration Manual"*, (1966)

[20] The use of East Face stone is not prevented by the fact that a painted finish is used. Its limited supply is simply removed as a factor.

[21] Painting restores the surface to a condition it enjoyed for 150 years as did the White House, recently restored in similar fashion.

[22] This material can be cut from East Front stone presently stored at two sites: The Capitol Power Plant Yard and Rock Creek Park.

[23] *Documentary History of the Capitol.*

[24] For wall designations see Figures 2 to 6.

[25] See page 1 of this report-Commission condition No. 2.

THE PRESIDENT'S ANTIBUSING PROPOSALS

Mr. SPONG. Mr. President, last Friday I issued a statement regarding the antibusing proposals which the President announced on Thursday night and sent to Congress on Friday.

As I noted in that statement, I believe that the proposals contain some commendable recommendations, but I regret that consolidation cases are not specifically included in the requested moratorium legislation, and I am not satisfied that the bills, as proposed, eliminate the hyprocritical distinction between de facto and de jure segregation. Consequently, I shall explore these two facets of the recommendations as they are considered in Congress.

In the meantime, I ask unanimous consent that my statement of Friday, March 17, be printed in the RECORD.

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

STATEMENT OF SENATOR SPONG

I am pleased that the President has sent to Congress a message on the busing of public school children. For almost two years, I have been calling upon all levels of the federal government to join together in an effort to clarify the existing confusion over busing—over what is and is not required by the Constitution, over what is and what is not educationally sound. And, I have been calling for a policy which will be applied uniformly throughout our nation, which will eliminate the superficial distinction between *de facto* and *de jure* segregation and which will mean the same thing in Boston and Chicago that it means in Richmond or Norfolk or Charlotte or Atlanta.

The legislation which was sent to Congress today did not specifically include a moratorium on implementation of consolidation cases. I am aware that the "Student Transportation Moratorium Act of 1972" which the Administration proposed, can be interpreted as precluding consolidation orders because of the anti-busing provisions it carries. It is, however, significent that legislation adopted by the Senate earlier this month contained a specific provision staying consolidation cases. If the conference report on that legislation does not include provision for staying consolidation cases, I will offer such a provision as an amendment to the proposals made by the President.

This morning, I attended a briefing conducted by the Secretary of Health, Education, and Welfare. I appreciate the thrust of much of what he was proposing and the fact that the Secretary, in response to a question I asked, replied that the Richmond case was "one of the more obvious possible situations" where the Justice Department might intervene as the President indicated last night and as I had urged in a February 22 letter to him. I am, however, distressed that there is apparently no immediate relief in this legislation for Richmond, for Norfolk, for Charlotte, for Nashville, for those many cities of the South where there is massive busing of public school students, where school districts with great education needs are being forced to divert funds from educational endeavors to transportation, where there are burdens of finance and inconvenience and where there is more desegregation than in many areas of the North and West. I am distressed that there is no imminent relief for those cities because there is immediate relief for the cities of the North, where there would be, under this legislation, little busing despite the fact that there is more racial isolation than in the Southern cities I have mentioned.

This is not to say that the legislation is without positive features. There are, as a matter of fact, a number of provisions which I believe are long overdue.

First, the legislation recognizes that massive enforced busing to achieve racial balance is counterproductive and generally fails to accomplish its stated purpose of providing equal educational opportunity for all children.

Secondly, it recognizes that the neighborhood school, on the elementary level, is the appropriate basis for the assignment of school children.

Thirdly, it recognizes that the courts have not clearly and consistently determined exactly what steps must be taken in order to dismantle a dual school system and what constitutes a unitary school system.

Fourthly, this legislation seeks to remove a number of inequities among our schools and school systems, and it permits funds to follow a disadvantaged child wherever he may be attending school.

On the other hand, the legislation could be improved. While I am opposed to the massive enforced busing of public school children to achieve a racial balance, I believe we should make every effort to see that every child in this nation has an assured right to education in a good school. For this reason, I have long felt that use of a majority to minority transfer provision was desirable. Under that, any child in a school in which his race was in a majority could transfer to one in which his race was in a minority. While this procedure is mentioned in the legislation, I wish more emphasis had been placed upon it and more encouragement given to it.

Secondly, there is the continuing matter of the superficial distinction between *de facto* and *de jure* segregation. On February 22 I wrote a letter to the President. That letter and his messages and proposals seem to have much in accord. But an analysis of the language of the legislation which has been sent to Congress fails to assure me that the legislation will insure that the same requirements are placed upon Boston, New York, Detroit, and Chicago as are placed upon Richmond and Norfolk and other cities in my State and throughout the South. And, until the same requirements are placed upon all, I believe that desegregation policies continue to discriminate against one section of our nation, that they continue to place upon the citizens of that area burdens of finance and inconvenience that are not placed upon citizens in other sections, where there is more racial isolation. Furthermore, I believe that the dual desegregation policies approach a denial of the equal protection of the laws for the residents of that section of the country, whether they be black or white, rich or poor, advantaged or disadvantaged. And, until there is legislation to rectify that situation, legislation to treat all areas of the nation alike, there can be no final resolution to this pressing domestic issue. There are, in my mind, serious questions as to whether or not this proposed legislation would, in fact, treat all sections of our country the same. I am confident this matter will be pursued in Senate hearings.

SCALPING THE FIRST AMENDMENT: PART THREE "MONEY TALKS OR WHAT'S FAIR IS FAIR"

Mr. MOSS. Mr. President, why is it that whenever a breath of fresh air emerges from a regulatory agency the White House reacts instinctively as if it had been assaulted by a stink-bomb?

And why is it that the administration's sole apparent concern with protecting the first amendment lies in its solicitude for the sellers of soap suds?

The Federal Trade Commission has proffered a modest and, in my judgment, sound proposal urging its sister agency, the FCC to provide limited access to the broadcast media for counter-advertising, including some free time.

Let us be clear about what the FTC has and has not proposed. The FTC has not asked for an "equal time" right of consumer and environment groups to counter the express or implicit claims of all advertising. It has proposed a limited

responsibility on broadcasters to provide, for example, a brief segment of prime time on occasion, during which the broadcaster will provide access for paid, as well as unpaid, responsible counter ads.

The FTC's premises are hardly remarkable: Advertisers pay $3.6 billion a year to tell the public what they want us to hear about their products. Because of its unique position, both as a publicly licensed medium of communication and as the most powerful medium of communication, it has never been our national policy to limit the broadcast channels to the highest bidder.

We have come increasingly to recognize that advertisements are much more than simple adjuncts to the commercial marketplace. Television advertising, to succeed, must sell ideas as well as products or services. They must convince us of the need for the product, of its safety, of its social utility. It must convince us that consumption or use of the product will not bring more harm to our society and our environment than good, and they must convince us in general that an upward spiral of increased consumption serves the ultimate good of society.

Maybe; maybe not. In any event there is an increasing number of careful and informed critics who are prepared to argue both generally and specifically that the ideas explicit and implicit in many ads are unsound, unsupported by scientific evidence, or counterbalanced by significant facts, including enormous hidden social and environmental costs.

Curiously, the FTC proposal arises from an admirable sense of constitutional conservatism on the part of the Trade Commission. Chairman Kirkpatrick is plainly reluctant to pursue a course of regulatory censorship of advertising, beyond traditional areas of perception and misrepresentation. The Commission could seek to restrain the public airing of commercials which contain claims of disputed scientific certitude. But the Commission believes that it is far more in keeping with our traditions of free speech, as embodied in the first amendment, to enrich the marketplace of ideas by providing the public with access to differing points of view.

Predictably the White House, speaking for its monied constituents, once again proceeded to jump down the Commission's throat. Mr. Clay T. Whitehead, Director of the Office of Tele-communications Policy, readily attacked the FTC's proposal as irresponsible and unworkable and an effort by the FTC to pass the buck of effective regulation to the FCC. The White House, thereby, echoed the predictable outcrys emanating from advertisers and broadcasters.

Mr. Whitehead told the Colorado Broadcasters Association that the job of guarding abuses and excesses of broadcast advertising should be left to self-regulation by broadcasters and advertisers. One wonders just how far self-regulation would succeed when a broadcaster is faced with the choice of an irresponsible paid ad for a polluting widget and a scientifically solid unpaid counter-ad prepared by a public interest scientists' group, calling attention to the dangers of widget pollution?

I would think that advertisers, confident of the value of their products, would welcome the interest and excitement which could be generated by counter advertising. We might even generate a renaissance of competition for quality and price and maybe instead of imaginary consumers, more often than not put to sleep by commercials, buyers may be stimulated to pay attention to ads. Counter ads might bear such intriguing openers as: "Nice points to watch for in detergent ads." Or, "What do you pay for in a brand name?" Or, "Is buffering worth a plugged nickel in a headache remedy?" Or, "Is there any medical need for a feminine hygiene deodorant?" Or, "What, if any, are the differences between gasoline brands?" Or, "Will sugar rot your teeth?" Or, "Will reliance on headache powders and tension relievers lead to indiscriminate pill-popping?" Or, "The ecological costs of whiter than white wash."

Who knows, despite the fears of the White House, the public might become more informed and alert to the choices which citizens are going to have to make, if their society and their environment is going to be preserved.

But meanwhile the White House continues to redefine the first amendment. As I read Mr. Whitehead and his colleagues, the first amendment now reads as follows:

The public is entitled to access only to the best opinions money can buy. Paid advertisements must not be "cluttered up" with contrary facts. As for the first amendment in television, soap suds spiels are vigorously protected from contradiction. Indeed they are fully entitled to be as free from criticism as the utterances of the President.

What is Office of Telecommunications policy? Did the Congress create it? Does the Constitution provide for it? Then, what is its role? For whom does it speak? Mr. President, these are very disturbing questions which have arisen of late.

It appears that although the Congress created the Federal Communications Commission to regulate the airwaves, and we gave the President the power to appoint, with advice and consent, the Commissioners, and to set budgetary priorities of the agency, the President has now seen fit unilaterally to preempt the intent and will of the Congress.

I welcome the President's speaking out on matters affecting the American people. But to institutionalize a "Monday morning quarterback" for a legislatively created independent regulatory agency, is to toll the death bells for all regulatory agencies.

Although the Congress, through the Commerce Committee has prodded the FCC to act on cable television, for instance, the Office of Telecommunications Policy has stepped in and preempted the FCC. Now, the Federal Trade Commission has offered an interesting and positive contribution to the Federal Communications Commission, but even before as much as an acknowledgment from the FCC, the Office of Telecommunications Policy has issued its negative decree.

Mr. President, I intend to offer an amendment at the appropriate time during Senate consideration of the Executive budget, to preclude the expenditure of funds for the institutionalization of White House super agencies which interfere with the functions of the independent regulatory agencies.

Independent regulatory agencies need independence. The Commissioners are appointed by the President. They are approved by the Senate. Congress supervises the functions of the agencies through oversight hearings. The judiciary reviews the decisions of the independent regulatory agencies. A White House office meddling in the affairs of the independent regulatory agencies is tantamount to the destruction of our system of checks and balances.

Mr. President, I ask unanimous consent that several documents on the subject be printed in the RECORD.

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

[Before the Federal Communications Commission, Washington, D.C.]

STATEMENT OF THE FEDERAL TRADE COMMISSION

In the Matter of The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act—Docket No. 19260.

(Part III: Access to the Broadcast Media as a Result of Carriage of Product Commercials.)

A. INTRODUCTION

The Federal Trade Commission submits this statement to the Federal Communications Commission as an expression of its views with regard to Part III of the FCC's Notice of Inquiry concerning the Fairness Doctrine, *i.e.*, that part of the inquiry entitled "Access to the Broadcast Media as a Result of Carriage of Product Commercials".

As an agency with substantial responsibility for and experience with the regulation of advertising practices and the development and enforcement of official policy respecting the impact of advertising upon the economy, the Federal Trade Commission believes that it has information and views that are relevant to this proceeding, specifically with regard to the economic nature and market impact of broadcast advertising and with regard to appropriate governmental responses to these aspects of advertising. The following comments express the Commission's support for the developing concept of "counter-advertising", or the right of access, in certain defined circumstances, to the broadcast media for the purpose of expressing views and positions on issues that are raised by such advertising. Although the Commission recognizes the potential complications and various difficult problems with regard to implementation and possible ultimate effects, the Commission is of the view that some form of access for counter-advertising would be in the public interest.

None of the comments contained in this statement should be construed to indicate the Commission's views or position with regard to any issue involved in any adjudicative matter. Indeed, this presentation is based on policy considerations, and avoids specific examples of the general points conveyed in order to prevent any possible prejudgment of cases before the Commission in an adjudicatory posture.

B. MAGNITUDE OF THE PROBLEM

While much has been said in submissions by other parties concerning the social and cultural impact of broadcast advertising

upon the national character, relatively little attention has been paid to the economic role of advertising and its proper place as a pro-competitive and pro-consumer force in a free enterprise economy. It is, however, from this latter perspective that the Federal Trade Commission approaches the question of determining a responsible, effective governmental posture vis-a-vis broadcast advertising. While others have sought additional or different access rights premised upon a social or cultural view of advertising, such considerations are beyond the scope of this statement.

It would be difficult to overstate the significance of the advertising mechanism in the modern free enterprise economy. To a society that values highly individual choice, the maximization of consumer welfare, and technological progress, fair and effective advertising must be of critical importance. The technique of advertising permits producers to speak directly to purchasers concerning these major economic decisions. This opportunity enables the consuming public to be sufficiently informed of the range of available options to be in a position, without external aid, to define and protect their own interests through marketplace decision-making. Advertising further provides sellers both a vehicle and an incentive for the introduction of new products and new product improvements.

It is beyond dispute that for a host of consumer goods, broadcast advertising plays a predominant role in the marketing process. In 1970, advertising expenditures in this country totaled almost $7 billion, or approximately $115.00 per family in the United States. $3.6 billion of this sum, or about $60.00 per household, was devoted to broadcast advertising. The vast bulk of all broadcast advertising—$3.2 billion, or $52.00 per family—was television advertising.

Broadcast advertising is dominated by a relatively few major companies. In 1970, fewer than 100 firms accounted for 75% of all broadcast advertising expenditures. Ten firms were responsible for over 22% of all broadcast advertising expenditures, and the comparable figure for television advertising is even higher.

The top ten television advertisers spent almost one-quarter of the money spent for television advertising; the top five alone accounted for over 15%. Moreover, more than half of all TV broadcast advertising expenditures were accounted for by five product categories—food, toiletries, automotive products, drugs, and soaps and detergents—and the figure would have been even higher had cigarette advertising been included. Significantly, sales presentations for these products often raise issues, directly or implicitly, that relate to some of the nation's most serious social problems—drug abuse, pollution, nutrition and highway safety.

Much of advertising is truthful, relevant, tasteful and—taken as a whole—a valuable and constructive element in this nation's free competitive economy. On the other hand, it is widely asserted that advertising is capable of being utilized to exploit and mislead consumers, to destroy honest competitors, to raise barriers to entry and establish market power, and that there is a need for government intrusion to prevent such abuses.

It is plain that television is particularly effective in developing brand loyalties and building market shares. The careful combination of visual and sound effects, special camera techniques, the creation of overall moods, and massive repetition can result in a major impact upon the views and habits of millions of consumers. Thus, television has done more for advertising than simply providing animation to the radio voice; it has added a new dimension to the marketing process."[1]

Footnotes at end of article.

Finally, advertising today is largely a one-way street. Its usual technique is to provide only one carefully selected and presented aspect out of a multitude of relevant product characteristics. Advertising may well be the only important form of public discussion where there presently exists no concomitant public debate. At times, this way produce deception and distortion where the self-interest of sellers in disclosure does not coincide with the consumer's interest in information.

All of these elements of the modern-day advertising mechanism combine to endow broadcast advertising with an enormous power to affect consumer welfare.

C. THE ROLE OF THE FEDERAL TRADE COMMISSION IN ADVERTISING REGULATION

As a matter of first priority, the FTC is committed to a program designed to remedy the dissemination of false advertising. Ads that are false or misleading clearly possess the potential of conveying misinformation, distorting resource allocations, and causing competitive injury. The FTC is empowered to proceed against such advertising and constantly strives to do so, primarily by means of administrative litigation, seeking various remedies that will vitiate the effects of the challenged deception.

It is important, however, to recognize two limitations upon litigation as a tool in the regulation of deceptive advertising. First, litigation is generally a lengthy and very costly device for the resolution of conflicts and in many instances cannot be successfully concluded until the damage has been done. Further, the Commission's resources are far too small to permit a formal challenge to every case of deception coming to its attention, and we may select priorities that result in our neglect of some important instances of advertising abuse. Second, the litigation process may be a relatively unsatisfactory mechanism for determination of the truth or accuracy of certain kinds of advertising claims. As suggested below, some advertising is based on "controversial" factual claims and opinions, and litigation may fail to resolve the controversies involved.

The FTC has recently undertaken to utilize a supplementary tool for the encouragement of truth-in-advertising. This technique is the systematic use of information-gathering and public-reporting authority under Section 6 of the FTC Act, in the form of a program of submission, by all advertisers in selected major industries, of substantiation for advertising claims, for evaluation and use by the general public. While this program alleviates some of the shortcomings of litigation, it is nevertheless subject to two major limitations. First, this particular program can deal effectively with only those claims that purport or appear to be "objectively verifiable", *i.e.*, claims which, if set forth carefully, must be based on and supported by laboratory tests, clinical studies, or other fully "adequate" substantiating data. Second, this program also is limited by the extent of available resources. Even if the program succeeds in its expressed goal of seeking and then screening substantiating data with respect to a different product line each month, it will not reach most of the broadcasting advertising that appears each broadcast season.

In addition to being truthful, it would be desirable for advertising to be "complete" in the sense that it makes available all essential pieces of information concerning the advertised product, *i.e.*, all of the information which consumers need in order to make rational choices among competing brands of desired products. Where the advertising for a particular product fails to disclose the existence of a health or safety hazard involved in the use of the product, or where it fails to provide some other "material" informational element in a circumstance in which such nondisclosure results in a misleading impression concerning the advertised product, the FTC is empowered to require clear and conspicuous disclosure of the relevant warning or other information, through litigation and/or rulemaking procedures. Moreover, failure to disclose performance or quality data in a manner that would facilitate comparison of the value of all competing brands is also within the power of the FTC to correct, at least in those circumstances in which the nondisclosure denies to consumers the kind of information which is found essential to the proper use of the advertised product.

The FTC's efforts to foster "completeness" by means of such disclosures is subject to two impediments. First, required disclosures must compete for consumer attention with the advertiser's own theme and message. Given the limitations of short commercials, it is usually impossible to require inclusion of the entire range of material information which consumers need and should have for intelligent shopping.[2] Second, the FTC's efforts are necessarily aimed at imposing disclosure requirements upon advertisers who may believe their self-interest is hindered by the dissemination of the information in question. In such cases, one cannot expect the disclosures to be presented as clearly or effectively as would be the case of presentations by advocates who believe in the information and want it to be used by viewers and consumers.

D. THE ROLE OF COUNTERADVERTISING

The Commission believes that counter-advertising would be an appropriate means of overcoming some of the shortcomings of the FTC's tools, and a suitable approach to some of the failings of advertising which are now beyond the FTC's capacity. While counter-advertising is not the only conceivable technique, regulatory or otherwise, for ameliorating these problems, it may the least intrusive, avoiding as it does the creation of additional governmental agencies or further direct inhibitions on what advertisers can say. Counter-advertising would be fully consistent with, and should effectively complement, the enforcement policies and regulatory approaches of the FTC, to foster an overall scheme of regulation and policy which would deal comprehensively with many important aspects of advertising, to insure with greater certainty that advertising serves the public interest.

Any attempt to implement a general right of access to respond to product commercials must allow licensees a substantial degree of discretion in deciding which commercials warrant or require access for a response. Certainly, it is implicit in the foregoing discussion that not all product commercials raise the kinds of issues or involve the kinds of problems which make counter-ads an appropriate or useful regulatory device. It is equally clear, however, that the licensee's discretion should be exercised on the basis of general rules and guidelines which should, *inter alia*, specify the general categories of commercials which require recognition of access rights.

The FTC believes that certain identifiable kinds of advertising are particularly susceptible to, and particularly appropriate for, recognition and allowance of counter-advertising, because of characteristics that warrant some opportunity for challenge and debate. Such an opportunity has not been afforded sufficiently by means of broadcast news or other parts of programming, and it is unlikely that it will or can be so afforded by such means at any time in the future. Hence, it is believed that challenge and debate through counter-advertising would be in the public interest with respect to the following categories of advertising:

1. *Advertising asserting claims of product performance or characteristics that explicitly raise controversial issues of current public importance*

Many advertisers have responded to the public's growing concern with environmental decay by claiming that their products contribute to the solution of ecological prob-

lems, or that their companies are making special efforts to improve the environment generally. Similar efforts appear with respect to the public's concern with nutrition, automobile safety, and a host of other controversial issues of current public importance. While other approaches could, of course, be devised, the most effective means of assuring full public awareness of opposing points of view with regard to such issues, and to assure that opposing views have a significant chance to persuade the public, is counter-advertising, subjecting such issues to "free and robust debate" in the marketplace of ideas.

The FCC has apparently already recognized the existence of Fairness Doctrine obligations with regard to this category of advertising.[3] Hence, there is no need for further discussion at this point.

2. *Advertising stressing broad recurrent themes, affecting the purchase decision in a manner that implicitly raises controversial issues of current public importance*

Advertising for some product categories implicitly raises issues of current importance and controversy, such as food ads which may be viewed as encouraging poor nutritional habits,[4] or detergent ads which may be viewed as contributing to water pollution. Similarly, some central themes associated by advertising with various product categories convey general viewpoints and contribute to general attitudes which some persons or groups may consider to be contributing factors to social and economic problems of our times. For example, ads that encourage reliance upon drugs for the resolution of personal problems may be considered by some groups to be a contributing cause of the problem of drug misuse. Counter-advertising would be an appropriate means of providing the public with access to full discussion of all of the issues raised by the above types of advertising, thus shedding light upon the perceived effects of advertising upon societal problems.[5]

3. *Advertising claims that rest upon or rely upon scientific premises which are currently subject to controversy within the scientific community*

Some products are advertised as being beneficial for the prevention or cure of various common problems, or as being useful for particular purposes because of special properties with regard to performance, safety and efficacy. For example, a drug may be advertised as effective in curing or preventing various problems and ailments. A food may be advertised as being of value to various aspects of nutritional health or diet. A detergent or household cleanser may be advertised as capable of handling difficult kinds of cleaning problems.

Such claims may be based on the opinions of some members of the scientific community, often with tests or studies to support the opinions. The problem with such claims is that the opinions on which they are based are often disputed by other members of the scientific community, whose opposing views are based on different theories, different tests or studies, or doubts as to the validity of the tests and studies used to support the opinions involved in the ad claims.

If an advertiser makes such a claim in a manner that implies that the claim is well-established and beyond dispute, when in fact the claim is currently subject to scientific controversy, the advertiser probably would be guilty of deceptive advertising, and the FTC is empowered to take formal action to eliminate the deception. However, counter-advertising could be a more effective means of dealing with such cases. For example, formal government action against such claims might, on occasion, unfortunately create the misimpression of official preference for one side of the controversy involved in the advertising. Counter-advertising would permit continued dissemination of such claims while subjecting them to debate and vigorous refutation, providing the general public with both sides of the story on the applicable issues. Such debate and discussion would be a useful supplement to a continued FTC concern with other forms of abuse of advertising in this general category.

4. *Advertising that is silent about negative aspects of the advertised product*

We have noted some shortcomings of the FTC's efforts to foster "completeness" by imposing disclosure requirements. In these and other circumstances, the FTC believes that counter-advertising would be a more effective means of exposing the public to the negative aspects of advertised products. This is especially true for situations in which there is an open question as to the existence or significance of particular negative aspects.

For example, 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.

This list of examples could go on indefinitely, for the existence of undisclosed negative aspects, or "trade-offs" of one sort or another, is inherent in all commercial products and thus in all advertising. Rather than forcing all advertisers to disclose all such aspects in all of their own ads, it is more efficient and more effective to provide for such disclosures, to the maximum extent possible, through counter-advertising.

E. IMPLEMENTATION OF THESE PROPOSALS

While adoption of these suggestions may impose additional economic and social costs, the extent of such costs will largely depend on the mode of implementation. The FTC does not possess the expertise to speak definitely on this point, but it would appear that adoption of a variety of procedures and limitations could minimize the costs involved in these proposals, to a point where the countervailing public benefit far exceeds any loss.

For example, the Commission recognizes that it may be desirable to impose strict limits upon access rights within each category. In addition to limitations on the frequency and duration of replies in each category, it might be appropriate to prohibit replies to particular ads (as opposed to all advertising for certain product categories), at least for some types of advertising problems.

For example, with respect to the problems and issues raised by general ad themes, it might be appropriate to require replies to apply to all advertising involving the theme or product in question, rather than being aimed at one particular ad or one particular brand. Such a limitation, however, would be inappropriate with regard to some other categories, such as "public issue" ads, that explicitly raise controversial issues of current public importance in connection with the marketing of particular brands.

Further, it is not essential that counter-advertising be presented in the 30 or 60 second spot format so frequently utilized for commercial advertisements. In fact, that procedure might unacceptably increase either the cost of commercial advertising, thereby possibly raising barriers to entry into some consumer goods industries, or the percentage of broadcast time devoted to disconnected spots, thereby increasing the proportion of broadcast time devoted to selling and decreasing the proportion devoted to programing and entertainment. While there is reason to doubt that regular news or public service programs can effectively serve the counter-advertising function, short spots are not necessarily the only alternative. For instance, licensees might make available on a regular basis five minute blocks of prime time for counter-advertisements directed at broad general issues raised by all advertising involving certain products, as a way of fulfilling this aspect of their public service responsibilities.

Beyond these general considerations, it is only appropriate that the Federal Trade Commission defer to the Federal Communications Commission on questions that relate to the more precise mechanics of implementing the concept of counter-advertising. That these proposals are workable does, however, seem clear both from a review of prior FCC experience with application of the Fairness Doctrine to cigarette ads and from the submissions in this proceeding by those versed in the mechanics of implementing access rules. We do, however, urge that the following points be embodied in any final plan:

1. Adoption of rules that incorporate the guidelines expressed above, permiting effective access to the broadcast media for counter-advertisements. These rules should impose upon licensees an affirmative obligation to promote effective use of this expanded right of access.

2. Open availability of one hundred percent of commercial time for anyone willing to pay the specified rates, regardless of whether the party seeking to buy the time wishes to advertise or "counter" advertise. Given the great importance of product information, product sellers should not possess monopolistic control by licensees over the dissemination of such information, and licensees should not be permitted to discriminate against counter-advertisers willing to pay, solely on account of the content of their ideas.

3. Provision by licensees of a substantial amount of time, at no charge, for persons and groups that wish to respond to advertising like that described above but lack the funds to purchase available time slots. In light of the above discussion, it seems manifest that licensees should not limit access, for discussions of issues raised by product commercials, to those capable of meeting a price determined by the profitability of presenting one side of the issues involved. Providing such free access would greatly enhance the probability that advertising, a process largely made possible by licensees themselves, would fully and fairly contribute to a healthy American marketplace.

FOOTNOTES

[1] Television is now "an intimate part of most people's lives and is a major factor in affecting their attitudes, in bringing them information, and in setting their life styles." White House Conference Report on Food, Nutrition and Health, p. 2. See *Banzhaf* v. *F.C.C.*, 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969):

"Written messages are not communicated unless they are read, and reading requires an affirmative act. Broadcast messages, in contrast, are 'in the air' . . . It is difficult to calculate the subliminal impact of this pervasive propaganda, which may be heard even if not listened to, but it may reasonably be thought greater than the impact of the written word." 405 F.2d at 1100–01.

See also *Capital Broadcasting Co.* v. *Mitch-*

ell, Civ. Action No. 3495–70 (D.C. Cir., Oct. 14, 1971), upholding the constitutionality of the Congressional ban on broadcast advertising of cigarettes.

[2] The average 30 second spot contains only one major selling point. Yet the consumer may wish to make his or her choice with regard to many products on the basis of a potential multitude of relevant characteristics. See Testimony of Thomas C. Dillon, Hearings on Modern Advertising Practices Before the Federal Trade Commission, October 22, 1971, p. 322, 343. (All citations from the Hearings on Modern Advertising Practices are from the uncorrected transcript, and may be supplemented or contradicted by other testimony appearing elsewhere in the transcript.)

[3] See *In re Complaint of Wilderness Society, Friends of the Earth, et al.* (Esso), 31 F.C.C. 2d 729 (September 23, 1971); see also Letter to National Broadcasting Co., et al. (Chevron), 29 F.C.C. 2d 807, p. 7, n. 6 (May 12, 1971).

[4] The White House Conference Report on Food, Nutrition and Health, page 179: "The gaps in our public knowledge, along with actual misinformation, carried by some media are "contributing seriously to the problem of hunger and malnutrition in the United States." The Conference Report noted that some commercial messages in food advertising which purport to be educational are in fact counter-educational: "No other area of the national health probably is as abused by deception or misinformation as nutrition." The report urged that action be taken to require corrective information to the public concerning any prior deceptive advertising. "This action is necessary to counteract the tremendous counter-education of our children by false and misleading advertising of the nutritional value of foods, particularly on television."

[5] Support for the application of Fairness Doctrine rights to this general category of advertising can be found in *Friends of the Earth* v. *FCC*, Dkt. 24,566 (D.C. Cir., Aug. 16, 1971): "Commercials which continue to insinuate that the human personality finds greater fiulfillment in the large car with the quick getaway do, it seems to us, ventilate a point of view which not only has become controversial but involves an issue of public importance. When there is undisputed evidence, as there is here, that the hazards to health implicit in air pollution are enlarged and aggravated by such products, then the parallel with cigarette advertising is exact and the relevance of Banzhaf incapable."

NEW DEVELOPMENTS IN ADVERTISING AND MARKETING LAW

(Remarks of Miles W. Kirkpatrick, Chairman, Federal Trade Commission, February 28, 29, 1972)

Over 100 years ago John Stuart Mill observed that "Not the violent conflict between parts of the truth but the quiet suppression of half of it, is the formidable evil; there is always hope when people listen to both sides; it is when they attend only to one that errors harden into prejudices, and truth itself ceases to have the effect of truth by being exaggerated into falsehood."

Mill's observation contains the essence of the Federal Trade Commission's recent counter-advertising Statement. It is to that Statement that I would like to address my remarks today.

The Statement was filed on January 6, 1972, in response to the Federal Communications Commission's notice of inquiry titled: In the Matter of the Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act,[1] Part III: Access to the Broadcast Media as a Result of Carriage of Product Commercials. In its Statement, the Commission set out the four basic economic facts which undergird our indorsement of the concept which has become known as "counter-advertising." First, advertising plays a significant role in the maintenance of our free economy. Second, broadcast advertising—some $3.6 billion a year—represents a large quantum of economic power. Third, broadcast advertising—especially television advertising—is a uniquely effective method of getting across the advertiser's message. Fourth, television is a one-way street; despite broadcast advertising's enormous impact, no one but the advertisers gets to talk.

Having thus delineated the dimensions of the general economic situation, the Statement next discussed several limitations on the FTC's ability to deal effectively with all economic problems of broadcast advertising which may affect competition in consumer products. We cannot regulate it all because we lack the resources to do so. Even if we had unlimited resources, we should not regulate it all for the simple reason that not all of it—indeed relatively little of it—directly violates any laws enforced by the FTC.

Each advertiser is free to pick and choose among the many things he *could* say about his product to select the things he actually *does* say. Unless the advertiser by his selectiveness materially misleads the consumer, the Commission cannot second-guess the advertiser's emphasis. That leaves the consumer with an incomplete set of facts when he may wish to know more, or, indeed, needs to know more if he is to make a "rational" purchase decision.

In the heart of its Statement, the Commission said:

"The Commission believes that counter-advertising would be an appropriate means of overcoming some of the shortcomings of the FTC's tools, and a suitable approach to some of the failings of advertising which are now beyond the FTC's capacity. While counter-advertising is not the only conceivable technique, regulatory or otherwise, for ameliorating these problems, it may be the least intrusive, avoiding as it does the creation of additional governmental agencies or further direct inhibitions on what advertisers can say. Counter-advertising would be fully consistent with, and should effectively complement, the enforcement policies and regulatory approaches of the FTC, to foster an overall scheme of regulation and policy which would deal comprehensively with many important aspects of advertising, to insure with greater certainty that advertising serves the public interest.

"Any attempt to implement a general right of access to respond to product commercials must allow licensees a substantial degree of discretion in deciding which commercials warrant or require access for a response. Certainly, it is implicit in the foregoing discussion that not all product commercials raise the kinds of issues or involve the kinds of problems which make counter-ads an appropriate or useful regulatory device. It is equally clear, however, that the licensee's discretion should be exercised on the basis of general rules and guidelines which would, *inter alia*, specifiy the general categories of commercials which require recognition of access rights.

"The FTC believes that certain identifiable kinds of advertising are particularly susceptible to, and particularly appropriate for, recognition and allowance of counter-advertising, because of characteristics that warrant some opportunity for challenge and debate. Such an opportunity has not been afforded sufficiently by means of broadcast news or other parts of programming, and it is unlikely that it will or can be so afforded by such means at any time in the future. Hence, it is believed that challenge and debate through counter-advertising would be in the public interest with respect to [certain] categories of advertising."

The first category we proposed is *advertising asserting claims of product performance or characteristics that explicitly raise controversial issues of public importance.* This category, which, since 1967, has been treated by the courts and the FCC as requiring fairness doctrine treatment in certain cases,[2] comprehends ads raising explicitly such controversial issues of public importance as pollution and auto safety.

The second category is advertising stressing broad recurrent themes, which affect the purchase decision in a manner that implicitly raises controversial issues of current public importance. Here we mentioned, for example, food ads which may be viewed by some as encouraging poor nutrition habits, This category, too, has received at least implicit court approval.

A third category is advertising claims which rest upon or rely upon scientific premises which are currently subject to controversy within the scientific community. While the FTC is empowered to take formal action to eliminate deception resting on scientific claims, such action might create the unfortunate misimpression that the government has an official preference for one side of the controversy. Counter-advertising would avoid that governmental intrusion.

The fourth category is advertising which is silent about negative aspects of the advertised product. This category is self-explanatory.

That, then, is in summary our rather modest counter-advertising Statement. Today, I would like to add some perspective by discussing, and I hope, answering some of the comments which have been made about counter-advertising. In effect, I will attempt to demonstrate the utility of counter-advertising by engaging in some myself.

I would like to take up first the charge that the FTC is shirking its regulatory responsibilities by passing the buck to the FCC, and that one of the reasons we prefer conuter-advertising to our own regulation is because we feel ourselves unduly constrained by our procedures. Neither point is correct.

The FTC is empowered by law to put an end to unfair or deceptive advertising if it would be in the public interest to do so. We intend to continue to use this power to enforce the law as vigorously, rapidly, and effectively as we can. The purpose of counter-advertising is not to end false claims but to permit private groups and individuals in appropriate cases to dispute claims with which they disagree. Obviously, of course, there may be some situations in which a claim is susceptible of both FTC regulation and counter-advertising.

In a sense, that is the case now. Anyone can write a letter to the editor or print a leaflet or testify before a Congressional committee about advertising which he believes raises issues of explicit or implicit public controversy, rests on unresolved scientific premises, or fails to discuss negative aspects of a product. None of this activity is a substitute for FTC action in a proper case; rather, it complements FTC action. All that counter-advertising would do is permit one who wishes to comment on broadcast advertising to do so over the same airwaves which carried the ad in the first place.

The charge that we seek to abridge advertisers' procedural rights surprises me. Subjecting a respondent to a cease and desist order is of significant legal force; a cease and desist order carries serious penalties for violation and the FTC will continue to afford full procedural and substantive rights to all subject to its procedures. But to argue that

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[1] Docket No. 19260.

[2] *Television Station WCBS–TV*, 8 F.C.C. 2d 381 (1967), *aff'd Banzhaf* v. *FCC*, 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied* 396 U.S. 842 (1969). *Friends of the Earth* v. *FCC, U.S.* App. D.C. —, — F.2d — (No. 24,566, August 16, 1971).

no advertiser should be criticized, or commented upon, or discussed, or praised, for that matter, without due process of law, trivializes due process. Advertisers frequently comment on each other's products. That is called competition. Magazines and newspapers often praise or criticize ad campaigns. These are called editorials. But when we propose that the public be allowed to comment on TV about TV ads, we are charged with attempting to bypass our responsibilities. There may be some criticisms of substance of counter-advertising, but that certainly is not among them.

Let me emphasize, too, that we have *not* proposed an equal time doctrine. We did not suggest that each broadcast commercial should trigger a right to a free reply. We specifically and quite willingly, I might add, deferred to the FCC with respect to the mechanics and implementation of counter-advertising. We suggested that it might be appropriate for the FCC to prohibit in some categories replies to particular ads, allowing only general replies to all advertising for broad product categories. We recognized the necessity of strictly limiting the frequency, number, and duration of reply ads.

We did recommend that the FCC require that anyone who was willing to pay for time be permitted to buy it, and we recommended that the FCC require licensees to provide some free time to those unable to pay for it.

It has been said that, if implemented, counter-advertising would drive advertisers off the air because they would not wish to run their messages in the same medium which permits attacks upon them. This, our critics say, would bankrupt broadcasters and ultimately deprive the public of free TV. If this were truly so, I suppose Ford would never advertise on the same network as Chevrolet. But, more seriously, I am deeply concerned by the notion that the majority of advertisers are able or willing to play the game only if the rules free them from any disagreement. In the first place, all advertising involves at least the implication that a competitor's product is less desirable than one's own. Some ads expressly criticize the much maligned "Brand X" or even name the competing product. I see no reason why counter-advertising should be any more deleterious to Product X than ads by the maker of Product Y. Why, in any event, should an advertiser have the right to monopolize the consumer's attention by trumpeting the virtues of his product when a consumer who learned of an aspect undesirable to him might not buy it if the attention monopoly were ended?

Then it is said that the presence of counter-ads will create a Tower of Babel, a multiplicity of ads so great that no one will be able to sort out anything. As I have already mentioned, the FTC did not propose that the FCC require limitless counter-ads. On the contrary, we explicitly recognized the desirability of limits as to frequency, duration and number. For example, we made the modest suggestion that it might be appropriate to cluster the free time in one prime five minute block per week. Nor did our proposal contemplate that all individuals or groups be granted access. Rather, we were concerned with increasing the points of view to be accommodated. Not all licensees will grant free time to all counter-advertisers. It is enough that each licensee accommodate a few counter-advertisers.

But how, it is asked, will licensees, without risking the wrath of the FCC, sort out those who wish to counter-advertise and arrange them? How, I ask, do licensees select among the variety of public interest spots now available to them? Obviously, they exercise their best judgment, consistent with their obligation to further the public interest, convenience, and necessity. Since there has never been a license denial for failure to select wisely, I believe the broadcasters' continued best judgment will be quite adequate to the task of selecting counter-ads.

And, if the broadcasters select, how is the consumer to make any sense of the welter of ads and counter-ads? The answer depends on what a consumer is supposed to learn from counter-advertising. If a consumer is supposed to receive a flash of absolute revealed truth complete with breadth and depth of understanding, from an ad or a counter-ad, then one minute ads or counter-ads are clearly inadequate. Just as an ad for a product tries to catch a consumer's interest, give him a piece of information, and induce him to consider the advantages of a product, so a counter-ad should catch his interest, give him a piece of information, and induce him to consider other aspects of a product. The key is the word "consider." No product ad is a dissertation with footnotes. It is a prod to thought, a spur to action. Neither must a counter-ad answer all the consumer's questions. If it encourages him to reflect, to think twice, to weigh for himself, to seek more information, a counter-ad will have done quite enough.

Without belaboring the point, I think those who would protect the consumer from too much information do him a real disservice. No consumer can know everything about all products any more than any voter can know everything about all issues. With respect to the electorate, Thomas Jefferson said:

"I know no safe depositary of the ultimate powers of the society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion."

The analogy to counter-advertising is apt.

It has also been claimed that counter-advertising in broadcast advertising violates the first Amendment, because the First Amendment no more permits the government's requiring that material be broadcast than it permits the government's banning or censoring of broadcast material. Some broadcasters are saying that their right of free speech will be unconstitutionally burdened by requiring them to run counter-advertising. The trouble with this argument is that it ignores the question of whose First Amendment rights are at issue. As the Supreme Court held in *Red Lion:*

"It is the right of the viewers and listeners, not the right of the Broadcasters which is paramount. . . . It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolisation of that market, whether it be by the Government itself, or a private licensee. It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC." [3]

But it is further argued that requiring access to television unfairly discriminates against broadcasters as compared to other media which carry advertising. This argument, of course, ignores the differences between television and other media.[4] A consumer who watches television must take evasive action which would do credit to Snoopy as the Red Baron if he is to avoid all television commercials and still watch TV. As a practical matter, most people will agree that the television viewer is a member of the advertiser's captive audience.

We trade regulation lawyers are not often dealers in the First Amendment, but the concepts behind the antitrust laws and the First Amendment do seem to converge at counter-advertising. If I were a potential monopolist—of ideas or of goods—I would revel in a system which lets me speak and sell at will but barred all those who would speak with ideas rather than with competing products. It is against just such monopolization that counter-advertising is aimed.

Another criticism is that no one will be able to regulate the counter-advertisements because their ads will be protected by the First Amendment. Thus, it is argued, advertisers who are held by the FTC to ever more rigorous standards of veracity will be subjected to attack which may be totally untruthful and totally unregulated. While this argument has surface appeal, I believe it is misplaced. I think *New York Times Co.* v. *Sullivan* is authority for the proposition that the First Amendment will not protect those counter-advertisers whose falsehoods are delivered with "actual malice"—that is, when the counter-advertiser knows his statement is false or he acts with reckless disregard of whether his statement is false or not.

That leaves those who, through their innocent mistakes, deceive. In some instances such innocent misstatements would be constitutionally protected, although clearly this would not be the case for those counter ads that constitute purely commercial speech.[5] I believe that we should risk the possibility of a few such distortions in order to achieve the balancing benefits that an effective counter-advertising mechanism would create for the American consumer. While our case for counter-advertising does not rest upon First Amendment considerations, it is perhaps noteworthy that chancing the possibility of some innocent distortion by counter-advertisers is fully consistent with the First Amendment's purposes.

I do not find at all persuasive the arguments leveled at our Statement. Perhaps what is even more striking is that very critic has in effect said "Yes, but . . ." Actually, our fundamental proposition, *i.e.*, that broadened access rights for counter-ads may make sense as a matter of national economic regulatory policy, has gone virtually unchallenged. Instead, detractors have concentrated on alleged adverse side effects that would overwhelm the conceded good our proposal would accomplish.

For the reasons expressed in the original Statement, I continue to believe that Counter-Advertising would materially contribute to the goal of a healthy and informed marketplace. In short, I do not fear that our proposal would burn the barn to roast a pig. I am confident that, whatever the niceties of unsettled or disputed questions of law that bear on our proposal, the FCC and the Courts will fashion procedures in accordance with the public interest.

I had thought our counter-advertising Statement a small contribution to the FCC's inquiry about the fairness doctrine, and I still think so. The ensuing outcry has surprised me. Perhaps now that you have heard me out you will agree that the proposal is a reasonable one and one that deserves consideration.

In closing, let me say that reasonable men may, I suppose, differ as to the merits of the Federal Trade Commission's proposal. I would hope, therefore, that the matter will be made the subject of national discourse and reasoned examination. To quote from the remarks of a third learned gentleman of over one hundred years ago—"Men are never so likely to settle a question rightly as when they discuss it freely." Those are the words of Thomas Babington Macauley in 1830, equally descriptive, I suggest, of the pur-

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[3] *Red Lion Broadcasting Co.* v. *FCC*, 395 U.C. 367, 389 (1969).

[4] *Television Station WCBS–TV*, 8 F.C.C. 2d 381 (1967), *aff'd Banzhaf* v. *FCC*, 405 F. 2d 1082 (D.C. Cir. 1968), *cert. denied* 396 U.S. 842 (1969).

[5] *New York Times* v. *Sullivan*, 376 U.S. 254, 265–6 (1963).

poses of counter-advertising as of the kind of discussion that should surround the consideration of that proposal.

Thank you.

FTC STATEMENT ON COUNTER-ADVERTISING

Last June, the F.C.C. issued a general "Notice of Inquiry" concerning "The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communication Act," inviting all interested parties to submit their views concerning a number of changes being proposed in the principles governing access to broadcast media for discussion of public issues. the Broadcast Media as a Result of Carriage Part III of the inquiry concerns "Access to of Product Commercials." The Notice for this part invited comments concerning recent proposals for recognition and allowance of "counter-advertising," or the right of access to the broadcast media for the purpose of expressing views and positions on issues that are raised by commercial advertising.

In August, the United States Court of Appeals for the District of Columbia handed down a decision that has an important impact upon the issues involved in Part III of the F.C.C.'s inquiry. In *Friends of the Earth* v. *F.C.C.*[1], the court reversed the F.C.C.'s denial of a request for access to the broadcast media to respond to issues raised by commercials for automobiles and gasoline. In remanding the case for reconsideration by the FCC, the Court rejected the FCC's distinction between cigarettes on the one hand, for which counter-advertising was previously allowed, and automobiles and gasoline on the other, for which counter-advertising has not heretofore been permitted. This decision greatly increases the urgency and importance of this part of the F.C.C.'s general inquiry.

The F.T.C. considered itself to be an "interested party" in this part of the inquiry, in view of its central role in advertising regulation. The Commission believed that it had information and views of relevance to the inquiry, specifically with regard to the economic nature and market impact of broadcast advertising. Hence, it was deemed appropriate for the F.T.C. to submit a statement of its position concerning the general concept of counter-advertising.

Although the Commission recognizes the complications and problems with regard to implementation, the Commission is of the view that some form of access for counter-advertising would be in the public interest. This is so when broadcast advertising is viewed in the context of the contemporary marketing economy.

For a host of consumer goods, broadcast advertising plays a predominant role in the marketing process. Although it is, for the most part, truthful and useful, it is capable of being utilized to exploit and mislead consumers, to harm honest competitors, to raise entry barriers and establish market power. These are traditional concerns of the F.T.C., and the F.T.C. is committed to the control of these practices. However, the Commission's ability to meet these objectives is subject to three limitations: (1) litigation is generally a lengthy and costly device for resolving factual conflicts involved in advertising; (2) the Commission's limited resources preclude formal action against all significant advertising abuses; and (3) formal adjudication is an unsatisfactory mechanism for determining the truth or accuracy of some of the issues and controversies raised by advertising.

Counter-advertising may be an appropriate means of overcoming these limitations upon the F.T.C., and its feasibility as a suitable approach to some of the present failings of advertising which are now beyond the F.T.C.'s capacity should be explored. While it is not the only conceivable supplementary mechanism, it may be the least intrusive, avoiding any further direct inhibitions on what advertisers can say.

As indicated in its statement, the F.T.C. believes that certain identifiable kinds of advertising are particularly appropriate for recognition and allowance of counter-advertising, because of characteristics that warrant some opportunity for challenge and debate. Such advertising would include the following:

1. Advertising asserting claims of product performance or characteristics that *explicitly* raise controversial issues of current public importance.

2. Advertising stressing broad recurrent themes, affecting the purchase decision in a manner that *implicitly* raises controversial issues of current public importance.

3. Advertising claims that rest upon or rely on scientific premises which are currently subject to controversy within the scientific community.

4. Advertising that is silent about negative aspects of the advertised product.

The Commission is aware that any recognition of a general right of access to respond to product commercials will involve major complications with regard to implementation. It would appear so with respect to any new approach to the solution of this problem. The F.T.C. does not feel, however, that these complications should preclude exploration of this approach. The F.T.C. must naturally defer to the F.C.C. on all aspects of implementation. We do, however, offer a few general comments and suggestions. First, it is clear that the right of access must, of necessity, be substantially limited in scope and duration in order to be consistent with the continuation of a commercial broadcasting system. It is quite apparent that not all advertisements raise the kinds of issues or involve the kinds of problems that make counter-ads an appropriate or useful regulatory device. One way or another, licensees must be given some degree of discretion in deciding which commercials warrant a right of response.

In addition to limitations on the frequency and duration of counter-ads, it might be appropriate to prohibit replies to particular ads (as opposed to all advertising for certain product categories), at least for some types of advertising problems. Further, it is not essential that counter-advertising be presented in the 30 or 60 second spot format so frequently utilized for commercial advertisements. One possible alternative would be for licensees to make available, on a regular basis, five minute blocks of prime time for appropriate spokesmen of opposing points of view with regard to the issues raised by current advertising, as a way of fulfilling this aspect of their public service responsibilities.

Finally, the Commission urges that the following points be considered for adoption in any final plan for counter-advertising:

1. Adoption of rules and guidelines for determining which commercials warrant a right of response.

2. Open availability of 100% of commercial time for anyone willing to pay the specified rates, regardless of whether the party seeking to buy the time wishes to advertise or to "counter" advertise.

3. Provision by licensees of a substantial amount of time, at no charge, for persons and groups that wish to respond to advertising like that described above but lack the funds to purchase available time slots.

[From the Washington Post, Feb. 20, 1972]

ADMINISTRATION HITS FTC COUNTER-ADVERTISING PLAN

(By Carole Shifrin)

Clay T. Whitehead, one of President Nixon's top advisers on communications, last week turned his wrath on the Federal Trade Commission.

The target of Whitehead's criticism was an FTC proposal to the Federal Communications Commission that broadcasters be required to grant free air time to those who want to challenge commercial advertising claims.

In a speech to the Colorado Broadcasters Association, Whitehead, director of the White House Office of Telecommunications Policy, charged the FTC with shirking its responsibility of monitoring false advertising and, instead, passing the buck to the FCC.

Atlhough it has adequate regulatory tools to do what it is supposed to do, Whitehead charged, "the Trade Commission would like to bring the FCC into the process and bypass 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," he said. "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."

Whitehead also called the proposal unworkable—one which could produce "a bewildering clutter of personal opinions thrust before consumers every time they turn on their radios and TVs."

Whitehead's attack is only the latest in the growing controversy over the FTC proposal.

The agency says advertising has largely been a "one-way street" with all the air time and money in the hands of major corporate advertisers. The public would be served if broadcasters were required to make available "a substantial amount of time" free to those who want to "counter" advertising claims involving controversial issues such as pollution, the FTC contends. Thus, a public-interest group might challenge a company's claim that its product helps clean the environment.

The FTC also recommended that stations be required to sell broadcast time to anyone willing to pay the going price. Licensees currently can accept or reject advertising.

The FTC just doesn't have the financial and human resources to go after every ad it suspects is deceptive, it told the FCC. And many of the cases it does bring take years to resolve, with an order to cease the advertising in question often coming years after the ad campaign was ended.

The FCC is reviewing the "fairness" doctrine, which generally requires broadcasters to air both sides of controversial issues. This standard has been applied primarily to political issues but the FCC has been under increasing pressure from public interest groups to apply it to commercial advertising.

The FCC hopes to hold oral presentations in late March, and to announce its conclusions as soon as possible.

Broadcasters and advertisers, not surprisingly, oppose the FTC proposals. National Association of Broadcasters president Vincent T. Wasilewski argues that, because the broadcast industry depends solely on advertising for revenue, forcing it to provide free time could seriously damage its economic base.

The American Association of Advertising Agencies says counter-advertising would be "counter-productive" because customers might choose not to run advertising if it might be subject to counter-ads.

Robert Pitofsky, director of the FTC Bureau of Consumer Protection, said some criticism of the FTC plan sounds like "a response to some other proposal, not the one we put forward."

The agency is not out to destroy the broadcast industry financially or to burden it unduly, he indicated. A counter-ad in response to every paid ad is not envisioned by the commission; a five-minute block of time made available on a regular basis, for example, may be sufficient, he noted. "It's not an equal-time proposal as some people have characterized it.

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[1] Dkt. No. 24,556 (D.C. Cir., Aug. 16, 1971).

"I don't see how a five-minute block of time once a week could undermine the economic base of the broadcast industry or could result in dreadful clutter on TV," he said.

Support for counter-advertising has come from consumer and public interest groups, some of whom have petitioned the FCC in the past for access to the airways.

A citizen advisory group to Virginia Knauer, the president's assistant for consumer affairs, has suggested that an outright "equal time" plan might be in order. The informal group of representatives from 36 national voluntary organizations urged that free broadcast time be allotted to consumer education to aid "an audience drowning in a sea of commercials."

Noting that the question of how much free time requires some study, the report contended it was "not entirely unfair" to suggest that a time equal to that spent on paid commercials be set aside.

American consumers do not presently get "a fair deal" from the broadcast industry, the FCC, or the advertising industry, the group said.

[From Broadcasting, Feb. 21, 1972]

MOUNTING ATTACK ON COUNTERADS—FTC-TO-FCC PROPOSAL GOES LESS THAN NOWHERE WITH INDUSTRY; A FOR-THE-ADMINISTRATION WHITEHEAD PUBLICLY DENOUNCES PLAN

The Federal Trade Commission's proposal for "counterads" was under mounting attack last week from members of the advertising and broadcasting fraternities alike. But the sharpest and most significant attack came from neither group but from the Nixon administration itself, represented by Clay T. Whitehead, director of the Office of Telecommunications Policy.

Mr. Whitehead, making it clear he was speaking for the administration, denounced the proposal as an ill-conceived effort to solve a philosophical problem that advertising in general poses for some consumer advocates."

He went even further—to express the administration's support of the existing system of advertiser-supported broadcasting. "This administration does not believe that advertising is inherently evil," he said. "We do not believe that advertiser support of the commercial broadcasting system is polluting the minds of America.

"This administration believes in a strong and free private-enterprise system of broadcasting for our country and in the effective but responsible government. We intend to work to keep it that way."

Mr. Whitehead, who spoke at the Colorado Broadcasters Association's legislative dinner in Denver, which was attended by members of the state's congressional delegation, was elaborating on criticisms he had voiced of the FTC proposal at a congressional hearing two weeks ago (BROADCASTING, Feb. 14).

The proposal, filed in the FCC's overall inquiry into the fairness doctrine, has been denounced by advertisers and their agencies, as well as by broadcasters, as a mechanism for driving advertisers from broadcasting.

The point was made again last week, by Mr. Whitehead as well as by two major advertising associations—the American Association of Advertising Agencies and the American Advertising Federation—in comments filed with the FCC.

The filings came against a background of reports from sources close to the leadership of the advertising fraternity that a solid front has been formed by advertisers and broadcasters in opposition to the proposal.

The Television Bureau of Advertising, in an unusual move, is expected to file an opposition to the counterad proposal with the FCC this week. A news conference has been called for tomorrow (Feb. 22) in New York to be attended by Theodore Sorenson, attorney and former special counsel to President Kennedy; Normal E. (Pete) Cash, and Albert J. Gillen (Poole Broadcasting), TVB's president and chairman, respectively.

It was indicated that Mr. Sorenson, who bluntly attacked Washington's posture on TV advertising in a speech in Chicago last fall during TVB's annual meeting (BROADCASTING, Nov. 15, 1971), has been retained recently to be its Washington "spokesman."

The FTC proposal would require broadcasters to make time available for responses to four kinds of commercials: those that explicitly raise controversial issues, those that raise them implicitly, those that rest on scientific premises that are in dispute in the scientific community and those that are silent about negative aspects of the products.

It is the last two categories that are the cause of most concern; the others are already covered by the fairness doctrine. In addition, the broadcaster would be required to make free time available to those wishing to rebut an ad, but lacking the money.

Mr. Whitehead was critical of the proposal that free time be made available. He said it would result in a "hidden subsidy," with the public ultimately paying for both the advertising and the counteradvertising messages.

But it was the entire philosophy behind the proposal he appeared to find distasteful. He said the FTC seems to be motivated by concerns shared by some who feel that the American people are being sold "a consumption-oriented way of life." He said this is "a fit subject for government redress—a remedy in addition to the traditional controls on false and misleading advertising—but presumably not by the FTC.

And like the AAF and the AAAA, Mr. Whitehead was critical of the FTC for attempting to shift some of its responsibilities to the FCC—but his criticism was harsher. The associations said simply that the FCC was not equipped to handle those responsibilities.

Mr. Whitehead's view: "Of course, the trade commission would like to bring the FCC into the process and bypass 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."

Mr. Whitehead was scornful of the FTC's contention that the proposal was workable. He said that although the proposal is intended to aid consumers, "the public would be done a disservice if all that counteradvertising achieves is a bewildering clutter of personal opinions thrust before consumers every time they turn on their radios and TV's."

And what of the responsibility for protecting the public from false material in the counterads? Mr. Whitehead noted that, when asked that question, the FTC's director of consumer protection, Robert Pitofsky, said the agency would face a "ticklish" First Amendment problem if it attempted to monitor the counterads. "Ticklish indeed!" Mr. Whitehead said. "One would have hoped that a federal agency would have been more sensitive to this problem before proposing a requirement of counteradvertising."

Mr. Whitehead said that the job of guarding against abuses and excesses of broadcast advertising should be left to self-regulation by the two industries concerned, with the FTC and FCC playing their "proper roles" in assuring 'public vigilance."

He said he strongly supports the FCC's frequently stated position that advertising should be regulated as a business practice by the FTC. "But product ads should not be regulated, TV or not, as expressions of ideological, philosophical or political viewpoints," he said.

The AAF and the AAAA, in their filings, said the FTC is attempting to stretch the fairness doctrine beyond its legal limit in seeking to apply it to all product advertising. And Mr. Whitehead, who has proposed scrapping the doctrine in favor of enforcing case-by-case fairness in the discussion of controversial issues, said the FTC would "expand the doctrine's already chaotic enforcement mechanism far beyond what was originally intended and what is now appropriate."

The AAAA, whose comments were prepared by Mahlon F. Perkins, its general counsel, saw the FTC proposal as antiadvertising in intent. It charged that the FTC's "real objective is to transform broadcast advertising into a detailed specification guide" and that the proposal is "designed to dilute brand loyalties and whittle down market shares."

The AAF comment, which was signed by Howard H. Bell, the federation's president, saw another possible danger in the proposal. If an advertiser could prove he has lost business as a result of counterads, Mr. Bell said, he could sue for trade libel—with the broadcast licensee involved named a defendant. Mr. Bell said the advertiser could cite "traditional notions of licensee responsibility" as a basis for assuming that the licensee "knowingly participated" in the presentation of the counterads.

Behind the formal filings, there were the privately expressed concerns of New York advertising executives, who spoke candidly, although not for attribution. One said the FTC proposal could affect almost any company in almost any situation but would most likely impact first on such vulnerable advertiser groups as manufacturers of breakfast cereals, drugs and remedies and gasolines.

A check of leading cereal makers—General Foods, Kellogg, General Mills, Quaker Oats, Ralston Purina and Nabisco—failed to elicit comment for the record. But one spokesman said flatly the FTC proposal could have a potential restraint on advertising—"it could encompass many advertising situations and in many fields." He also said that "Pete Allport [president of the Association of National Advertisers] has said it for us. We think it best to continue to have him speak for us." Mr. Allport warned two weeks ago that FCC adoption of the FTC proposal would be followed by advertisers' "exodus" from broadcasting.

Talks with advertising officials also disclosed the purported existence of what was described as a "chilling" factor. The mere threat of the FTC proposals, as well as the court rulings on counterclaims, have instilled caution among some advertisers, one source said.

It was noted that one company had dropped its TV-advertising plans when network continuity acceptance sources indicated the prepared commercials might subject the advertiser to fairness and the right of reply. (Network verification of this report was not available.)

There also was speculation that the issue of lead-free gasoline had left a gash in the ad plans of petroleum companies. It is not known whether monies pulled out of advertising as a result were "put back in or diverted into something else."

These two statements, made by advertising executives, would appear to sum up opinion on FTC's proposals: (1) "It is hard to find any advertisers that couldn't be vulnerable if the FTC's proposals were adopted," and (2) "It is possible to make advertising messages so innocuous that they don't even sell." And the question was then asked: "Is this what the FTC really wants?"

And Mark Smith, general manager of KLAS-TV Las Vegas, who filed a comment with the FCC last week, may have reflected the views of many broadcasters when he said: "Without a doubt, this is the most frightening proposal I have ever heard in my entire 16 years of broadcast management . . . I would think that the FCC has the proper judgment to dispose of this request by telling the FTC to do its own job."

FCC ASKS NBC TO GET MOVING ON FAIRNESS COMPLAINT

NBC has been requested to inform the FCC of the company's plans for balancing views contained in commercials for large-engine automobiles and leaded gasoline that are broadcast on NBC-owned WNBC-TV New York.

The order is one of the after-effects of the decision of the U.S. Court of Appeals which held that carriage of such commercials imposes a fairness-doctrine obligation on a broadcaster. The decision overturned a commission order on a complaint against WNBC-TV brought by the Friends of the Earth, an environmentalist group.

NBC is currently making a complete review of the station's programing from Oct. 1, 1970, through Sept. 30, 1971, to see if it satisfied the fairness obligation with respect to the FOE's complaint. It says it will take four months to complete the study.

The commission last week said the one-year review, to which FOE has agreed, is "reasonable." But it noted that the material giving rise to the complaint was being aired on a continuing basis. Accordingly, it said, there is no reason why "consideration of the treatment now being given the issue" should have to "await the completion of NBC's prolonged study of the past."

CAUTION: TELEVISION MAY BE HAZARDOUS TO YOUR HEALTH

Remarks of Commissioner Nicholas Johnson, Federal Communications Commission, Mar. 4, 1972)

There are a number of reasons why consumers ought to be concerned with communications policy.

The Bell Telephone System takes from the American people more than twice as much as all the income taxes collected by all the 50 states combined. And yet most citizens probably worry far more about their state income taxes, and state governments' financing and expenditures, than they do those of AT&T.

Cable television shows signs of becoming a new multi-billion-dollar industry, perhaps even larger than AT&T, with a potential future social impact comparable to that wrought by the automobile or the telephone.

Even before cable arrives, today's conventional, over-the-air television has to be counted as America's number one consumer product. The American people have $34 billion invested in radio and television receivers. Counting the added product costs to pay for the programs, they are paying about $9 billion a year to receive this "free" programming. And, as a demand on time, television watching has no peer. After working and sleeping, Americans spend more time watching television than at any other activity.

Television is also, however, the largest purveyor of information and attitudes diametrically opposed to the best interests of consumers. The one I want to talk about specifically today is health.

I would like to think of myself as one of the strongest supporters presently in the federal government for what has come to be called "the consumer movement." And it is in that friendly spirit that I would like to suggest that television—by baptizing us with the name "consumer"—has created at least a half of the consumers' problem. Once you call yourself a "consumer" you're hooked. You simply assume you're going to consume the stuff they're pushing, and you then try merely to buy it as intelligently and economically as possible.

The alternative, of course, is to think of ourselves as a part of a movement for life, or for people, rather than for consumers. When you view your mission in those terms you very quickly discover that the choice that may best serve your true interests is not to buy any product at all.

The sad fact, of course, is that all too many Americans are spared the burdens of abundance because they are still subject to the scourge of poverty. We can disagree about the minimum levels of decency in food, housing, clothing, transportation, education, and so forth and the income it takes to achieve them. Could you get by on $3,500 a year as a family of four in New York City? $5,000? $7,500? Whether we are talking about one-tenth of the nation, or one-third, the fact is that many consumers cannot even acquire the mere necessities of life. We had a year of "poverty" on the mass media. Now it's the China season. But the poor are still with us. And they are first entitled to basic decency, and then the opportunity to squander a little income as foolishly as the rest of us, before they can be expected to understand that the tinsel bell of opulence has a hollow, lonesome ring.

Fortunately, for those of you here, few of you confront such stark choices. You *are* consumers. Television does not tell you that you are devoid of values and satisfactions because the materialistic life has passed you by—as TV taunts the poor—you *can* choose the value system it preaches and make it your own. They cannot. You can surround yourself with all the toys, breakfast cereals, automobiles, beer, toothpaste, shampoo and various aerosol cans its says are the path to personal fulfillment.

The question I pose to you, and others of the affluent middle class, goes to the heart of television's most basic assumption. After necessities are met, do life philosophies based upon materialism and conspicuous consumption really contribute to human happiness?

The option of cutting back on our unnecessary purchases has a number of advantages.

It's more economical. Or, stated otherwise, it gives us more discretionary income to spend on travel, cultural exposure, or other services and expanding experiences—or to contribute to sustaining public interest reform groups or other charities. Often leasing or renting (whether an automobile, as sail boat or a summer cottage) can provide a comparable satisfaction at a much lower cost than owning.

It's less restraining. "Things" must be cared for: dusted, oiled, picked up and neatly arranged, taken in for repairs, stored, moved, painted, replaced when broken. To rent, or do without, may give you much more real freedom, and release from pressure and tension, than ownership of the thing you originally acquired to give you pleasure.

It's ecologically sound. If it makes you feel good to know you're doing your bit to contribute to human compatability with a whole earth, you'll feel better knowing you're only using your share of the world's resources. (The United States, with 5 percent of the world's population, consumes 40 percent of the world's resources. In other words, your *share* is about one-eighth what you're using now.) "Consuming" less, you'll create less trash, and generate less pollution.

It's more consistent with basic principles of almost all of the world's great religions. Poets, philosophers, many psychiatrists, psychologists and other social scientists agree: the only meaningful and lasting sense of wellbeing must come from within not from externals. The more we look outside ourselves for our "status" in the eyes of others the less we find it in the mirror. The path to inner peace must be walked, alone, in simplicity.

Finally, and the subject I'd like to emphasize today, consumption is often destructive of your health—even the consumption of products ostensibly designed to improve it. The nation's number one pusher of the drug life is television. And it's not at all clear that the drugs it pushes—say, the tranquilizers for tension and the sleeping pills for restlessness—are any better for you than the less respectable drugs pushed by others to deal with comparable problems. One need not even reach the questions of chemical additives involved in the "organic food" movement to acknowledge that most of us are impeding, rather than aiding, our health by the sheer quantity of food and drink we consume. And aside from the 60,000 Americans who are simply killed every year by automobiles, it is fairly obvious that almost all of us would better serve our health by walking (bicycling or jogging) more and consuming automobiles less.

In order to fully understand the adverse impact of television upon our health, however, it is necessary to see the problem in context. And in order to see the context there are a lot of misconceptions and myths that must first be eradicated. The most widely prevalent myth about the television business is that it has to do with programming. It does not. Its product is not programming; its product is you. You are not the consumer; the advertiser is the consumer. The advertiser is buying audience, audience to watch his commercial; he buys that audience from the broadcaster (network or local station); you are sold to him like cattle—at a "cost per thousand." You are the product. No one buys the program. The program is the attention-getting device, the flypaper, the flashing neon, the carnival barker, the medicine show, the topless dancer.

Once you begin to perceive the television business in this light it is easier to understand the reasons why television programming has been such a social disaster area in our country. The Dodd Committee found it implicated in what was called, in the 1950's, "juvenile delinquency." The Kerner Commission found it had contributed to a worsening state of race relations in America: "the communications media, ironically, have failed to communicate." After the assassinations of Dr. King and Senator Kennedy the Eisenhower Commission devoted two full volumes of staff reports to the relationship of violence in the media to violence in our society. The Surgeon General will soon be releasing more studies on the impact upon our young children of violence in programs specially directed at them. The women's liberation movement finds television one of the most demeaning forces in our society. The list goes on and on until one almost yearns for the day when the worst one could say of television was that it was just "a vast wasteland." Today the seeds of our society's discord find the vast wasteland has been well fertilized indeed.

The point, you see, is that there is absolutely no incentive whatsoever within the institution of modern day American commercial television to encourage socially constructive programming. There is not even the economic mechanism for pandering to mass taste that is available in the record, magazine and book business. In any line of commerce where the product is sold to the audience there is at least a market place mechanism for consumer choice—however manipulated by advertising that choice may be. TV certainly has no incentive to do anything more than pander to mass taste. There are no longer even "sponsored" programs that might give viewers the economic boycott as a weapon to influence programming. As long as the programming is attention-getting it serves its purpose. If some network executive could get higher ratings by showing babies being run over on the Los Angeles freeways—"live from Hollywood"—I suppose he would do it. Ratings are the measure. The only measure. If our cities go up in flames, if our political leaders are assassinated, if minorities and women are slandered—who is there to alter his prime time entertainment programming as a result? No one. And if investigations are conducted by Presidential Commissions or Congress the industry is up in arms that its First Amendment right to unlimited profit is being curtailed.

The point of all this is that the problem is not just that network executives care not

at all about your health. They care not at all about any aspect of your life, or the society we share. This realization makes the impact of television upon health both easier to understand and harder to remedy.

Doctor shows have, in recent years, virtually flooded our television screens. If we could find as many doctors in rural America as there are in prime time the problems of small town health care would virtually disappear. "Dr. Kildare," "Ben Casey," "Marcus Welby, M.D.," "Medical Center," "The Doctors" segment of "The Bold Ones," all prime forums to help stimulate a national debate on problems of health and health care. Yet what have we learned from those shows?

There is no shortage of hospital rooms. No patient is ever denied a bed or required to wait until one is available.

Apparently we already have free medical care, for no doctor ever charges for his services; no hospital ever bills a patient; no one has to go without needed treatment; no one has problems with inadequate coverage by Medicare, requiring discontinuation of treatment; doctors are always dedicated professionals, unconcerned with monetary gain.

County hospitals have no problem attracting highly competent professionals; there are no "crises in sanitation," or strikes by doctors demanding better conditions.

Almost every doctor cures almost every patient; and if one dies it is always the result of some strange complication that even the finest doctor could not have anticipated; no one ever dies as a result of incompetence—malpractice suits are unknown.

There is no American Medical Association, or any other group which lobbies against or otherwise delays development of more and better hospitals and medical schools, low-cost health care, national health insurance, health care delivery systems or preventative medicine.

In short, after watching doctors programs on television, there is absolutely no way that anyone could realize there is a crisis in American medicine and health care—a crisis of major proportions.

We recently learned about two specific examples from testimony before the Senate Subcommittee on Constitutional Rights free press hearings. During the successful run of Dr. Kildare, the production unit wanted to do a program on veneral disease. They had the backing of the AMA, National Educational Association and the Surgeon General. It was to be done with scrupulous attention to good taste. Everyone agreed that it would be a great benefit to the American people, since more people watched Dr. Kildare than documentaries. The network killed it; it was afraid of "offending."

On another occasion, the producers wanted to do an episode entitled "Holiday Weekend," based on a doctor's statement that those were the worst times in hospitals because of the increase in automobile accidents. Again, the network killed it; what, after all, was entertaining—or commercially encouraging—about auto crashes?

In one area of health, television has been most lax, not only failing to educate us, but affirmatively increasing the likelihood that we will become afflicted. That area is heart related diseases.

Over 50 percent of the deaths of men over 40 are a result of heart attacks and other cardiovascular diseases. This has more than doubled in percentage from 1900. The estimated incidence of coronary heart disease is 3.1 million Americans between 18 and 79, and an additional 2.4 million with suspected heart disease. This constitutes 5 percent of the population. Last year alone, it was estimated that such diseases cost the American people as a nation over $20 billion. And, of course, there is no way to value the loss of human life. Heart diseases are relatively unsymptomatic—at least until they have advanced beyond the point of control. More often than not, death is sudden, unexpected. Of those who live, the prognosis is bleak: they are five times as likely to die within the next five years as those without a prior history of heart disease. Many doctors believe that prevention, rather than treatment, is the only effective way to deal with it. And prevention can only come after education.

Although unable to agree that any single factor has a universal impact—either leading to or preventing heart conditions—most doctors can accept the position that certain factors do have at least some effect on the hearts of many people. These factors include cigarette smoking, exercise, proper diet, cholesterol content of the foods we eat, overweight, tension and anxiety.

Notice how, at every turn, televison feeds us with information which seems designed to create, rather than alleviate heart problems.

Let's start with cigarettes. We know that cigarette smoking contributed significantly to over 300,000 deaths a year—many the result of heart conditions. We have known that for quite a long time—since at least 1964 and the Surgeon General's report—and had good reason to suspect it long before that. Yet television went right on selling cigarettes—and not just selling them, but equating them with youth, vigor, freshness, outdoors and health; the very elements smoking destroyed.

"But," you say, "Look at all those wonderful anti-smoking public service announcements television put on. And, after all, cigarette commercials are no longer on the air." How true, how true. But neither of these momentous events took place without a major struggle—the industry kicking and screaming all the way. It took John Banzhaf and an FCC decision to get any significant number of "counter-commercials" on the air, and the passage of sweeping legislation to get cigarette ads off. Even now, the industry has not given up the fight. It has cut back on the anti-smoking commercials on the theory that the absence of cigarette ads signals the end of its responsibility to inform the public, even though cigarettes and smoking had a 20 year monopoly on peoples' minds through television. And in the courts, broadcasters are challenging the legislation prohibiting cigarette advertising on radio and television. After losing in the Court of Appeals, they have taken their case to the Supreme Court. Licensees, obligated to act in the "public interest" are anxious to begin again their crusade against life.

Proper exercise is never preached on television. Indeed, television is the very antithesis of exercise. The entire theory of television is that it is your spare time companion, not exercise. Better to while away the hours in front of the screen than walk or jog or garden or engage in any sports. And how much encouragement do you see on television for bicycles? Next to cigarettes (before they went off the air) automobile companies sponsored more prime time television than any other product. Never mind the 60,000 deaths caused by automobiles annually; consider how many heart attacks were at least partially caused by the exercise we didn't get because we drove rather than walked.

What about proper diet, a factor in all health matters, not just those related to the heart? Aside from selling you products that are overpriced (after all, Shake-n-Bake is just high-priced bread crumbs and Hamburger Helper is nothing more than glamorized rice, noodles or potatoes with spices added), television promotes unhealthy eating habits. With its exploding cereal and its tasty but nutritionally deficient treats, Saturday morning television is a veritable disaster area for parents trying to encourage sound eating habits for children. But then, with prime time television touting frozen vegetables in butter sauce, fried foods and TV dinners, it is unlikely that there are many parents left who even know good eating habits.

Our diet is and has been changing over the past few years. Even a casual look at your neighbors' grocery carts will verify that. But it has been changing in other ways as well. Not only have we increased our purchase and consumption of snack and convenience foods, we have in the process increased our consumption of meat, eggs, dairy products, starches and simple sugars. As a result, there has been a gradual but significant increase in the proportion of calories we derive from fat, particularly the saturated fats. This has produced an increase in the cholesterol level in the average American. As a result, over 30 percent of all American men between 40 and 60 have a cholesterol level that exceeds that associated with a high risk of coronary heart disease. Aside from ads for polyunsaturated cooking oils (which, incidentally, resaturate when heated, thereby negating any benefit they might have had), how often has television in any way addressed this issue, either in programming or advertising? Some reports suggest that a a simple adjustment in our diet would go a long way to reduce the incidence of heart disease. But have you learned that from television? Since it requires moderating, an outlook inconsistent with the materialism preached by television, it is most unlikely.

Aside from good eating habits, overweight itself is a major factor in heart conditions. Yet eat we do, prompted by television. We may have "caught" Profile Bread (interestingly enough, it was the FTC not the FCC that put a stop to their phony claims of effective reducing), but we'll never catch the thousands of other ads shoved at us daily by television, telling us, like good mothers to "Eat, darling, eat." The very same products that are the staple of television advertising are nutritionally unsound, and have the highest calorie count.

Finally, television delivers a less than enlightened approach to tension and anxiety. Recently, doctors have suggested that tension alone may be the single most important cause of heart attacks. When we are tense, our bodies and heads are trying to tell us something about our surroundings. Yet, through television, we have learned that the solution to tension is Compoz, rather than an examination of the reasons for the tension and an effort to eliminate those reasons.

These are the commercials, but programming is not much better. Needless to say, television doesn't treat heart disease or its prevention in serious dramas—after all, what's entertaining about heart disease? But it goes beyond that, beyond even a benign neutrality.

I am reminded of the television producer who was told he had to remove the line "She eats too much" from a script, because it ran counter to the philosophy of consumption touted by the sponsors. How many of our television heroes can be seen walking or biking anyplace? How many cigarettes does Dean Martin smoke—and sell—weekly? How much tension and anxiety does television foster by doing its share to keep us in the rat race prompted by the middle class settings and conspicuous consumption "sold" through allegedly entertaining programs? The list goes on forever.

Doctors may not agree on the importance of any of these factors. But each is supported by at least some reputable authority. I hope that we learned our lesson from the history of Vitamin C. It took over 200 years from the time scientists began to conclude that it prevented scurvy until it was widely enough supported by the medical establishment to require its use in the British Navy, where the incidence of scurvy was at its highest. The question that each of us must answer for ourselves in this age of establishment specialists is whether it is worth the risk to deny the effectiveness of

something because there is less than complete agreement about it. Television's role in this process should be to provide us with the information to help us make our own decisions, and to bring to light the debate that lies behind the disagreement. To the extent it fails to contribute to the debate or provide information, television has failed us. To the extent it provides harmful information, television is killing us.

Television's approach to heart problems and health in general is really symptomatic of a broader problem. In every phase of modern social life—from problems of youth to problems of age, from racial discrimination to sex discrimination—television has abdicated its responsibility to contribute, in a meaningful way, to a broad, national debate. For a medium that is so powerful to abuse its power is sad. For a medium that is statutorily required to operate in the public interest, it is close to criminal.

Television affects you, as consumers, because it is the foremost enemy of intelligent consumerism. It affects you, as people, because you can only act when you are informed. And by and large, television is not informing you.

There is a lot television could do—if it wanted to. Fifteen second spots telling you to "Help your Heart Association help your heart—with a check-up and a check," isn't enough. In the face of all of television's misinformation and noninformation, announcements like that are almost fraudulent.

We deserve more. We deserve some real information and some social conscience. It can be done—without losing money. It can be done within the context of present shows. It can be entertaining and interesting.

In Washington, Giant Food Stores have started nutritional labeling of some of their own products. On the labels, they tell the purchaser how many "units" of basic vitamins and nutrients they need daily. They then tell how many units of each a serving of the product will provide, and how many calories that equals. This may have resulted in fewer sales of pork and beans, or orange drinks, but it hasn't hurt Giant's overall profits—which have only gone straight up since it started this radical experiment with truth. President Danzansky and Esther Peterson's leadership is pushing other canners and grocery chains to institute similar labeling programs.

Television could learn from Giant's example. To Giant you are also both consumer and product. You are consumer when you buy something, but product when you are "delivered" to the store. In the same way that intelligent consumers are responding to Giant's concern, so, too, would audiences respond to a little intelligent programming. I'm not suggesting that television stop accepting advertising from those products which do not serve the health needs of everybody. I am simply saying that television could do all of us—itself included—a service by providing us with more information that affects whether we live or die. When we get that information, we respond—witness the decline in cigarette smoking with the coming of anti-smoking messages.

The networks cannot continue to fight the responsibilities that are thrust upon them by reason of their power. They ultimately are bound to lose. The question is, how will they be judged by history? Will they be remembered for their social leadership or their intransigence? If the history books are written now, there is no question as to how they would fare.

People such as yourselves have come together increasingly recently to form groups devoted to improving television as it affects them. In Boston, Action for Children's Television has prodded the FCC into examining children's programming. In Washington, John Banzhaf has helped organize groups of law students to press for consumer protection through the FCC. Across the nation, local groups are demanding that stations in their cities respond to the needs of the citizens, and challenging their licenses at renewal time if they are not. There have been setbacks, but these groups persist.

You, as an organized group of consumers, should join those who are working to improve the quality of American life through television. You have already shown your dedication to that general goal by joining together to promote your common interests. But now, take a broader look. You have interests in common with those you don't even know. You share the common bonds of concern and hope: concern for humanity and hope for its future. Pledge that concern and that hope to changing the sense of responsibility of our mass media and there is no way you can be stopped.

UNDERGROUND NUCLEAR TEST BAN TREATY

Mr. KENNEDY. Mr. President, I invite the attention of Senators to a nuclear trial balloon that leading administration spokesmen appear to be floating.

As much as I would wish it otherwise, it seems the administration is testing public reaction to the idea that the United States should not pursue a comprehensive nuclear weapons test ban treaty, regardless of whether or not we have mastered the problem of verification.

No longer is there the assertion that we are firmly committed to achieving a halt to all testing so long as the test ban treaty can be adequately verified. Instead, the highest officials in the Atomic Energy Commission and in the Defense Department now suggest that a test ban treaty "is not necessarily desirable."

Such a shift would mark a break not only with the policies of the past three Presidents but it also would reflect an ominous reversal in the policy of President Nixon.

AEC Chairman James Schlesinger's statement in an interview published February 14, 1972, in the U.S. News & World Report, which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks, is the most disturbing comment. Mr. Schlesinger states:

> The real question is, given the changed nature of the opposed forces in this era of negotiations, whether it is desirable to cease nuclear testing.

His reasons are as follows: First, that, because there are ABM's, then we should continue to test new missiles and warheads to assure penetration; and, second, that we should not stop testing because that would foreclose the development of nuclear weapons for the general-purpose forces—sort of every-day-use nuclear weapons.

Both arguments are spurious. First, the Soviet Union, for the past several years, has had a stable total of 64 ABM launchers around Moscow. They are considered by most authorities to be even less effective than the ABM system this Nation unfortunately has begun to deploy, a system which many of our leading scientists do not believe will work. Also, Dr. Schlesinger well knows that our ICBM's, our submarine missiles, and our bombers, assure our capacity to overwhelm the Soviet ABM system, not only today but well into the foreseeable future.

Finally, he apparently has disregarded the strong indications that a SALT agreement will be concluded shortly covering ABM systems. Such an agreement removes all merit from this argument against pursuing a comprehensive test ban treaty.

Dr. Schlesinger's second argument is that we should not end our own testing because it would mean not being able "to modernize our tactical nuclear weapons stockpile." This argument seems to be even more devoid of justification than the first. Dr. Schlesinger is referring here to the adaptation of antisubmarine warfare, artillery, antiaircraft weapons, and other weapons for our general purpose forces.

The assertion that this reason is sufficient to justify abandoning an underground nuclear weapons test ban treaty is simply not understandable. There is an almost Dr. Strangelove element involved in the assumption that as long as we can build better bombs then we should not seek a treaty banning all further nuclear weapons testing which can have far-reaching effect in lowering the threat of nuclear destruction and moving the nations of the world along the path of arms control. It would seem that Dr. Schlesinger is suggesting that we should throw this goal away in favor of building a better nuclear artillery shell.

Once Dr. Schlesinger's statement is read, then other more subtle shifts in language by other leading administration officials also become suspect.

In an interview early in February, which I aks unanimous consent to print in the RECORD at the conclusion of my remarks, Secretary Laird indicated the Pentagon was not in favor of an underground nuclear weapons test ban treaty at this time. He not only reiterated the timeworn refrain that verification techniques were not yet adequate to justify a change from the demand for numerous on-site inspections. He went further, adding, the United States, "learns new things every time we have a test."

It would appear that a question that presumably had been settled is being reopened. The United States, as national policy and through its treaty obligations, had determined that a nuclear weapons test ban treaty was in our interest, regardless whether or not new nuclear frills could be discovered by further testing. We had concluded that a test ban treaty was in the interest of the Nation with the only caveat being adequate verification. Now there is the question raised anew as to whether the test ban is desirable.

A similar shift appears even in the opening statement of the U.S. representative to the Geneva Conference on the Committee on Disarmament less than 2 weeks ago. He said:

> Further progress toward restraints on testing is tied in closely with understanding and resolving the complex problem of verification.

That is far different from asserting that we will sign a comprehensive nuclear weapons test ban treaty if we are satisfied with the provisions for verification.

Taken alone, the statement of the

delegate to the disarmament conference would not be disturbing. But following upon the truly regressive comment of AEC Chairman Schlesinger, the commitment of this administration to our past treaty obligations appears to be wavering.

In that regard, let me quote from the preamble to the limited test ban treaty to emphasize what must be our policy. The preamble reads that the signatories will endeavor "to achieve the discontinuance of all test explosions of nuclear weapons for all time."

Again, in the Treaty on the Nonproliferation of Nuclear Weapons, ratified in 1968, this position is repeated:

Each of the parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date.

Nor have we been alone in the pursuit of an end to nuclear weapons testing. The United Nations General Assembly adopted three resolutions only last December urging:

The Governments of nuclear-weapon states to bring to a halt all nuclear weapons tests at the earliest possible date and, in any case, not later than 5 August 1973, and urging the nuclear powers to reach an agreement without delay on the cessation of all nuclear and thermonuclear tests.

And finally:

Requests particularly Governments that have been carrying out nuclear tests to take an active and constructive part in developing in the Conference of the Committee on Disarmament, or in any successor body, specific proposals for an underground test ban treaty.

I asked unanimous consent to have the resolutions printed in full at the conclusion of my remarks.

The resolutions have been reinforced by the eloquent statement of U.N. Secretary General Kurt Waldheim at Geneva only last week in which he urged that the test ban treaty be the priority item on the agenda. I ask unanimous consent to have his statement introduced into the RECORD at the conclusion of my remarks.

He emphasized as well that the remaining obstacle to such a treaty no longer was the technology of verification but the political will of the parties.

Now the political will of the United States has been seriously called into question by the recent statements of administration spokesmen.

Therefore, I would urge the President to issue a forthright declaration asserting our commitment under past treaties and our continuing national policy of achieving a comprehensive test ban treaty. And I would urge him to follow such a declaration with specific proposals in Geneva as called for by the United Nations resolutions.

Now is the time for the President to demonstrate his allegiance to the goal of halting the arms race by taking affirmative action to reach a comprehensive nuclear weapons test ban treaty.

Hopefully, here in the Senate, we also can take steps to support such a policy by emphasizing the Congress' commitment to such a treaty by passing a resolution to that effect.

I have introduced Senate Resolution 230, which now has bipartisan support among its 12 cosponsors. Senate Resolution 230 calls on the President to announce a moratorium on our testing so long as the Soviet Union abstains and recognizing the progress in the technology of verification urges him to undertake prompt new negotiations with the Soviet Union on this subject.

I ask unanimous consent to have Senate Resolution 230 reprinted at the conclusion of my remarks.

A similar resolution introduced by Senators HART and MATHIAS also urges the President to propose the extension of the limited test ban treaty to include testing underground.

We have asked that hearings before the Foreign Relations Committee be conducted on these resolutions and hopefully a resolution on this subject will be reported out and adopted by the Senate before the President leaves for Moscow.

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

NUCLEAR ENERGY—ITS PEACETIME USE

Atomic power, despite growing problems, is the best hope to meet soaring U.S. energy needs, says Dr. Schlesinger. He came to the conference room of "U.S. News & World Report" for this interview on the nuclear future.

Q. Dr. Schlesinger, how do you assess public acceptance of the atom today as compared with 25 years ago when the atomic age was just getting under way?

A. I think that it is improving in some respects, but in others it is deteriorating.

At the end of World War II, there were great expectations—probably too great. People got the notion that you could drive ships across the ocean with an atomic engine about the size of a pea. There was a romanticizing of nuclear possibilities with little appreciation of the technical difficulties that would ultimately be encountered.

Now these difficulties are staring us in the face, and this has led to concern and disenchantment on the part of many serious-minded citizens. I don't think that this is widely shared by the general public, but there is at the present time some degree of public disenchantment with things in general. At the extreme, there's an antieverything movement.

Q. Does this revolt center on material things?

A. It's really not limited to material things. There is a feeling that nothing is working: Government is bad. Industry is bad. The press is bad.

In the energy area, one hears slogans: "Let's stop building nuclear plants," and "Let's stop strip mining," and "Let's stop exploring for oil," and "Let's stop providing port facilities for tankers."

But that would lead quickly to something else. What it really means is: "Let's stop air conditioning," and "Let's stop the dishwashers," and "Let's stop the dryers." I think that a number of vocal people have missed that connection. But as far as members of the general public are concerned, they understand that cutting off sources of energy, which are the base for this country's standard of living, would change our way of life.

Q. Is the average citizen ready to accept an atomic power plant in his neighborhood?

A. I think there is widespread public acceptance of nuclear generation of electrical energy. I don't foresee at this point in time that there is any real alternative. Without nuclear plants we would be faced with massive use of fossil fuels—coal, oil, natural gas—and the impact on the environment would be much greater.

In his energy message last June, President Nixon described the safety record of civilian power reactors in this country as "extraordinary in the history of technological advances."

I personally would very much prefer to live next door to a nuclear plant. It is clean and attractive. The risk of an accident that would in any way threaten the safety of my family is exceedingly remote.

Q. Has the problem of disposing of radioactive wastes from atomic power plants been solved?

A. Disposal of these high-level radioactive wastes in salt formations appears at this time to be the most promising way of handling them. The National Academy of Sciences has recommended this as the safest method to use. Legislation adopted by Congress in 1971 provides that the President will appoint an advisory council to investigate the safety of using salt mines, with particular attention to those in the vicinity of Lyons, Kans. Until we get the report of this advisory council, we cannot go ahead.

Some specific problems at the Lyons site have been identified as a result of our investigations in recent months. There are 30 boreholes down through the salt formations from previous drilling operations. Our consultants indicate that 27 of these holes can be safely plugged, but three of them cannot. Secondly, American Salt Company, which has a solution mining operation in the neighborhood, plans to double the capacity of its operations. Unless these two problems can be resolved, we would not go ahead at the Lyons site.

Q. If this site at Lyons, Kans., can't be used, what will be the answer?

A. We will have to explore the possibility of storing the radioactive wastes in salt formations at some other location. The Kansas Geological Survey has identified some possible alternative areas for study.

Q. In the meantime, what is being done with the wastes from atomic plants now in operation?

A. They are being stored underground in metal tanks. This is what other countries that have developed nuclear reactors are doing with radioactive wastes, and they have been kept safely for many years.

We want to do better than that in the United States. We hope to remove these wastes permanently from the environment of man, and that means for tens of thousands of years, because, for example, some traces of plutonium—which has a half life of 24,000 years—remain in the waste.

We are confident that the salt mines provide a safe storage place—even in this kind of geological time frame. In addition to that, we are exploring other methods of disposal, including encouraging the National Aeronautics and Space Administration to look into the cost of shooting these high-level radioactive wastes into the sun—taking them right out of the world. Now, this would depend on development of the space shuttle [approved by President Nixon on Jan. 5, 1972], and that is a decade away.

Q. What is your answer to the environmentalists who say the building of nuclear generating plants should be halted until there is a sure-fire method of disposing of radioactive wastes?

A. My answer is that we are confident that one of the possibiliites—salt mines, other deep underground formations, or conceivably shooting the wastes into the sun—is going to solve this problem. There are still questions of implementation. I think that this has been an area of appropriate concern on the part of environmentalists.

Q. Has there been any leakage from the wastes that have been stored underground?

A. There have been a number of very small leaks in some of the storage sites, but no detrimental effects.

Q. Another concern frequently expressed is the possibility that radiation will escape from atomic power plants—

A. That's an argument that I think is passe. The amount of ionizing radiation that you get, even in the vicinity of a nuclear plant, is exceedingly small relative to the radiation you get from other sources.

For example, the average American is now getting 90 millirems a year from medical X-rays. From nuclear plants the average American will get only 1/9000 of the amount of radiation that he gets from medical X-rays. On a coast-to-coast flight, from the cosmic rays at high altitude you'll receive 500 times as much radiation as the average American will get from a nuclear plant. So there are other sources of radiation that we should perhaps be more concerned about.

Q. Why has the Atomic Energy Commission imposed new and stricter environmental controls on nuclear power plants?

A. The immediate cause was a court decision in the case involving construction of a nuclear plant at Calvert Cliffs on Chesapeake Bay by the Baltimore Gas & Electric Company. That decision said that the Commission was not properly enforcing provisions of the National Environmental Policy Act of 1969. We accepted the court's judgment and issued the new environmental regulations in September.

Q. Are these new regulations delaying completion of nuclear power plants?

A. The regulations themselves should not set back development of nuclear power, except in the cases of a few plants that have special environmental problems. We have allowed sufficient flexibility in the regulations so that construction of most plants can continue while an environmental review is under way and recommendations are made to bring the facility into compliance.

Construction is going ahead on most plants. We have indicated to five utilities that construction of specific portions of eight plants should cease until such time as there is a complete environmental review. But on the other 44 plants under construction, work is continuing, and this includes the Calvert Cliffs unit of Baltimore Gas & Electric Company.

Q. Will added costs of environmental protection change the competitive economic position of atomic power?

A. No. At the present time, the driving forces behind the improved competitive position of nuclear energy are rising costs and depletion of fossil fuels. Nuclear power has very clear advantages, environmentally speaking, particularly with regard to air pollution.

You've seen the advertisements, for example, which state that there's more air pollution contained in a lighted match than there is in a nuclear plant. That's probably something of an overstatement, but it is correct that air pollution is minimal with nuclear facilities, whereas fossil-fuel plants contribute the bulk of sulphur oxides in the atmosphere and a very substantial proportion of the nitrogen oxides—to say nothing of the particulates. And to the extent that the new standards elaborated by the Environmental Protection Agency with regard to reducing pollutants in the atmosphere are rigorously enforced, that would tend to increase the attractiveness of nuclear power.

The environmental disadvantage of nuclear power is that the present generation of plants has a lower level of thermal efficiency than fossil-fuel plants, and as a result there is about 50 per cent more by-product heat. This has led to thermal pollution from these plants.

Q. What is thermal pollution? What would happen to the Chesapeake Bay, or any body of water near which an atomic power plant is located, if no steps are taken to eliminate this kind of pollution?

A. In a nuclear generator, it is necessary to use cooling water which is taken from a river or lake or sometimes the ocean. When this is discharged from the plant it has picked up heat, and if put directly back into the body of water from which it was taken, it will increase the temperature of that water. This is called thermal pollution.

A substantial body of water, such as Chesapeake Bay, can absorb a considerable amount of heat. A more limited body of water may be heated up 4 or 5 degrees, and that could have some impact on the biological environment. In the immediate vicinity of the plant, unless considerable care is taken through the use of cooling towers or other devices, the increased temperature of the water could have severe effects on fish and plankton and other aquatic life.

Now, it is easier to deal with these problems if the plant is near a sufficiently large body of water, and that is why coastal sites with the ocean close at hand are often selected.

Q. Why are there continuing complaints about the safety of atomic power plants?

A. One area of concern has been that the Commission requires every light-water reactor—which is the type now in general use—to have an emergency core-cooling system. This provides assurance that in the very unlikely event that the primary cooling system failed catastrophically, there would be enough coolant available to prevent meltdown of the core.

We have had more than a hundred light-water reactors operating, and we've never had any major problems with them. Even so, there has been concern expressed by environmental groups and others about the adequacy of these emergency cooling-systems. But I fear that this may have diverted attention from other areas that I regard as more serious with respect to safety.

There are, for example, problems of quality assurance, codes and manuals for the utilities that operate the plants—and of assured compliance with those codes and standards.

I am more concerned about small accidents—spills or leaks in pipes that can interrupt power production but would pose little public hazard—than about the possibility of drastic breakdowns. So I think that we should devote a major part of our attention to making sure that there is quality assurance and appropriate maintenance.

NEXT: A FAR MORE EFFICIENT REACTOR

Q. Atomic scientists say that the liquid-metal fast-breeder reactor is the next step in development of nuclear power. How will it differ from today's atomic generating plants?

A. It will differ in a number of respects:

First and foremost, it will utilize about 70 per cent of the energy content of uranium, as opposed to about 1 per cent in today's light-water reactors. It will achieve this by "breeding," that is, it will produce more nuclear fuel than it consumes in the course of generating electric power. It will do this by irradiating the fertile uranium isotope U-238 and converting it to fissionable plutonium 239.

Second, it will use liquid sodium as its coolant. Sodium is a tricky substance to handle, but it has been used as coolant in the Fermi reactor as well as the nuclear submarine *Seawolf*.

Third, because it uses liquid sodium as opposed to water, the breeder reactor can operate at a much higher temperature, and we will have much higher thermal efficiencies. This reduces the amount of waste heat, so that thermal pollution would be less than in existing fossil plants.

Q. When do you expect the fast-breeder reactor to be operating commercially?

A. President Nixon committed the Government in his energy message on June 4, 1971, to have a demonstration plant in operation before 1980. This plant will not be commercially competitive, but I believe that by the mid-1980s there will be fast-breeder reactors producing electricity at competitive rates.

As you know, we announced on January 14 that a proposal by Commonwealth Edison of Chicago and the Tennessee Valley Authority has been accepted by the Commission as the basis for negotiation leading to a contract for the construction and operation of our first plant. We are especially pleased by this joint venture and by the fact that the nation's utilities have pledged 240 million dollars toward the total cost of this half-billion-dollar facility. This represents an unprecedented effort by industry. We hope to start construction within a year or so.

Q. What has held up development of the fast-breeder? Some scientists were saying early in the 1960s that it would be available by the end of that decade—

A. Of course, we do have a small commercial breeder at the present time—the Fermi plant, a uranium-fueled plant which is operated by Detroit Edison—but there has been too much optimism. I think technical people tend to be unduly optimistic about the time required to get to particular goals.

Q. In recent days, there has been a report that the Russians have completed a fast-breeder reactor that will produce electricity and desalt water, too. Are they ahead of the U.S. in this field?

A. We believe that, in terms of technology, we are still ahead of them—and, as has happened on frequent occasions, when we reach the ultimate goal the U.S. will be first.

LOOKING AHEAD TO THE YEAR 2000

Q. When will fusion power—harnessing of the H-Bomb process—come into use? Keeve M. Siegel, who heads KMS Industries, Inc., has said that this could be done within the next five years—

A. We believe we can demonstrate the scientific feasibility of controlled fusion by 1980, but we don't expect to have a demonstration fusion reactor until about 2000.

We are working on both magnetic-containment and laser-fusion approaches concurrently. KMS is working in the laser-fusion area exclusively. We can't discount the possibility that there might be an earlier demonstration of a break-even point in sustaining the fusion reaction. However, our experience in the AEC weapons laboratories with laser-fusion research and related problems leads us to believe the probability of it is quite small. Of course, we would welcome an early breakthrough, either by our own laboratories or by private industry.

Q. A problem of the atomic age that is worrying people in Western States is that of some 3,000 homes in Grand Junction, Colo., that were built on radioactive fill dirt from uranium-mine tailings. Are the people living in these houses in danger?

A. There is no immediate threat to the health of the people living in those homes, and only a very limited long-run danger. We have done gamma-radiation maps for something like 1,400 of the houses, and only two exceed the U.S. Surgeon General's guidelines to the extent that remedial action is mandatory. Something like 33 have enough gamma radiation to indicate that corrective steps may be advisable.

The other problem is radiation from "radon daughters," which are isotopes of radium and appear to have caused lung cancer in some uranium miners. We don't know how many homes have this type of radiation at the level where action would be required under the Surgeon General's guidelines.

Q. If action is required, what will be done?

A. The problem of radon daughters could conceivably be handled by ventilation. It would not necessarily involve removal of tailings, as would the gamma radiation.

The legal responsibility is not the Atomic Energy Commission's, but we have taken the attitude that we have a shared moral re-

sponsibility with the State of Colorado, which was the regulatory authority in this case, and with the contractors who removed the tailings and with the mining companies themselves.

The question is: Who has the deepest pocket? I think the answer may be that it is the Federal Government. In 1961, the AEC had indicated in a letter that, although these tailings were not under its regulatory control, there was concern about their use. But before that, all through the '50s, tailings were used for various types of construction all through the West.

Q. Does that mean some fill dirt used in highway construction in the West, for example, could be radioactive?

A. That's right, but there is no problem about the roads, because they are out in the open. To the best of our knowledge, there is no situation comparable to that of the homes in Grand Junction.

Q. Dr. Schlesinger, there is another side of the Atomic Energy Commission's business—the development of nuclear weapons. Is that responsibility growing or diminishing?

A. I would prefer to describe this as the national-security side of our agency. It is a continuing responsibility. I believe that the United States must do what is required to maintain its military posture.

We are developing weapons, but we are performing other functions for the Department of Defense. There is, importantly, the development of nuclear propulsion units for naval vessels—aircraft carriers and submarines—which plays a very large role in our national security.

Q. Why does the U.S. continue to develop nuclear weapons when, according to some scientists, there now are enough atomic warheads stockpiled in this country and the Soviet Union to destroy the world?

A. There is a premise in your question which I must reject. The objective of our weapons program is not "to destroy the world"; in large measure, it is to design weapons that will go after very discrete military targets and to avoid generalized destruction.

For example, antiaircraft weapons are designed to destroy an aircraft in flight. The anti-ballistic-missile system is a defensive weapon designed not to go after population centers but to intercept incoming nuclear warheads.

In addition, the United States Government pursues research into nuclear-weapons technology in order to keep up with the changes in the potential opponent's force structure. At the present time, the Soviets are deploying ABM defenses. We must be assured that we can penetrate those defenses. We must be assured of the reliability of the over-all weapons systems. We must be assured that the weapons and the means of delivery will survive, and will be available at the place and time they may be needed.

For these reasons, we maintain a substantial stockpile of weapons—much larger than required to destroy cities. We are attempting to upgrade that stockpile in a number of respects. The growth in the stockpile reflects the decision to develop MIRV—multiple, independently targeted re-entry vehicles. But, by and large, the trend has been to reduce the size and yield of weapons. We now have relatively low-yield warheads on board the Minuteman III and the Poseidon missiles, in contrast to the very-high-yield nuclear weapons which some of our B–52 bombers carried in the 1950s.

Q. Is this policy being followed by the Soviet Union?

A. We can only speculate on that at the present time. But you've read, I'm sure, reports about Soviet multiple re-entry vehicles. To the extent that they're beginning to move in that direction, that would suggest that they are following a similar policy.

MANKIND'S CHANCES IN ALL-OUT WAR

Q. Even with these more selective weapons, would an all-out nuclear war mean the end of life on the planet?

A. No, sir. Most of the world's population would live in untargeted areas. Even in the areas that are targeted, a very significant fraction would survive.

Q. How dangerous would radioactive fallout be in an all-out nuclear war?

A. That would require cleanup on the part of both targeted and untargeted countries. There would be a fair amount of radioactivity on the ground and in the atmosphere for a period of time, and this would probably induce a somewhat higher rate of cancer and leukemia and possibly raise the death rate.

Q. Could the U.S. survive an all-out nuclear war if it developed a civil-defense program?

A. I think that the U. S. would survive, but not in the form that we know it today. The estimates are that something on the order of 100 or 110 million of our people would die in an all-out nuclear war, and it might go even higher than that. That is assuming the most fragmentary kind of civil-defense program.

Civil defense, even so simple a scheme as evacuation of the public from major metropolitan centers, would save on the order of 40 or 50 million lives if there were strategic warning.

The Soviets have had a more ambitious civil-defense program than has the United States.

The point is that we are not going to have all-out nuclear war. All-out nuclear war would be a catastrophe for the nations involved. But the end of life on the planet—or even the end of life in the countries targeted—represents a vast overstatement.

Q. Does the U.S. have a plan for evacuation of major urban areas?

A. No.

Q. Should there be such a plan?

A. In my personal judgment, yes.

Q. You have been talking about the possibility of nuclear war between the U.S. and the Soviet Union. But aren't there other countries that now have—or will have—atomic weapons?

A. There are at the present time five nuclear powers: U.S., Russia, Britain, France, and Red China. I doubt that either Britain or France is likely to initiate nuclear warfare. The U.S. and Russia are deterred, I think, from attacking each other at the present time. And I believe that the Red Chinese would recognize full well the consequences to themselves of initiating nuclear war—although perhaps we understand less about the Chinese attitude on this question than we do the other nations.

IF MORE JOIN THE "NUCLEAR CLUB"

Q. There are recurring reports that countries such as India and Japan and Israel are on the verge of joining the "nuclear club." Do you think that will happen?

A. It is our hope that all nations which are not presently nuclear-weapon states will observe the objectives of the nuclear nonproliferation treaty.

The Indian Government has emphasized in the past that further spread of nuclear weapons is not in the interest of any nation. Israel has supported the United Nations General Assembly resolution in favor of the nonproliferation treaty. Both countries may have taken some preliminary steps which would permit them to acquire nuclear weapons on a compressed schedule if they embarked on a crash program, but as yet they do not—to our knowledge—have them. The Japanese have been exceedingly meticulous, so far as we know, to avoid any effort to develop nuclear weapons.

Q. Since the 1963 treaty banning atomic tests in the atmosphere, the U.S. has reported some 210 underground nuclear explosions. What has been the purpose of these tests?

A. In broad terms, the purpose has been to improve our nuclear-weapons technology. This has been necessary with the decision to deploy ABM defenses, which require a special type of warhead. Another reason was the decision to MIRV our offensive forces.

Q. Would you explain MIRV more fully?

A. That is providing each missile with a number of independently targeted re-entry vehicles—so that Poseidon carries a sizable number of re-entry vehicles; the Minuteman III has a lesser number. It required extensive testing to engineer a warhead which could in fact be carried by our missiles.

I'm not sure that it is generally recognized that the development of improved nuclear weapons has been a cheap way of maintaining our force structure while the Soviets were quadrupling the size of theirs. If we had not MIRVed our missile forces, it probably would have cost the United States between 15 and 20 billion dollars to expand its force structure by adding 30 or 40 Polaris submarines and 800 to 1,000 Minutemen missiles. Not only are procurement costs considerably lower but, in addition, operations and maintenance costs will be even more reduced because we have not expanded the force structure, with all that that implies with regard to crews and maintenance personnel.

Q. Does this imply that you are not particularly concerned about the numbers of Soviet missiles versus the number of U.S. missiles?

A. I think that the expansion of the Soviet force structure has been matched by the modernization of the U.S. force structure to date. If the Soviets were to go on increasing the number of missiles in their inventory it would become an increasing source of concern.

WHY "CANNIKIN" WAS "ESSENTIAL"

Q. Why was the Amchitka underground nuclear test so important that the President decided, in spite of all the emotion generated in opposition, to go ahead with it?

A. I think that the President has the responsibility as Commander in Chief to do what is essential for national security, even when there is some public opposition.

The reason for the "Cannikin" test in Amchitka Island was to minimize the risk of putting into stockpile a defective device. There was a decision in 1969 to deploy the Spartan missile. This was the warhead for that missile. It would not have been wise to deploy it without making sure it was effective.

Q. What do the latest reports show as to the effectiveness of the weapon and as to environmental damage from the blast?

A. All indications that we have from the test show that the weapon performed up to expectations, and therefore that it can be introduced into the stockpile.

At this point in time we do not anticipate any further high-yield tests at Amchitka.

With regard to the environmental effects—they were localized, relatively small, and well within the range of predication. The one possible exception is the immediate impact on the sea-otter population around Amchitka. We will not have a good count to compare with our base number until next September or October, and then we can tell what the effect of the test was on the otters.

Q. Is it possible that there has been irreversible damage done to the sea otters?

A. No, sir. There's no possibility of that. The maximum damage to the sea-otter population that anyone has estimated is less than the State has taken in its periodic harvests for the pelts, as well as our transplanting otters to other areas.

A problem with the sea otters at Amchitka is that the growth of the herd encroaches on the available food supply.

Q. The U.S. and the Soviet Union signed the atmospheric test-ban treaty in 1963. Since then, both nations have been testing

underground, and the Red Chinese have been exploding nuclear devices in the atmosphere. Do you see any end to this atomic arms race?

A. I think the major nuclear powers will continue to test—provided there's no complete test-ban agreement—until such time as the benefits to themselves in terms of improved weapons technology no longer are equal to the costs that they are paying, financial and otherwise. At that point their interest testing will diminish.

Q. Do you have any idea when that might happen?

A. I would think that improvements in the force postures of both sides, with particular reference to weaponry, are likely to go on into the '80s, in any event.

AT THE HEART OF TEST-BAN DEBATE

Q. Would it be feasible, as some scientists are suggesting, to discontinue all testing—underground as well as atmospheric?

A. It may be feasible, but it's not necessarily desirable.

Much of the discussion of a possible treaty banning all atomic testing has focused on the issues of whether the U.S. can effectively monitor what the Soviets are doing. The issue of feasibility has hung on that.

We have very much improved our capability to monitor events in the Soviet Union. But the question of the desirability of the test ban goes far beyond the question of monitoring what the Soviets are doing.

The real question is, given the changed nature of the opposed forces in this era of negotiations whether it is desirable to cease nuclear testing.

Now, there are two points that ought to be kept in mind:

When President Kennedy talked about a complete test ban, he believed that it was impossible to develop ABM systems. Now we are in a period of time in which ABM systems are being deployed, and it may be necessary to continue testing to insure penetration of defensive systems.

A second difference is the present discussion of the modernization of our tactical-nuclear-weapons stockpile. By "tactical nuclear weapons" I mean those weapons which might be used in support of our general-purpose forces. These include antisubmarine and antiair weapons, artillery projectiles, short-range missiles and the like.

If there were a comprehensive test ban, it would be impossible to develop an improved array of tactical nuclear weapons. That is a price that must be paid, along with maintenance of our strategic deterrent. And it's an over-all political judgment whether the price that you have to pay is worth the benefits, environmental or political, in a comprehensive test ban.

To return to the question about how well the U.S. can monitor events of the Soviet Union: We have made very substantial improvements in the period since 1963. At the present time we are able to monitor nuclear explosions in the Soviet Union with fair competence down to a range of 10 to 20 kilotons, assuming that the Soviets do not take extraordinary measures to achieve concealment.

Now, at 10 to 20 kilotons, there are possibilities of testing weapons effects and the like which have considerable impact with regard to nuclear-weapons technology, although it would, of course, be impossible to do a proof test of the Cannikin type at such low yields.

Q. Do you know, then, approximately how many underground tests the Soviet Union has made in recent years?

A. Unlike the United States, the Soviets do not announce tests. They are not exactly forthcoming with regard to public information. But we have detected 43 seismic signals in the past four years which we feel have been tests. Whether there have been others of lower yield that we may have missed we do not know.

Q. How would that compare with the number of U.S. tests in the same period?

A. We have had a signficantly larger number of tests in the same period than that number. To whatever extent we may have missed some Russian tests, that would reduce the ratio.

Q. Is the U.S. able to detect nuclear tests in Red China?

A. Yes—we have the same capability as we do in detecting Russian tests. But since the Red Chinese have dealt in the atmosphere, it's even easier in their case.

Q. Has the 1963 treaty between the U.S. and the Soviet Union banning atmospheric tests reduced radioactive fallout in this country and around the world?

A. We usually use strontium 90 as our indicator of radioactivity in the atmosphere. When the partial test-ban treaty was signed in '63, something on the order of 20 million curies of strontium 90 had been released up to that point, of which 16 million curies were still in the atmosphere. Between '63 and '68 the number of curies in the atmosphere diminished from 16 million to 250,000. Since '68 it has stabilized.

So what the Chinese tests and those by the French in the South Pacific have done is to prevent further reduction of the amount of strontium 90 in the atmosphere.

Q. Does the level that now exists pose any threat to human health?

A. We would prefer not to have it in the atmosphere. Strontium 90 is a particularly undesirable radioisotope because it substitutes for calcium and it goes into the bones of human beings—and most rapidly into the bones of growing children. So the less we have of strontium 90 around in the environment the better off we are.

THE FUTURE'S "IMAGINATIVE OPTIONS"

Q. Dr. Schlesinger, looking into the future, do you see uses of the atom that the ordinary person hasn't even dreamed of? What about atom-powered space travel, for example?

A. I do not consider myself visionary or a nuclear prophet. Some people in the past have—and many have had notoriously bad batting averages in their predictions.

Obviously there are areas of research and development where, with the necessary public approval and funds, certain nuclear technologies could be developed and made to pay off eventually: for example, nuclear rockets for deep-space missions and, at some point in the future, nuclear-powered merchant shipping.

In the years ahead we probably will see a number of interesting and valuable developments in the use of radioisotopes—the isotope-powered artificial heart, for example. Also, we may well see radiation used for improved sterilization procedures in hospitals, to convert wastes into useful materials, and for the preservation of food.

These are not new ideas, and more imaginative nuclear technologies may be in prospect, but to what extent will always depend on national goals and priorities. That is why I refer to them as "technical options."

Ultimately, it is up to the public to decide what they want and what they are willing to pay for. This will have the greatest bearing on the future of nuclear energy.

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

(On the report of the First Committee (A/8575 and Corr. 1))

2828 (XXVI). Urgent need for suspension of nuclear and thermonuclear tests.

A

The General Assembly,

Viewing with the utmost apprehension the harmful consequences of nuclear weapon tests for the acceleration of the arms race and for the health of present and future generations of mankind.

Fully conscious that world opinion has, over the years, demanded the immediate and complete cessation of all nuclear weapon tests in all environments,

Recalling that the item on the question of a comprehensive test ban has been included in the agenda of the General Assembly every year since 1957,

Deploring the fact that the General Assembly has not yet succeeded in its aim of achieving a comprehensive test ban, despite eighteen successive resolutions on the subject,

Noting with regret that all States have not yet adhered to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, signed in Moscow on 5 August 1963,[1]

Deploring the fact that the determination expressed by the original parties to that Treaty to continue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all time has not so far produced the desired results,

Noting with special concern that the continuation of nuclear weapon tests in the atmosphere is a source of growing pollution and that the number and magnitude of underground tests has increased at an alarming rate since 1963,

Having considered the special report submitted by the Conference of the Committee on Disarmament[2] in response to General Assembly resolution 2663 (XXV) of 7 December 1970,

Recalling its resolution of 1762 A (XVII) of 6 November 1962, whereby all nuclear weapon tests, without exception, were condemned,

Convinced that, whatever may be the differences on the question of verification, there is no valid reason for delaying the conclusion of a comprehensive test ban of the nature contemplated in the preamble to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water.

1. *Reiterates solemnly and most emphatically* its condemnation of all nuclear weapon tests;

2. *Urges* the Governments of nuclear-weapon States to bring to a halt all nuclear weapon tests at the earliest possible date and, in any case, not later than 5 August 1973;

3. *Requests* the Secretary-General to transmit the present resolution to the nuclear-weapon States and to inform the General Assembly at its twenty-seventh session of any measures they have taken to implement it.

B

The General Assembly,

Noting that one of the first steps in the strengthening of international security is to dissipate world-wide fears that nuclear, thermo-nuclear and other weapons of mass destruction may be used by miscalculation in what could appear to be a desperate situation,

Considering that for the last few years the United Nations has been preoccupied with finding ways and means of diminishing the pollution of the earth's atmosphere,

Noting that scientists have been unanimous in the conclusion that the fall-out from nuclear tests is injurious to human and animal life and that such fall-out may poison the earth's atmosphere for many decades to come,

Taking into account that underground nuclear and thermonuclear tests may not only create serious health hazards but may also cause as yet undetermined injury to

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[1] United Nations, *Treaty Series*, vol. 480 (1963), No. 6964. 72-01593

[2] A/8457, sect. III.

humans and animals of the region where such tests are conducted,

Recognizing that there already exist sufficient nuclear, thermonuclear and other lethal weapons of mass destruction in the arsenals of certain Powers to decimate the world's population and possibly render the earth uninhabitable,

1. *Appeals* to the nuclear Powers to desist from carrying out further nuclear and thermonuclear tests, whether underground, under water or in the earth's atmosphere;

2. *Urges* the nuclear Powers to reach an agreement without delay on the cessation of all nuclear and thermonuclear tests;

3. *Reassures* the peoples of the world that the United Nations will continue to raise its voice against nuclear and thermonuclear tests of any kind and earnestly requests the nuclear Powers not to deploy such weapons of mass destruction.

C

The General Assembly,

Recognizing the urgent need for the cessation of nuclear and thermonuclear weapons tests, including those carried out underground,

Recalling that this subject has been included in the agenda of the General Assembly every year since 1957,

Recalling in particular its resolutions 914 (X) of 16 December 1955, 1762 (XVII) of 6 November 1962, 1910 (XVIII) of 27 November 1963, 2032 (XX) of 3 December 1965, 2163 (XXII) of 19 December 1967, 2455 (XXIII) of December 1968, 2604 (XXIV) of 16 December 1969 and 2663 (XXV) of 7 December 1970,

Expressing serious concern that the objectives of those resolutions have not been fulfilled,

Noting with regret that all States have not yet adhered to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water, signed in Moscow on 5 August 1963,[3] and that some continue to test in the atmosphere,

Taking into account the determination expressed by the parties to that Treaty to continue negotiations to achieve the discontinuance of all test explosions of nuclear weapons for all times,

Noting the appeal for progress on this issue, made by the Secretary-General in the introduction to his report on the work of the Organization,[4]

Noting with special concern that nuclear weapon tests in the atmosphere and underground are continuing,

Having considered the special report submitted by the Conference of the Committee on Disarmament[5] in response to General Assembly resolution 2663 B (XXV),

1. *Stresses anew* the urgency of bringing to a halt all nuclear weapon testing in all environments by all States;

2. *Urges* all States that have not yet done so to adhere without further delay to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water and meanwhile to refrain from testing in the environments covered by that Treaty;

3. *Calls upon* all Governments that have been conducting nuclear weapon tests, particularly those of parties to the Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and under Water, immediately to undertake unilateral or negotiated measures of restraint that would suspend nuclear weapon testing or limit or reduce the size and number of nuclear weapon tests, pending the early entry into force of a comprehensive ban on all nuclear weapon tests in all environments by all States;

4. *Urges* Governments to take all possible measures to develop further, and to use more effectively, existing capabilities for the seismological identification of underground nuclear tests, in order to facilitate the monitoring of a comprehensive test ban;

5. *Requests* the Conference of the Committee on Disarmament to continue as a matter of highest priority its deliberations on a treaty banning underground nuclear weapon tests, taking into account the suggestions already made in the Conference, as well as the views expressed at the current session of the General Assembly;

6. *Requests particularly* Governments that have been carrying out nuclear tests to take an active and constructive part in developing in the Conference of the Committee on Disarmament, or in any successor body, specific proposals for an underground test ban treaty;

7. *Expresses the hope* that these efforts will enable all States to sign, in the near future, a treaty banning underground nuclear weapon tests.

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[3] United Nations, *Treaty Series*, vol. 480 (1963), No. 6964.

[4] A/8401/add.1 and Add.1/Corr.1.

[5] A/8457, sect. III.

Nixon To Review Stance on Underground Tests

(By George C. Wilson)

The Nixon administration, spurred by an initiative by Sen. Edward M. Kennedy (D-Mass.), is taking a new look at the idea of expanding the nuclear test ban treaty to encompass underground blasts.

The Defense Department has put together an extensive analysis of the proposition for White House discussions, with Secretary Melvin R. Laird opposing a comprehensive ban.

"From our standpoint," Laird said in an interview yesterday, "the best scientific information is that we are not in the position to advocate such a program in the Department of Defense."

He said his opposition was based on the belief that detection of Soviet tests without on-site inspection was not yet foolproof and that the United States "learns new things every time we have a test."

Laird stressed that the Pentagon's position may not be the one President Nixon adopts after studying the various government position papers.

The Defense Department view collides with that of Kennedy and several other senators as well as a group of scientists who claim the Nixon administration has shifted the basis of its opposition from worries about Soviet cheating to the desire to continue U.S. testing of warheads.

Kennedy's strategy is to force President Nixon to take a stand on a comprehensive test ban treaty this election year. Kennedy already has Sen. George McGovern (D-S.D.), a declared presidential candidate, as a co-sponsor on his sense of the Senate resolution to open "prompt negotiations" with the Soviet Union to end all underground nuclear weapons tests.

His resolution also calls for "an immediate moratorium on all U.S. testing to remain in effect so long as the Soviet Union also abstains from testing."

Besides Kennedy and McGovern, Democratic presidential challengers Edmund S. Muskie (D-Maine) and Hubert H. Humphrey (D-Minn.) have advocated moving toward a comprehensive test ban.

Muskie has said the preamble to the limited test ban treaty of 1963 and the nonproliferation treaty commits the United States to achieve a ban on all test explosions of nuclear weapons.

President Nixon on March 18, 1969, said "the United States supports the conclusion of a comprehensive test ban adequately verified," adding that "efforts must be made toward greater understanding of the verification issue."

Seven arms control specialists, in a telegram sent to Kennedy on Jan. 24, endorsed his resolution and said that "national means of certification" of underground nuclear tests "are now adequate even for a permanent comprehensive test ban treaty."

The seven included Marvin L. Goldberger, chairman of the Federation of American Scientists and former chairman of the Strategic Weapons Panel of the President's Science Advisory Committee; Herbert York, former director of the Pentagon's research and engineering office; and Herbert Scoville Jr., former deputy director for science and technology at the Arms Control and Disarmament Agency.

Thus, Mr. Nixon's reservations about being able to verify Soviet tests are being disputed by one body of scientific opinion.

The Federation of American Scientists argued in a policy paper that "recent improvements in seismology and other means of detection" would enable the United States to "detect Soviet violations of a test ban treaty long before the Soviets could carry out enough tests to score a breakthrough that would threaten the stability of the nuclear balance."

The FAS said that "much of the opposition" to a comprehensive test ban springs not from fear of Soviet cheating but "from the desire to continue American nuclear testing in order to develop new weapons to retest existing weapons and to keep our laboratories vigorous."

Jeremy J. Stone, director of the Federation of American Scientists, said yesterday that administration opposition to a comprehensive test ban represents a shift from insistence on onsite inspection of Soviet nuclear tests to the U.S. desire to conduct more tests of its own.

John S. Foster Jr., director of the Pentagon's research and engineering office, told the Joint Atomic Energy Committee in October that experience with detection over the last 10 years had established the need for on-site inspection to "clarify the nature of seismic events" large enough to detect but too small to identify positively; "establish the nuclear or non-nuclear nature of low-yield explosions; restore international confidence in any cases where earthquakes are misidentified as explosions, and deter violations by increasing the chance of being caught."

Kennedy said he will take the floor of the Senate the week of Feb. 13 to argue the case for a moratorium on testing. By then, he hopes to have some Republicans as well as Democrats as sponsors of his resolution.

His next step will be to ask Chairman J. W. Fulbright (D-Ark.) of the Senate Foreign Relations Committee to hold hearings on the comprehensive test ban resolution.

At such hearings, if not before, the administration would be forced to take a stand on the proposal for a wider test ban.

The White House reportedly had scheduled a strategy meeting today on the question, but White House press officials said they did not know of such a meeting.

Formal meeting or not, the whole question of building on the test ban treaty negotiated by President Kennedy is receiving fresh attention from President Nixon.

Communiqué of the Meeting

The Conference of the Committee on Disarmament today held its 545th plenary meeting in the Palais des Nations, Geneva, under the Chairmanship of Mr. Mohamed Al Arbi Khattabi, Representative of Morocco.

The Chairman made a statement.

The Secretary-General of the United Nations made a statement.

The Secretary-General. It is a great privilege and pleasure for me to be present in person, as one of my first duties as Secretary-General, to welcome the distinguished members of the Conference of the Committee on Disarmament to the Palais des Nations. The meeting also provides me with

the opportunity to reaffirm my strong conviction of the fundamental importance of disarmament in any effective system for the establishment and maintenance of international peace and security.

It is to state the obvious to emphasize at this time—as indeed always—the close interaction between progress in disarmament and the general political situation. In this respect one can see a number of positive developments, in particular the meetings between leading statesmen of the world with their declared aim of improvement of relations and relaxation of tensions to strengthen the foundations of a more rational and peaceful world. There is also movement towards reduction of tensions and strengthening of *détente* in Europe. There is hope that this will accelerate the process towards a conference on European security and talks on force reductions. Indeed the need for progress towards regional arms control and disarmament is urgent in Europe, which is still burdened with a most deadly concentration of modern weapons.

The disarmament scene also shows a number of encouraging signs. One of them is the promise of progress at the Strategic Arms Limitation Talks, known as SALT. This continuing strategic dialogue between the Union of Soviet Socialist Republics and the United States of America has already produced two agreements which serve to some extent the purpose of limiting the threat posed by the very existence of nuclear arsenals and of improving methods of communication for crisis management in the nuclear age. All of us hope that spring may bring the first more substantive SALT agreement. Despite its probable limited scope, such an agreement, if achieved, could become a first harbinger of a real effort to put a stop to the development of ever more deadly and sophisticated nuclear arms both in quantitative and qualitative terms. It is high time that the household words which the vocabulary of nuclear weaponry has become—expressions such as MIRVs, ABMs, ICBMs etc.—be relegated back to the world of science fiction where they more properly belong.

The Conference of the Committee on Disarmament has proved to be the most effective and productive organ for multilateral arms control and disarmament negotiations available to the international community. This Conference first met in Geneva as the Eighteen Nation Committee on Disarmament on 14 March 1962. On the eve of its tenth anniversary I should like to pay special tribute to the members of the Conference for their valuable contributions to the successful conclusion during the past decade of a series of six international treaties all dealing with important aspects of disarmament, arms control and limitation of armaments.

At no previous time in recorded history have so many agreements been achieved in the field of disarmament. In addition, the 1925 Geneva Protocol banning the use in war of chemical and biological weapons has been strengthened and given new stimulus. Moreover, for the first time in history the international community has designated a decade—the 1970s—a Disarmament Decade.

In one way or another, what is familiarly known as the Geneva Disarmament Conference has played a significant role in these achievements. Despite these important successes, however, the nations of the world have so far failed to halt or even perceptibly slow down the armaments race, in particular the nuclear arms race. In fact, during this period the armaments race has spiralled to a higher level than ever before. World military expenditures have escalated from some 120 billion dollars to over 200 billion dollars per year. Two leading nuclear powers have emerged with such overwhelming nuclear capacity that a mere fraction of the weapons possessed by each can destroy the other and the world with it. Yet, as a result of recent developments in the qualitative nuclear arms race, the number of deliverable nuclear warheads is being multiplied by a factor of 3 to 14. While the world thus survives on the knife-edge of nuclear terror, vast material and human resources which could be used for productive peaceful purposes to enrich the standards of living and the quality of life of the people of the world have been wasted in a futile and harmful arms race.

For more than two years the Soviet Union and the United States have been engaged in bilateral negotiations at SALT. All of us, I am sure, are greatly encouraged by the reports reaching us concerning the possibility of an early treaty on the limitation of anti-ballistic missile systems and an interim agreement on certain measures with respect to the limitation of strategic offensive arms. Any agreement between the two Powers to limit the production of these strategic weapons would have great political significance, particularly if it represented an initial step in a further disarmament process. Increasingly, however, concern is being voiced that SALT might achieve some quantitative limitation of nuclear weaponry but permit a qualitative nuclear arms race to continue.

In my view, an indispensable step to halt the qualitative nuclear arms race is a comprehensive test-ban treaty. It is now more than eight years since the Partial Test Ban Treaty was signed on 5 August 1963, banning all tests in the atmosphere, in outer space and under water. Despite the moral obligation contained in that Treaty to stop all weapon tests and the legal obligation in the Non-Proliferation Treaty to halt the nuclear arms race, underground testing has been continued at an even greater rate than previously in the other three environments. In addition, testing also continues in the atmosphere, though at a slower pace.

No other question in the field of disarmament has been the subject of so much study and discussion as the question of stopping nuclear-weapon tests. I believe that all the technical and scientific aspects of the problem have been so fully explored that only a political decision is now necessary in order to achieve final agreement. There is an increasing conviction among the nations of the world that an underground test ban is the single most important measure, and perhaps the only feasible one in the near future, to halt the nuclear arms race, at least with regard to its qualitative aspects. There is a growing belief that an agreement to halt all underground testing would facilitate the achievement of agreements at SALT and might also have a beneficial effect on the possibilities of halting all tests in all environments by everyone. It is my firm belief that the sorry tale of lost opportunities that have existed in the past should not be repeated and that the question can and should be solved now.

While I recognize that differences of views still remain concerning the effectiveness of seismic methods of detection and identification of underground nuclear tests, experts of the highest standing believe that it is possible to identify all such explosions down to the level of a few kilotons. Even if a few such tests could be conducted clandestinely, it is most unlikely that a series of such tests could escape detection. Moreover, it may be questioned whether there are any important strategic reasons for continuing such tests or, indeed, whether there would be much military significance to tests of such small magnitude.

When one takes into account the existing means of verification by seismic and other methods, and the possibilities provided by international procedures of verification such as consultation, inquiry and what has become to be known as "verification by challenge" or "inspection by invitation," it is difficult to understand further delay in achieving agreement on an underground test ban.

In the light of all these considerations, I share the inescapable conclusion that the potential risks of continuing underground nuclear weapon tests would far outweigh any possible risks from ending such tests.

The widespread impatience and dissatisfaction of the non-nuclear-weapon States with the failure of the nuclear Powers to stop nuclear-weapon tests was clearly demonstrated at the recent 26th session of the General Assembly. Three resolutions were adopted, in stronger and more specific language than ever before, calling for a halt to all nuclear-weapon tests at the earliest possible date.

The General Assembly condemned all nuclear-weapon tests and called on the nuclear Powers to desist from further tests without delay; it called for immediate unilateral or negotiated "measures of restraint" to reduce the number and size of such tests pending an early ban; and finally the Assembly called upon this Conference to give "highest priority" to banning underground nuclear tests, and appealed to the nuclear Powers to take an active and constructive part in developing in the CCD specific proposals for such a ban.

A comprehensive test-ban treaty would strengthen the Treaty on the Non-Proliferation of Nuclear Weapons, which remains the foremost achievement thus far of the disarmament negotiations. It would be a major step towards halting what has been called "vertical proliferation," that is, the further sophistication and deployment of nuclear weapons, and would also strengthen the resolve of potential nuclear-weapon States not to acquire nuclear weapons and thereby help to prevent the "horizontal proliferation" of such weapons. On the other hand, if nuclear-weapon tests by the nuclear Powers continue, the future credibility and perhaps even the viability of the Non-Proliferation Treaty achieved after such painstaking effort may be jeopardized. I need not describe the greatly increased dangers that would confront the world in such event.

In the field of chemical and biological weapons, an encouraging first step has been taken during the past year. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction has the distinction of being the first international agreement on a measure of actual disarmament; it will result in the destruction of a small but not negligible part of the world's stockpile of weapons of mass destruction, bearing the stigma of particular horror. Its significance will be vastly increased when it is complemented, as the General Assembly has urged, and as indeed the treaty itself prescribes, by a similar ban on the development, production and stockpiling of chemical weapons. The Assembly has also called for an immediate halt in the development, production and stockpiling of the most lethal chemical weapons pending agreement on the complete prohibition of all chemical weapons. I am confident that the Conference will put forward the most strenuous efforts in order to fulfill the specific mandates of the General Assembly concerning chemical weapons.

The recent General Assembly has demonstrated its keen interest in the many facets of the disarmament problem by adopting a greater number of resolutions than ever before in this field. All these resolutions are now before you. On the questions of general and complete disarmament, which remains the ultimate goal of all disarmament efforts, they include a call to this Conference to resume its work on this subject, taking into account the comprehensive programme of disarmament originally proposed by some nonaligned members of the Conference, as well as other documents presented, as recommended by the previous General Assembly. The comprehensiveness of the CCD's agenda and the flexibility of its practices and

procedures make it possible for all of these disarmament items to be discussed at any time.

Among the important resolutions adopted by the General Assembly is one concerning the convening of a World Disarmament Conference. The discussions revealed a broad interest in the holding of such a conference and led to a decision by acclamation to take immediate steps in order that careful consideration be given to convening, following adequate preparation, of a world disarmament conference open to all States. It would in my opinion be most fitting that a World Disarmament Conference be held at some early date, also in order to advance the common objectives of both the Disarmament Decade and the Second Development Decade. It is, of course, of prime importance, as the resolution itself indicates, that such a conference be the subject of the most careful preparation in order to ensure its success.

Mr. Chairman, while disarmament is of vital interest to all peoples and to every member of the United Nations, I share the oft-repeated view of my distinguished predecessor underlining the importance of the participation in disarmament negotiations of all the militarily most important States which as permanent members of the Security Council have—according to the Charter of the United Nations—primary responsibility for the maintenance of international peace and security in which progress in disarmament is such a vital element.

As far as the participation of China in disarmament negotiations is concerned, a new situation has been created by the restoration of the lawful rights of the People's Republic of China in the United Nations, its subsequent entry in the organization and participation in its various activities.

This new situation was reflected in the disarmament debates during the 26th session of the General Assembly during which a practically unanimous wish was expressed by those delegations which spoke on the subject underlining the desirability of the participation of China and France in disarmament negotiations.

I have thought it appropriate to bring these facts to the knowledge of the representatives of the Governments concerned.

Mr. Chairman, it is my firm conviction that it is of paramount importance that China and France be associated with the disarmament negotiations. I hope that serious consideration would be given to this matter in order to ensure the participation of these two Powers in the disarmament negotiations.

During the Disarmament Decade all existing international treaties in the field of disarmament should be strengthened and fully implemented. I have already referred to the growing adherence to and support of the 1925 Geneva Protocol.

Today we are only a few days away from the second anniversary of the entry into force of the Non-Proliferation Treaty. In those two years, progress has been made in working out a Safeguards Agreement as required by Article III of the Treaty. As the previous chairman of the Safeguards Committee that succeeded in working out the Safeguards Agreement, I can share with you my satisfaction and appreciation of the good will and universal co-operation that was displayed by all involved in its deliberations. The efficient help and guidance given by the International Atomic Energy Agency was invaluable in reaching this agreement. It is essential that this spirit of international co-operation remain and be reinforced so as to facilitate the speedy and successful conclusion of negotiations on the Safeguards Agreement.

The report of the Secretary-General on the Economic and Social Consequences of the Arms Race and of Military Expenditures was welcomed with satisfaction by the General Assembly, which recommended that the conclusions of the report should be taken into account in future disarmament negotiations. The report underlined that the growing arms race not only puts human survival in jeopardy but, granted that humanity does manage to survive, it is also a cancerous threat to human welfare.

The report comes at a most opportune time. There is increasing evidence of a trend towards détente in international relations. The current political climate presents greater opportunities than ever before for additional agreements in the disarmament field. In these circumstances it would seem that nations can now at long last make a beginning in reordering their national and international priorities, so that their wealth and energy can be concentrated on the betterment rather than the possible destruction of life and society on this planet. The delegations present at this Conference have a most important function to perform in the fulfillment of this noble task.

I feel sure that all participants in this Conference will, in the year of its tenth anniversary, put forward their utmost efforts to deal with the full range of problems referred to the Conference by the General Assembly. I extend to all participants my most cordial wishes for the fullest success in their common endeavour.

The CHAIRMAN (Morocco) (*translation from French*). I think I am interpreting your feelings in expressing to the Secretary-General, Mr. Waldheim, our most sincere thanks for the interesting statement he has just made to us. We have listened attentively, Sir, to your clear and carefully thought-out remarks and to your words of encouragement. They will remain in our memories throughout the effort we shall be making to work out concrete and substantial measures of disarmament.

On behalf of us all, I should like to express our deep gratitude for this demonstration of sympathy and interest which you have made by your presence and by your statement.

Now I declare that we have finished the open part of this meeting. After a suspension of five minutes, the Committee will resume its work in closed meeting.

U.S. CUSTODY OF MARINE RESOURCES ON THE CONTINENTAL SHELF

Mrs. SMITH. Mr. President, for myself and on behalf of the distinguished junior Senator from Maine (Mr. MUSKIE), I ask unanimous consent to have printed in the RECORD a joint resolution of the Legislature of Maine relating to U.S. custody of marine resources on the Continental Shelf.

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

JOINT RESOLUTION PETITIONING THE HONORABLE WILLIAM P. ROGERS, SECRETARY OF STATE, AND THE MAINE CONGRESSIONAL DELEGATION FOR U.S. CUSTODY OF MARINE RESOURCES ON THE CONTINENTAL SHELF

Whereas, the living resources found in the waters adjacent to the State of Maine and associated with the continental shelf and slope of the United States are essential to the seafood needs of the State of Maine and the nation; and

Whereas, these living marine resources are gravely endangered from unrestrained harvesting and fishing; and

Whereas, the United States, because it lacks adequate jurisdiction over all domestic and foreign fishing in the area in which these resources are found, is unable to provide proper protection and management for the conservation of these living marine resources; and

Whereas, the State of Maine has traditionally depended upon its commercial fishing industry for a major portion of its coastal income; and

Whereas, the State of Maine believes that, because of a further decline in the fish stocks in this area as a result of continued heavy fishing pressures by foreign distant waters fleets, the living marine resources are in danger of critical depletion; and

Whereas, the State of Maine is convinced that the harvesting of these living marine resources on a sustained basis can be continued only if a greater measure of jurisdiction is given to coastal authorities; now, therefore, be it.

Resolved: That we, the Members of the 105th Legislature of the State of Maine now assembled in special session, go on record as petitioning the Honorable William P. Rogers, Secretary of State for the United States, and members of the Maine Congressional Delegation to use every effort at their command to establish a legal basis so that the United States shall become the custodian of all living marine resources on the continental shelf and its slope, including all such living resources in the water column above the continental shelf and its slope, so that these resources may be harvested in a manner which would provide proper conservation and wise utilization; and that in addition to such management, the United States would have the rights to the preferential control and use of such living marine resources on the bottom and in the water column above the continental shelf and its slope as is now provided for the nonliving resources of this area; and that such fishery jurisdiction be qualified to permit controlled harvesting inside said United States fishery zone of species not fully utilized by United States vessels; and be it further

Resolved: That a copy of this Resolution, duly authenticated by the Secretary of State of the State of Maine, be transmitted forthwith by him to said Secretary of State of the United States and to each member of the Maine Congressional Delegation with our thanks for their prompt attention to this vitally important matter.

CIVIL RIGHTS AND EXECUTIVE COMMITMENT

Mr. MONDALE. Mr. President, an incisive review of the long history of the civil rights struggle in America, written by Senator HUBERT H. HUMPHREY, was published in the New Leader, of February 21, 1972.

Senator HUMPHREY correctly identifies the crucial role of the President in advancing or delaying the Nation's movement toward the establishment of genuine equal opportunity for all Americans. In his article, entitled "Civil Rights and Executive Commitment," Senator HUMPHREY concludes that the present administration has yet to demonstrate a genuine commitment to the quest for civil rights and full opportunity.

Senator HUMPHREY suggests a social action program to get America back on the road to equal opportunity where every possible effort is made by the Federal Government. It is a program that would assure affirmative compliance with our civil rights laws, provide effective assistance for self-help community economic development programs, rebuild our cities, and develop new growth centers in rural America—all designed to give every American genuine equality of opportunity.

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:

THINKING ALOUD: CIVIL RIGHTS AND EXECUTIVE COMMITMENT

(By HUBERT H. HUMPHREY)

Is President Nixon trying to create a new climate for civil rights, a second post-Reconstructionist era in which the pains of the past decades will be cast aside? Judging from the political ebb and flow of the past three years, one would have to say Yes. The Administration has unflinchingly straddled civil rights issues; even the most liberal Republicans have found their zeal chilled by Presidential memoranda warning that their heads will roll if they seek to enforce existing statutes. "Watch what we do, not what we say" has been the official password, and in some instances the admonition has proven not without merit. Yet on the whole, little has been said and less done.

Although the Declaration of Independence held it to be a self-evident truth that all men are created equal, Richard Nixon is not our first national leader to compromise that ideal for political considerations. Some historians argue that Thomas Jefferson, for example, wanted the Declaration to censure George III for emasculating the "most sacred rights of life and liberty of a distant people, who never offended him, captivating and carrying them into slavery in another hemisphere." As Jefferson succintly pointed out, however, this provision was not inserted because it might have offended the North, where "people had very few slaves themselves, yet . . . had been pretty considerable carriers of them to others." Throughout the history of our quest for civil rights, progress has been blocked by the tacit agreement that only he who is without sin may cast a stone.

Immediately following the Civil War, radical Reconstructionism was imposed on the South; but in a decade it gave way to a general weariness about the rights of black Americans, and once again reality fell short of ideal. President Grant finally complained that "the whole public are tired out with these annual autumnal outbreaks in the South, and the great majority are ready now to condemn any interference on the part of the Government." When Northern liberalism acceded to the Compromise of 1877, we began the long retreat during which, as C. Vann Woodward observed, "at no time were the sections very far apart on race policy." Education, voting, public transportation, decent housing, employment—all became legally the exclusive preserve of whites. William Graham Sumner and the Darwinian sociological tribe soon confirmed American prejudices by "proving" that "legislation cannot make mores" nor "stateways change folkways." No one, we were informed in Congress, can legislate morality.

Not until the time Franklin Delano Roosevelt did the mass of Negroes begin to move out of the backwaters and slowly into the mainstream of national life. Under Harry Truman, who told his Committee on Civil Rights that "I want our Bill of Rights implemented in fact," the Presidential commitment to equal opportunity matched that of the Declaration. Except for military desegregation, unfortunately, Truman did not see his dreams carried out in his tenure. Yet his stand was so firm that four deep South states defected from the Democratic camp in 1948.

During the Eisenhower era straddling on civil rights became the Executive norm, despite the leadership exercised by the Supreme Court from the 1954 Brown decision onward. The lesson we all learned was that if decisions of the courts are not actively supported by appropriate administrative agencies, the sores of racial injustice are inevitably rubbed raw.

Fortunately, in the '50s several developments were conspiring to put Jim Crow behind us. The modern civil rights movement, inspired by the courage of Dr. Martin Luther King Jr., was helping Americans to accept the Negro not simply as a Negro but as a fellow human being. His nonviolent vision captured all of us when, echoing St. Paul, he cried out to his followers: "You may even give your body to be burned, and die the death of a martyr, and your spilled blood may be a symbol of honor for generations yet unborn, and thousands may praise you as one of history's supreme heroes; but even so, if you have no love, your blood is spilled in vain."

At the same time, America was increasingly realizing that it had a "white problem" too. Once this recognition took hold, pressure mounted on Congress to enact needed changes. After 1956, a great part of the legislative leadership in the area of civil rights and social welfare came from a generally unnoticed source—the Democratic Study Group. Formalized out of Minnesota Representative Eugene "McCarthy's Mavericks," this ad hoc body developed a broad social and economic platform, much of which became the law of the land under Presidents Kennedy and Johnson. And over in the Senate a strong corps of Republicans and Democrats was also coalescing around key issues, leading in 1957 and 1960 to the first of the modern civil rights bills. Their limitations notwithstanding, these measures helped create the lawmaking momentum of the '60s.

With John Kennedy's leadership on civil rights, America could no longer turn back. True, his Administration offered few legislative initiatives at first and sometimes was also compelled to straddle in order to ease its programs through Congress. But when the crunch came and the nation had to know just where he stood, President Kennedy left no doubt. Responding to the racial violence in Birmingham and elsewhere in the South, he said: "Let it be clear, in our own hearts and minds, that it is not merely because of the cold war, and not merely because of the economic waste of discrimination, that we are committed to achieving true equality of opportunity. The basic reason is because it is right."

President Kennedy's death triggered the flood of civil rights and social legislation worked through Congress by President Johnson; ambivalence on equality became a historical and political anachronism. While black, brown and red Americans still trail white in most economic and social measures of success, and free social relations among the races remains a goal envisioned but unachieved, minority progress since 1960 has been truly revolutionary. Legal barriers to integration have generally fallen and housing, jobs, income, and education have improved dramatically. The country has good cause for hope—provided we recognize that America's problem, to cite Archibald MacLeish's formulation, is "not to discover our national purpose but to exercise it."

A President out of tune with history, as Richard M. Nixon has been, might attempt to return us to the social complacency of the past, and in limited ways he might succeed. But history does not stand still, even for Presidents. Our nation simply will not long support attempts to sidetract the quest for civil rights and full opportunity.

The two essential ingredients of the Nixon recipe for civil rights seem to be (1) code words such as "strict constructionism" and "forced integration" to slow down Federal efforts against racial discrimination, and (2) reliance on welfare reform and revenue sharing to improve the lives of the urban poor. These have been mixed into a political stew called the "Southern strategy."

Some uses of the first integredient are well known—e.g., Attorney General John Mitchell's 1969 confrontation with the Supreme Court over desegregating Mississippi's schools. Even legal novices realized this ploy would merely transfer responsibility for Federal civil rights leadership from the Executive Branch, where Congress had placed it in 1964, to the Court, which has few instruments to integrate urban schools, higher education, the nation's 25,000 nursing homes, and so forth. The President subsequently produced his 8,000-word legal brief on school desegregation, promising no busing, and his June 1971 message on equal housing. Whatever their intentions, these statements were interpreted as a pledge to keep blacks in their place. Of course, neither statement reflected "strict constructionism" or "law and order," but rather a defiance of the affirmative compliance provisions of Title VI of the Civil Rights Act of 1964 and the 1968 Act. The public should not have been surprised when Nixon Supreme Court nominees were marked by inadequate judicial qualifications or actions connoting bigotry.

Meanwhile, the President has allowed the second ingredient, his plans for revenue sharing and welfare reform, to be consigned to the limbo of neglect. In his eloquent farewell to the Administration, Daniel P. Moynihan forecast precisely this result, pointing to the persistent inability of the White House to develop a second- and third-order advocacy of its priorities. Although Moynihan did not mean for his remarks to be so construed, they leave a distinct impression of the Executive's gross mismanagement of its own initiatives. And when this mismanagement of programs was extended to a massive mismanagement of the economy, the cause of legal and social justice suffered a sizable setback.

Lyndon Johnson used to remind us that we have only one President at a time and that he deserves at least our sympathy and respect for trying. Richard Nixon, for all his failures, did try to achieve progress in employment, welfare reform and revenue sharing. Unfortunately, these efforts seem to be headed nowhere. In his dramatic August 1971 address to the nation on economic reforms, the harsh reality became clear: The President's bungling of the economy for three years forced him to ask Congress "to amend my proposals to postpone the implementation of revenue sharing for three months and welfare reform for one year."

Several years ago Harry Golden observed that "noble Southerners have raised their voices against immorality and injustice but have remained mute about racial segregation because to condemn it made them traitors." But in today's South economic and social questions—which cannot be answered by rhetoric—are evidently larger than racial ones. Moreover, as John S. Nettles, Vice Chairman of the Alabama NAACP, told the Washington *Post*, the South is "dealing with a new nigger now—a black man who is no longer afraid."

President Nixon's Southern strategy might have succeeded in the South of 10 years ago, when only 1.5 million black citizens were registered to vote. Now the number has reached 3.6 million, and the white community is turning its back on the past. (In this new South, the Republican Governor of Virginia—once the home of "massive resistance"—"respectfully" disagrees with the President and urges Virginians not to resist court-ordered busing!) Indeed, the new South is increasingly facing the same problems as the rest of the country.

Should his new economic course pay off, Nixon may still check inflation and create more jobs, goals that eluded him during his first three years in office. But even if he achieves these goals, he will surely have done little to improve the quality of life for the poor—black, Spanish-speaking, Indian, or white.

What, then, must the Democrats do to get America back on the road to equal opportunity? We must develop a social action program that can be implemented if our candidate gains the Presidency.

First, we must pledge to enforce the statutes already on the books. As the U.S. Civil Rights Commission conclusively demonstrated in 1970, there has been a massive breakdown in Federal execution of existing legislation, a situation that is continuing to grow worse. Similarly, we must promise that affirmative compliance with existing civil rights laws by state and local governments will be a routine condition for receiving all Federal financial assistance, including funds returned in any revenue-sharing plan.

Second, Democrats ought to promote the cause of equal opportunity by expanding Federal monetary and technical assistance to minority enterprises and to financing institutions, as well as to community self-help programs. Federal projects like "Model Cities," now tottering after three years of the Nixon Administration, must be strengthened. In addition, renewal and development plans for our metropolitan centers must be made to include lower- and moderate-income housing with good public facilities and services. Since housing opportunities and public transportation in suburban locations are limited, jobs in these areas are effectively denied to underemployed and unemployed residents of the inner city. Principal HUD officials have stressed that income discrimination in housing affects more whites than blacks, but one would never guess this to be true from the President's pronouncements on the matter. Furthermore, we should create a National Domestic Development Bank (as proposed in legislation I recently introduced) to provide the funds to restore our decaying cities.

Third, although our urban problems remain the most serious obstacle to equal opportunity, the Congress has committed this nation to promoting a "sound balance between rural and urban America." To fulfill this mandate, we need to encourage rural capital development that would create new regionalized growth centers in the American economy. These will ease the pressures—economic, environmental, social, and fiscal—generated by the concentration of 70 per cent of our people on 2 per cent of the land.

Raymond Aron has argued that America's civil rights problem is "tragic, because Negroes and whites, despite their theoretical loyalty to Americanism and its values, have remained socially so alien they may perhaps be tempted to formalize their separation at the very moment they achieve the right and ability to become united." Rigid separation would certainly be a tragic outcome to our historical quest for civil rights and full opportunity. No doubt there will always be significant cultural and social differences among us. But that does not excuse us from the struggle to achieve the right to life, liberty, and the pursuit of happiness for all. To accept anything less would be a violation of the ideals that gave birth to our country.

CANCELLATION OF U.S. AID TO BANGLADESH

Mr. KENNEDY. Mr. President, after telling Congress and the American people that "all of us can be proud of the administration's record" in committing $158 million in aid to the Bengali people, the administration has relunctantly revealed that $97 million of those commitments were canceled. These statistics confirm earlier findings of the Judiciary Subcommittee on Refugees.

But what pride can there be in a record of nondeliveries, bureaucratic delays, and inefficiency in allocating humanitarian assistance for the Bengali people, whose needs were—and remain—great?

Mr. President, the administration has a sorry record in responding to human needs in Bangladesh. They have oversold and overannounced their program. A look at the record reveals a clear contrast between rhetoric and performance. Whether this is double talk, incompetence, or both, the administration has seriously misled the Congress and the American people on the release of humanitarian aid to the people of Bangladesh.

The record is clear that there remain today massive humanitarian needs in Bangladesh, and that three international appeals for relief assistance have not been answered in any meaningful way by this administration. The Congress has appropriated $200 million for Bangladesh relief needs, yet we read dispatches from the field that tell us that relief programs of the United Nations have been canceled and stymied because of the lack of American contribution. And so in desperation, the Bangladesh Government is turning instead to the Soviet Union. Should we be proud of the fact that the Russians are proving themselves to be more responsive and efficient in humanitarian assistance than the United States?

It becomes clearer every day that America's failure to recognize Bangladesh is standing in the way of America's ability to respond to the human needs of the Bengali people. The Congress recognized these needs months ago, and has provided funds that this administration must use now.

Mr. President, I ask unanimous consent to have printed in the RECORD recent press and academic articles on the crisis in Bangladesh and America's response to it.

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

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

WEST HESITATES, DACCA GIVES PORT JOB TO SOVIETS

(By William J. Drummond)

DACCA.—The Soviet navy has taken a major step toward extending its influence in the waters surrounding the Indian subcontinent, taking advantage of the inability of Western countries to come up with $6 million to finance salvage operations.

After waiting for more than two months for the West, acting through the United Nations, to clear sunken vessels from the ports of Chalna and Chittagong, Bangladesh Prime Minister Sheikh Mujibur Rahman gave the Russians permission to do the work.

Thirty hours later, United Nations headquarters in New York came through with approval for its representatives here to accept bids for the work. By then, it was too late.

The Soviet vessels were already under sail, and although it is understood that the Sheikh would like to cancel the invitation, he cannot, for diplomatic reasons.

Some neutral diplomatic sources here think that the Russian salvage fleet is the precursor of an extensive Russian naval presence in the Bay of Bengal.

The Russians will be able to chart every mile of the vast waterways of Bangladesh and will gain an important supply foothold to complement the growing Soviet naval presence in the Indian Ocean, according to these sources.

Other sources dispute this contention, pointing out that the larger of the two ports, Chittagong, cannot accommodate a vessel larger than a destroyer and would require extensive work before it could become a useful facility for ships of the line of the Soviet fleet.

Furthermore, these sources say, it seems unlikely that Mujib would tolerate full-fledged Soviet bases since the prime minister has proclaimed his country to be "The Switzerland of Asia."

In addition, India, the Soviet Union's major ally in the region, is committed to keeping the area free of the navies of the big powers.

Whether or not the Soviet Union gains a base, diplomatic sources of all persuasions say, its undertaking of the salvage operation is a significant step that will further heighten its political influence in Bangladesh.

The granting of the salvage job to the Soviet Union was a natural outgrowth of the delays characterizing Western relief operations in Bangladesh, most of which are channeled through the United Nations Relief Operations Dacca (UNROD).

In early January, UNROD informed headquarters in New York that clearing the ports of vessels sunk during the December war was an item of the highest priority. Even in the best of times Bangladesh imports more than a million tons of foodgrains a year, and with the ports blocked to normal shipping, a food shortage in the hinterland was bound to develop, UNROD said.

A Singapore firm was asked to provide a cost estimate for the work and the figure came to $6 million, which UNROD asked New York to supply.

Each day the food shortage upcountry became more severe. Rahman went to Moscow for an official visit, during which the Russians offered to clear the ports. Mujib did not give an answer immediately.

Mujib returned to Dacca on March 6, inquiring immediately whether the ports would be cleared by the U.N.

No approval had come. He waited until March 9 before accepting the Soviet offer to do the salvage job.

[From the Baltimore Sun, Mar. 17, 1972]

FOOD CRISIS GROWS IN BANGLADESH

DACCA, BANGLADESH.—The head of the United Nations relief program in Bangladesh said yesterday that the country is "heading for disaster" because of a food shortage and lack of response to a U.N. money appeal. He forecast food riots "a few weeks from now,"

"Bangladesh has been a playground for charitable hobbies," said Toni Hagen, the Swiss director for U.N. relief operations in Dacca.

"You can't build bridges with baby food and you can't transport food with blankets," he told a news conference.

Bottlenecks in Bangladesh ports receiving rice and wheat shipments from abroad are so great that the shipments have virtually halted. The distribution delay stems from congestion in port warehouses, according to U.N. officials.

Erna Sellver, Austria's ambassador to India and head of a special U.N. team surveying relief, said she had cabled the U.N.'s secretary-general, Kurt Waldheim, requesting $100 million worth of Red Cross goods to combat supply bottlenecks.

United Nations officials report that 229,000 tons of food grain—a six-week supply—is backed up in the ports, unable to move inland because of disrupted communications and lack of transport. Another 66,000 tons of grain is in government warehouses in the interior, where the bulk of the new nation's 75 million people live.

The relief officials say 11,143 tons of wheat from Switzerland and the United States, and 18,300 tons of rice from the U.S. is all that is scheduled to arrive in the ports of Chittagong and Chalna in the next 90 days. With the officials hoping to keep at least 150,000 tons of grain moving each month, this 29,443 tons will amount to only a 10 days' supply. There has been slow response to a worldwide appeal three weeks ago for $626 million in aid for Bangladesh.

Mr. Hagen has met Prime Minister Mujibur

Rahman twice this week to discuss the faltering program.

A week ago, Mr. Hagen said the U.N. program and the two-dozen voluntary relief organizations operating under its umbrella would pull out unless the government started unloading and moving more grain. He says he has noted some improvement. But the prime minister's coordinator of external relief assistance, Abdul Ran Choudhury, criticized the relief agencies and charged that they were taking up too much time making surveys.

Relief sources say the government has rejected a U.N. plan to spend $6 million clearing sunken ships from the harbors of Chittagong and Chalna, and apparently agreed instead to accept a Soviet salvage proposal outside U.N. auspices. The ships were sunk during the war between India and Pakistan last December.

The sources also say that rice in private stocks has been depleted by widespread smuggling across the border to India, where prices are higher. Sheikh Mujib has called for the formation of citizens' committees in the northern border areas to combat the smuggling.

The Indian government has started to ship the first 80,000 tons of 500,000 tons of wheat that it has promised into north Bengal. This is coming overland across the northern border.

U.S. AID TO BANGLADESH BEING REPROGRAMED

WASHINGTON (Reuter).—About 60 per cent of United States relief aid for Bangladesh, formerly East Pakistan, is being reprogramed or canceled, the State Department disclosed yesterday.

The disclosure came following claims by Senator Edward M. Kennedy (D., Mass.) that the Nixon administration had misled the American people on the extent of U.S. aid actually reaching the war-torn nation.

A department spokesman, Charles Bray, said that of the total U.S. commitment to East Pakistan relief of $158 million between November, 1970, and November, 1971, $97 million was being reprogramed or deobligated.

No one knows how much of this latter amount will go to Bangladesh. The U.S. officials said that of the $97 million, $91 million represented food-for-peace dollar sale agreements with the government of Pakistan.

In order to deliver this food to Bangladesh, it would require renegotiation of the agreements with the new government in Dacca, which the U.S. has not yet recognized.

[From Worldview, January 1972]

TAKING BANGLADESH IN STRIDE: SELECTIVE INDIGNATION IN AMERICA

(By Martin E. Marty)

The world community does not seem to care. This judgment appears in almost every analysis of the situation in Bangla Desh, formerly East Pakistan. North Americans know little about the politics of Pakistan, the geography of suffering, the moral issues involved. What is more, "compassion fatigue" has set in and our capacity for moral outrage is dormant, at least where the agonies of remote millions are concerned. Still we can, as Hugh McCullum, for example, does in the September, 1971, *Canadian Churchman*, make an effort to personalize the plea to help save the life of a Bengali refugee. ("One of the almost eight million driven from their homeland by soldiers of West Pakistan . . . the people . . . are systematically being destroyed culturally, politically and, in many cases physically by a repressive military regime from West Pakistan.")

McCullum knows that readers "don't want to be harangued again. You've seen it all. The old familiar scene from Biafra and the Middle East and South America and Vietnam. The naked child, the bloated belly, the wizened grandfather, the hopeless eyes." This tragedy is worse than Biafra, an earlier situation to which readers had eventually responded until compassion fatigue set in. "But this tragedy is a little worse." And it has political complications that were unrealized in Biafra. President Nixon is "playing with people's lives" in his leadership and in his encouragement of continued support of West Pakistan military ventures. On page after page, McCullum balances international political concerns with personal appeals. On a smaller scale, so have other editors. Their tone reveals one thing in common: They expect readers either to page rapidly past the articles on Bangla Desh or to have such a high threshold of resistance that very little will ever come of their reading.

Those who try to stave off the effects of that current version of "selective indigation" which overlooks Bangla Desh regularly ask: Why does one crisis reach a nation while others do not? The answer is not to be found in statistics. More Americans were roused to passionate support of one Lieutenant William Calley, declared by military courts to be a Mylai murderer, than were moved to indignation over the hundreds of deaths at Mylai—a fact demonstrable to any one who observed the actions of the President after Calley's guilt was announced. Mr. Nixon had obviously been reading the public opinion polls. That larger numbers of people are involved in one crisis than in another makes little difference. Similarly, distance is not the critical factor; Bangla Desh is not much farther away than Vietnam, a nation which was eventually brought into the scope of American concern.

"The world community does not seem to care." Understanding why at least one part of that community, the United States, does not seem to care may not resolve the crisis, but it could be the first step. According to a *New York Times* editorial, the events in East Pakistan are "crimes against humanity unequalled since Hitler's time." It is hard to measure the accuracy of such a statement, but the editorial goes on to cite numerous now-eclipsed tragedies, some of which attracted American attention and others which did not. The butchery that followed partition of the Indian subcontinent, for example, probably registers not at all. When was that? Who were the parties, who the personalities? What was the loss of life, what was the reason given, what were the means? Public recognition is close to zero.

A second cited "crime against humanity" was Stalin's postwar crimes. 'Selective indignation" in America picked that one up. America and Russia had been wary and uncertain allies during World War II; memories of earlier Red Scares in America and consistent reportage of Stalinist atrocities had prepared the climate for outrage. Rejection of pro-Stalinist domestic Communists during the 1930's had built up public predispositions against Soviet leadership. Now a "cold war" had begun, most Americans had taken sides and were looking for confirmatory evidence. When news began to trickle out of Russia, the American public had no difficulty filling out its stereotype of Communist evil. Little could be done, of course, about an internal situation "behind the Iron Curtain," but people on this side could at least employ their indignation to shore up American defenses.

Then there was "the massacre of Communists in Indonesia"; an event that hardly blipped across the psychic radar screen of Americans. The same people who had justified the U.S. presence in Vietnam as an alternative to a potential "bloodbath" of anti-Communists should America withdraw, overlooked the anti-Communist bloodbath—worse than the Vietnamese one would appear to be in prospect—that had already occurred in Indonesia. Estimates of the dead vary from 250,000 to 500,000, yet the event received no more than a few paragraphs of newspaper space and was ignored by "prime time" television. After all, it was "our side" that was doing the killing, and anyway, Indonesia is far, far away.

Finally, suffering in Africa during two freedom decades must be listed in the catalog of comparative crises. Through the years, in part because of American blacks' identification with African causes and in part because of white America's fears the African situations—including the morally and politically confusing Biafran scene—did begin to draw signs of recognition on the part of Americans.

We cannot say, then, that Bangla Desh is more overlooked than any of the other post-Hitler tragedies. It is safe to say that it is far down on the scale of neglect, rarely a subject of outrage, and clear evidence that "selective indignation" is operative. Selective indignation suggests that people respond to crises, threats, or events in no way proportionate to the quantity or quality of human misery involved. Other factors are determinative.

To begin to understand comparative crises and responses, a framework of inquiry designed by phenomenologist Alfred Schutz may be useful. Much of this framework is stated in formal philosophical terms and its detail does not concern us here; I shall freely pirate and translate his ideas as a background to understanding selective indignation in the case of Bangla Desh.

In his book *On Phenomenology and Social Relations*, Schutz speaks of "zones of relevance," describing four regions of decreasing relevance. First, "there is that part of the world within our reach which can be immediately observed by us and also at least partially dominated by us—that is changed and rearranged by our actions. It is that sector of the world within which our projects can be materialized and brought forth." Cancer in my family is a matter of "primary relevance" as disease in Bangla Desh is not. Vandalism in my neighbor's house is so close to home that I respond out of fear for my own property or care for his in ways different from my response to property-destroyers far away. The burning of Watts, Detroit, Newark, are matters of primary relevance to citizens of those metropolitan areas as the burning of villages in Bangla Desh is not. The first rule of comprehension, then, would be that we expect less response to problems outside the zone of primary relevance.

Schutz speaks next of "fields not open to our domination but mediately connected with the zone of primary relevance because, for instance, they furnish ready-made tools to be used for attaining the projected goal or they establish the conditions upon which our planning itself or its execution depends." One becomes familiar with these "zones of minor relevance," becoming aware of possibilities, chances, or risks contained in them "with reference to our chief interests."

The election of a Socialist premier in a Western Hemispheric nation, Chile, draws intermediate-range "selective indignation" responses. Our chief interests may be threatened and we begin to be alert. The Cuban revolution, "ninety miles away," was perceived as an immediate and direct threat—hence, the Bay of Pigs. It has been more difficult to dramatize the Chilean situation because of distance and the way in which the threat became present—the approved method of the ballot box as opposed to violent revolution. Bangla Desh has not fallen into this mediate zone.

Third, says Schutz, there are "other zones which, *for the time being*, have no such connection wtih the interest at hand." We call them "relatively irrelevant, indicating thereby that we may continue to take them for granted as long as no changes occur within them which might influence the relevant sec-

tors by novel and unexpected chances of risks." Even though Bangla Desh might lead to war between populous India and Pakistan—over what, by the way, would become the eighth most populous nation in the world if it were granted independence—the situation remains "relatively irrelevant." We can picture the conflict moving from the third to the first zone were Americans suddenly able to see China, Russia, and the United States being drawn into war in that area, however.

Finally, there are "zones which we suggest calling absolutely irrelevant because no possible change occurring within them would—or so we believe—influence our objective in hand." Jacques Ellul, in his book called *Violence*, scorned Western radicals for their "selective indignation." They expressed rage at the U.S. presence in Vietnam because in embarrassing America they might further their own interests. They did not seem intrinsically interested in human suffering as such; they could conveniently overlook comparable misery in the Sudan. Why? Because says Ellul, the outcomes there seemed "absolutely irrelevant" to those radicals' political objectives.

While Bangla Desh is not being dismissed as "absolutely irrelevant," it hardly represents anything closer than the third zone.

Schutz reminds us that "interest at hand" does not represent an integral, static, closed system of phenomena. There are pluralities of interests, neither constant nor homogeneous. Further, these are imprecise and intermingled. Last, and most important, there are "intrinsic" and there are "imposed" relevances.

Intrinsic relevances "are the outcome of our chosen interests, established by our spontaneous decision to solve a problem by our thinking, to attain a goal by our action, to bring forth a projected state of affairs." We are free to choose what we are interested in, but an established interest determines the system of relevances. We then have to put up with this system as established. Thus, Americans have come to regard the racial crisis as established and thus fit new responses within an intrinsic and almost automatic framework. Most have taken sides for black or white, for militant or moderate, for backlasher or reconciler. Stereotypes can then then readily be filled. Not so with a situation such as Bangla Desh, where neither West nor East Pakistan is yet part of a national mind-set here.

Schutz speaks also of "imposed relevances." We are not centers of spontaneity, "gearing into the world and creating changes within it." Imposed upon us as relevant are situations and events which are not connected with interests chosen by us, which do not originate in acts of our discretion, and which we have to take just as they are, without any power to modify them by our spontaneous activities except by transforming the relevances thus imposed into intransic relevances." While that remains unachieved, says Schutz, "we do not consider the imposed relevances as being connected with our spontaneously chosen goals. Because they are imposed upon us they remain unclarified and rather incomprehensible."

In those few words, Schutz has written an abstract history of the Vietnamese war and American consciousness. During the early 1960's, the "man on the street" could not have located Vietnam on the map. From his youthful stamp-collecting days he may have known about French Indochina; but Vietnam partitioning, Geneva accords, and the profiles of Southeast Asia remained unclarified and incomprehensible. Some Pentagon and State Department people who, no doubt sincerely, believed that Vietnamese destinies were closely connected with our national self-interest ("domino theories," "cold war enemy expansiveness," "fight them there or on the shores of California") tried to bring Vietnam from imposed to intrinsic relevance. Nothing like that has happened in the case of India or Pakistan. Surely the situation is now being brought to our attention but, as editors and media managers know, their audiences do not connect the issues "with our spontaneously chosen goals." The Schutzian framework can be tested on numerous events in American life and reveals something less than a rational pattern of national action and reaction.

"Remember Pearl Harbor" and "Remember the *Maine*" are two slogans which helped motivate American involvement in wars. The wars were on different scales, as were the threats implied, yet both slogans were sufficient to achieve their purpose. In the case of the *Maine*, the American public mind had been shaped by nearly a century's promotion of the ideas of Manifest Destiny and redeemership. The Spaniard stood in the way of an expanding Protestant empire, in the way of America's fulfillment of its divine mandate to world service. While the military details may have been meagerly perceived before the *Maine* went down, the nation's "spontaneously chosen goals" were being frustrated. The slogan enjoining remembrance of the *Maine* reinforced preconceptions and belonged to the already existing pattern of intrinsic relevance.

Pearl Harbor also belonged. As enemies of Franklin D. Roosevelt have contended for a quarter century and more, the American public was on the verge of intervening in war and only needed a dramatic act. The conspiratorial theory argues that Roosevelt, a master of cosmic stage-managing and the use of media, lured Japan into catching America off guard. Thus he discovered a new congruence between his goals and the nation's "spontaneously chosen goals," which in this case included national survival. The scale of stimuli, then, may differ so long as the new incidents fit into the existing goal pattern.

The threats to security involved in the Mexican War of 1847 and the firing on Fort Sumter in 1861 are hardly comparable, yet both fit the intrinsic relevance scheme. In both wars, leaders on both sides faced internal opponents, foot-draggers and reluctant participants, but they were able to prosecute the wars because triggering incidents had fulfilled certain expectations. Similarly, American Presidents know they can gain support for economic actions if they can rouse the nation to "selective indignation" about economic patterns (e.g., inflation) which remind the people of the Great Depression of the 1930's. People bear a bundle of memories and received traditions; they fear another depression and will find immediately relevant any step that seems plausibly related to avoiding such a development.

In all of this, some analogy to the individual human organism is appropriate. A knife at my throat, for example, or an open prison gate will, to say the least, be perceived as immediately relevant by me or by a prisoner. Bangla Desh offers neither threat nor opportunity in that same sense. Vietnam eventually did come to be seen—by perhaps a slight majority of Americans—as an actual threat to American survival in a world of falling dominoes; "victory" there was portrayed by coonskin-nailers-on-the-wall and the John Waynes among us as promising a generation of peace and the beginning of the end of Sino-Soviet expansion. But what do Americans gain from one side or the other in Bangla Desh?

One may compare a relatively trivial entity in our national history, the "Red Scare" following the Russian Revolution, with the "Red Coats" of the American Revolution. The Red Scare provoked the nation to hostility toward communism, even though, as it turned out, few citizens of the United States were active agents of Soviet communism. Yet, after World War I, the nation was so uncertain of its power and purpose that it could not tolerate internal dissent. Something similar occurred in the McCarthy era following World War II. Through that bitter time, many thoughtful citizens knew that the actual internal Communist threat was small, but enough of their contemporaries believed that national survival was at stake, and McCarthyism became a matter of intense concern.

In the American Revolution, many of the slogans warned of a threat to survival, but careful study shows that it was more a time of promise and opportunity. By any objective standard, the colonists were not oppressed as most of the revolutionary peoples of the world are. But there had been just enough taxation, non-representation and delay in the enlargement of liberties to permit leaders to rally the troops against England. The conflict had more to do with seizing the possibility of full self-government than with resisting tyranny. "Selective indignation" against relatively trivial events (the Boston Massacre) or selective support of ambiguous acts (the Boston Tea Party) came easily because they were positive reinforcements of "spontaneously chosen goals." Whether chosen goals were expressed in terms of resistance to tyranny, Manifest Destiny or, as more recently, Defending the Free World, crises must first be related to the goal pattern before they are popularly recognized as critical.

A number of other factors should at least be explored as possibly enhancing the "zones of relevance" explanation. For example, it seems that scale and scope have *something* to do with response to crisis. "The death of one person is a tragedy; the death of a million people is a statistic" (Stalin). Americans cannot hear enough about the suffering of one American prisoner of war in Vietnam or one imprisoned bishop anywhere in "the Communist World." They may even be able to respond positively to one Southeast Asian child flown to the U.S. for heart surgery. But the forced flight of 9 million people from Bangla Desh, who become a festering presence among hundreds of millions of Indians, is unimaginably gross and has to be reduced to abstraction and mere statistics. Perhaps Biafra was just enough smaller. Perhaps it represented a "conceivable" situation, one where American voluntary aid might make a difference. It is easier for American churches to raise funds for one graphic need—as when a local high school student needs kidney surgery—than it is to gather funds to keep alive hundreds of children in India's refugee areas.

Next, there must be some base in an already approved moral community. Richard L. Merritt shows in *Symbols of American Community 1735–1775* how American colonists in the middle of the eighteenth century began to see a common destiny and to be able to communicate with one another. During that period, events such as the Stamp Act or the almost inconceivably trivial threat that Anglicans might establish a bishop in the American colonies served to reinforce the resolve to work for independence. Americans have no network which picks up signals from Bangla Desh or many other parts of the world. Little "moral community" exists in a nation which supports the very regime that is the agent of most of the misery.

The timing of a tragedy also affects the response to it. "When" matters. Sebastian DeGrazia's *The Political Community: A Study of Anomie* suggests that there are moments when the leadership of a community projects such competing and confusing symbols that the followers, the masses, are lost and lapse into anomie. (For example, should one compete *or* cooperate, since the American system enjoins both? Yet they are logical opposites.) The government supports the regime that causes the suffering (in Bangla Desh, Spain, Greece, etc.) yet calls for a

compassionate response to the victims. The resulting anomie dissipates any public sense of obligation.

A decade of war in Indochina, racial turmoil at home, confusion over student dissent, hippie counterculture, and many "cry wolf" crises mixed in among authentic threats have led people to lapse into nostalgia, amnesia, apathy and dulled consciousness. In a different decade and a different context, Bangla Desh might have aroused more sympathy and support. Unfortunately for the starving, they did not get to choose their moment in the world community's psychic history. They are hungry now.

A local embodiment of distant realities helps international incidents become part of the scheme of intrinsic relevances. The movement of American blacks from marginal status to a zone of immediate relevance in national consciousness makes it easier for African incidents to be seen as vital to American blacks have stressed their ties to African roots, and more, no doubt, because they are a local embodiment of "black" threat and promise. Bangla Desh has no such embodiment in most of the world community.

The Arab-Israeli situation is seen as threatening because it may draw Russia and the United States into confrontation. It may be no more volatile than the Asian situation, which could similarly involve Russia with China and thus, inevitably, the United States. But the Middle East has American Jews as effective communicators of emergencies. The suffering of relatively smaller numbers of people there is more vivid to Americans than is the suffering of Pakistan's millions.

Selective indignation is obviously most operative where the line between "good guys" and "bad guys" is clearest. The difficult task of the U.S. government regarding the war in Vietnam is to convince Americans that they really are backing a more free, enlightened and promising regime than that of Hanoi. It is clear that our government has failed. The *Green Berets* on film attracted the already convinced, but few slogans, songs, heroes or legends emerged to support this war. The United States government was thrown back to depend upon the sheer authority of government itself, and it is only on this basis that it has been able to claim the cooperation of most of its citizens. In the case of Bangla Desh, however, the authority of the U.S. government is on the side of the "bad guys," of West Pakistan, and there is little reason or possibility for citizens to sort out the signals received from that part of the world.

The scheme I have mapped out does not preclude the role of the agitator or of mass media in stimulating response. Unfortunately, Bangla Desh has no agitators in most of the world community. The agitator can take a dormant issue and make it live, can discern factors at the edge of one zone of relevance and use them to bring the issue home. Colonists expressed "selective indignation" against potential Anglican bishops in the eighteenth century not because the bishops would have threatened American lives but because their presence collided with certain existing interests, particularly those of Congregationalists and other free churchmen.

Throughout the nineteenth century, spokesmen for a "Protestant Crusade" against a "Catholic Conspiracy" could agitate and draw response out of all proportion to Catholic presence and threat—because they were able to persuade others that the Crusade was defending the American fabric of government from internal and external foes. Of course there were few occasions when such a threat might conceivably have existed, and of course the crusaders were merely defending Protestant churches and interests. But the genius of the agitator is in creatively exploiting one set of interests to force a redefinition of the whole society's interests.

Repressive governments struck back at "anarchists" at the nineteenth-century Haymarket Square "riot" in Chicago and more recently, also in Chicago, at the "Hippy-Yippie" revolutionists of 1968, knowing in both cases that they could depend on positive public responses. After the "Cambodia-Kent State" incidents and the resulting widespread but largely non-violent campus demonstrations, polls showed the American people locating "campus unrest" and youth rebellion as more critical public issues that either the Vietnam war or racial unrest. Vice-President Agnew and Attorney-General Mitchell demonstrated their skill as agitators by overdramatizing these "anarchist" moments, by appealing to the tastes, interests and fears of the American people.

To convince Americans that their national survival relates to the choices they make in Bangla Desh is incomparably more difficult. Not until a further move is made, not until some Communist power makes gestures of apparent threat, will most Americans even know which side to choose.

While the role of the media could be an important factor, so far as is known the media reinforce existing opinion more than they convert to new opinion. Scores of empirical studies show that media have to rely, "all things being equal," on the predispositions of audiences or parts of audiences. Those who favor Ronald Reagan or George Wallace or Spiro Agnew find themselves more drawn to their heroes after televised performances; those who are repelled find these people even more repulsive after media exposure. So far, the Bangla Desh situation is so blurred, remote and confusing that portrayals of misery there fall into no pattern of reinforcement. McCullum is correct: We've seen all the bloated bellies before. We have to get closer to people's ego than mass media can, to predispose citizens to take seriously the signs of human exploitation and despair.

Although people's ego-formation goes on in the intimate circles of home, school, church and conversation groups, a symbolic national leadership is necessary to shape even these exchanges. Without such national leadership it is difficult to picture the nation coming alive to the problems of India and Pakistan. The name-giver, the eponym-fashioner, the locater of issues and symbol-creator is essential "Charismatic" is the term usually applied to such leadership. Pope John XXIII took unnamed, ill-defined yearnings for human concord and in five years enforced the themes of ecumenism as other people had not in fifty years. With meagre political programs, the Kennedy brothers brought hitherto-buried issues to public life. A Martin Luther King with very little power based on bus-rides, demonstrations and non-violent action sensitized a nation to the struggle for racial injustice.

A leadership that offers no clear path or clean imagery can hardly bring about the conversions which can then be reinforced by the media. Arms for West Pakistan and concern for Bangla Desh will strike most citizens as incompatible interests; one or the other might make sense, but compassionate response is crushed between the two.

Religious institutions are using their residual power in a minor way to change the situation. The appeals in religious publications, the fund drives of various denominational and ecumenical agencies, the occasional reports of visitors to the scene—all this may be of some modest help. While "crash programs" and "crisis responses" from small corners of the private sector strive to fill the void, agencies involved must also war against apathy. The dulling of human sensitivity is the greatest threat at the moment. Those who deal with religious symbols and theological interpretations are poised to effect some change, at least. Not much is likely to happen if they support the very governmental policies that contribute to the misery against which they profess to be contending. Nor is much likely to happen if they fall into apathy or cynicism themselves.

THE DISTINCTION BETWEEN MODERN WARFARE AND GENOCIDE

Mr. PROXMIRE. Mr. President, in testimony before the Foreign Relations Subcommittee on the Genocide Convention, Bruno V. Bitker, a Milwaukee lawyer and expert on the convention, clarified the treaty's distinction between the acts of modern warfare and acts of genocide. Since the war in Vietnam persists, that testimony is worth recalling.

At that time, the distinguished Senator from Idaho (Mr. CHURCH) asked Mr. Bitker whether there was any difference between genocide and the mass killings and bombings of villages which we are inevitably engaged in in Southeast Asia. Mr. Bitker noted the convention's judgment that the intent to commit genocide must be proven in all cases in question. If our intention was solely to destroy a national and racial population, then genocide could be charged. However, our intervention in Vietnam was based on political necessity, in protection of American national security, and such an involvement would not provoke accusations under the articles of the Genocide Treaty.

Although the war in Vietnam tragically continues, and although lives on both sides continue to be lost, the U.S. Government is not guilty of genocide. The distinction which Mr. Bitker made in 1970 points out the critical difference of intent. We are there to halt the Communist invasion from the north and not to destroy an national group. The horror of war is hardly diminished thereby, but Mr. Bitker's testimony does thwart the arguments of those who oppose the treaty for fear of American violations.

Mr. President, I urge Senators to ratify this humanitarian treaty to outlaw genocide.

FLORIDA COUNCIL OF FARMER COOPERATIVE OPPOSES ADMINISTRATION RURAL REVENUE SHARING PROPOSAL

Mr. HUMPHREY. Mr. President, the Committee on Agriculture and Forestry is now in the process of marking up several of the rural development bills now before it. Included among the bills is the administration's special rural community development revenue sharing proposal, S. 1612.

In the hearings that were held last year before the Rural Development Subcommittee of which I serve as chairman, many witnesses appeared before us on this measure. With the exception of the administration witnesses, no one favored the enactment of this particular proposal. Yet despite this opposition, President Nixon again this year, in his Rural Development message to Congress, called for enactement of this legislation.

Most Senators know that the administration's proposal calls for the termination of several rural development pro-

grams and activities by turning them over to the States to do with as they wish. Included in these programs are the Cooperative Extension Service, the Rural Environmental Assistance program, the Economic Development Administration, the Appalachian Regional Commission, and others.

I believe it is fair to say that most members of the Committee on Agriculture and Forestry including myself are opposed to this legislation.

The House Committee on Agriculture recently rejected both this proposal and the administration's latest proposal relating to credit sharing involving the turning over of Farmers Home Administration loan funds to the States.

Mr. President, I am not only confident that the Senate Committee on Agriculture and Forestry will join the House Committee on Agriculture in voting down these proposals, but will report a rural development bill which will strengthen the rural development program efforts the administration now wants to weaken or eliminate.

As an example of the many communications I continue to receive in opposition to these proposals of the administration, I ask unanimous consent to have printed in the RECORD a resolution I received recently from the Florida Council of Farmer Cooperatives, stating their opposition to the administration's Rural Revenue Sharing bill, S. 1612.

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

FLORIDA COUNCIL OF
FARMER COOPERATIVES,
January 19, 1972.

Hon. HUBERT HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUMPHREY: The Florida Council of Farmer Cooperatives passed the enclosed Resolution at its recent annual meeting. It is our hope that you will give this matter serious consideration and your support.

Please advise us if the Florida Council of Farmer Cooperatives can be of assistance to you in obtaining additional information on this or other agricultural related subjects.

Sincerely,

BOBBY R. BENNETT, *Secretary.*

Enclosure.

RESOLUTION

Whereas, since the 1930's funds from the United States Department of Agriculture have been used to encourage farmers to actively practice soil and water conservation, and

Whereas, these programs have been eminently effective, and

Whereas, it is now desirable that funds dispensed through Rural Environmental Assistance Programs be used not only for soil conservation, but for the preservation of water and air by preventing activities which pollute the air or the water by farmers, and

Whereas, H.R. 9447 and S. 1560 provide authorization for presently appropriated funds to be used for cost sharing by farmers who take active measures to reduce air and/or water pollution, and

Whereas, hearings on these bills are anticipated in early 1972;

Be it hereby resolved by the Florida Council of Farmer Cooperatives meeting November 8, 1971, that full support for this legislation be given by the Association, and that this resolution be forwarded by the Secretary to all members of the Agriculture Committee of the House of Representatives and of the Senate, assuring them of the need for such legislation.

FLORIDA COUNCIL
OF FARMER COOPERATIVES,
JACK NELSON, *President.*

Mr. KENNEDY. Mr. President, I wish to express my concern about the implications of the arrival of Rhodesian chrome ore in an American port. For the first time since 1965, the United States will receive chrome ore from Rhodesia. This country banned trade with Rhodesia in 1965 when the United Nations Security Council imposed mandatory sanctions on trade with the Rhodesian Government. Last September, the Senate voted to violate our United Nations obligation by accepting an amendment offered by the senior Senator from Virginia, permitting the United States to ignore its United Nations agreement to ban trade with Rhodesia. Thus, the United States joins Portugal and South Africa as the only nations officially breaking the Security Council ban on trade with the minority-ruled regime of Rhodesia.

South Africa and Portugal never indulged in the pretense of observing sanctions. Their interests, in one way or another, have long been alined with each other in national policies on race. Both of those governments maintain racist policies that impose the strictures of minority rule on masses of African citizens.

But the United States, on the one hand, has managed to support a public posture that claims abhorrence of the repressive and inhuman doctrines of minority rule, while on the other hand we actively support countries that officially maintain racist policies:

The Congress last year approved continuation of the bonus paid to South Africa sugar growers—the administration signed a half billion dollar loan agreement with Portugal for the use of an airbase in the Azores—a deal that may ultimately provide support for the Portuguese wars in Mozambique, Angola, and Guinea Bissau—and, 5 days after Mrs. Nixon returned from a visit to Liberia, the administration announced a loan guarantee of $48.6 million for South Africa to purchase locomotives from General Motors.

No official voice of concern has been expressed by our Government in response to the violence in the Southwest Africa dispute that has shut down an American-owned mining operation.

Rhodesia is a nation where 250,000 whites dominate the lives of 5 million blacks. In 1965, we voted to support the United Nations sanctions because of Rhodesia's split with Great Britain and because we believed in the need to nudge the Rhodesian regime toward a settlement with Great Britain.

Presumably, our Government felt at the time that England would most likely succeed in urging the rebellious Rhodesians to adopt reforms. Over the years, other countries have maintained the ban on trade with Rhodesia, while the United States, claiming a strategic need for Rhodesian chrome, has abandoned its United Nations obligation and succumbed to an unjustified plea for materials we do not need.

Both the State Department and the Office of Emergency Preparedness—OEP—have denounced the existence of a national chrome "crisis." Last year the administration supported legislation to reduce our current stockpile of chrome ore from 5.3 million tons to 3.1 million tons. Why then have we ignored OEP assurances that chrome stockpiles are more than sufficient to meet our so-called strategic needs?

In the Senate debate on Rhodesian chrome last September a principal concern was the matter of price and the matter of dependence on the U.S.S.R. for chrome ore. Presumably, because of the United Nations resolution, U.S. consumers have had to purchase chrome ore from Soviet sources, at inflated prices. But I feel that the price argument is not a satisfactory reason to refute America's pledge to support the struggle for human decency, wherever it is made. To those who support the need for Rhodesian chrome to satisfy U.S. defense demands, how can it be explained that Foote Mineral's Steubenville, Ohio, plant will probably process the incoming shipment into stainless steel for kitchen utensils and other consumer goods?

Many people have insisted that the sanctions against Rhodesia deny the United States access to a vital defense materiel. But what could be the possible strategic requirement for goose down—one of the newly acceptable Rhodesian imports the Treasury Department included in its list of 72 acceptable commodities.

Thus, when the Argentine ship, the *Santos Vega,* docks in Louisiana it will unload a tremendous cargo of American discredit along with 25,000 tons of Rhodesian chrome ore.

Mr. President, I am concerned about the arrival of the shipment of Rhodesian chrome because the implications are so terribly linked to what has evolved as a national policy of "benign neglect" for the concerns of disadvantaged people, both here and in other countries.

The Pearce commission went to Rhodesia with a view toward extracting expressions of compliance from black Rhodesians for a proposal to adopt majority rule in 30 years or more. Because that proposal so blatantly violates the standards of human justice, the Pearce commission was met with violent erruptions of denunciations because black Rhodesians, like other citizens in the world, refuse to be shackled with the anchors of repression. Yet, the actions of the United States have shown no outward support for the struggle for equality by Rhodesian Africans.

Africans want self-determination. They want to benefit from the satisfaction of selecting their own government, and determining their own destiny. But Rhodesian Africans face the degradation of living in a society controlled by a white minority that believes it is racially superior to them and they show it.

The arrival of the shipment of Rhodesian chrome ore serves to symbolize this country's lack of concern for those policies.

It must be explained to the American public that we are not faced with the issue of whether trade with Rhodesia is economically desirable.

The critical issue at this point simply

stated is that the United States has violated a United Nations sanction that we voted to adopt more than 6 years ago. Moreover, our actions tend to indicate that the world's industrial powers are still more interested in profits than in the right of African peoples to rule themselves.

When the United States broke the sanctions resolution we also undermined the potential for a successful solution to Britain's problems with Rhodesia. Indeed, the white Rhodesian government declared last October that the moves on Rhodesian matters in the U.S. Congress are "symptomatic—they show increasing sympathy for us."

This move of the United States against the interests of black Africans not only erodes our credibility with other African nations but jeopardizes the validity of our United Nations commitments in other spheres of the world.

Bishop Abel Muzorewa, head of the Methodist Church in Rhodesia, told the Security Council that the United States should be brought before the World Court for violating the terms of the United Nations resolution.

I strongly denounce the action that has allowed the United States to begin trading with the Rhodesian Government. I believe that our Government must make a thorough review of the plans permitting the *Santos Vega* to dock at a Louisiana port. Moreover, I will support legitimate efforts to prohibit further shipments of goods from Rhodesia, until after that regime has clearly demonstrated its intentions to halt its inhuman policies.

CHILD HEALTH

Mr. MONDALE. Mr. President, the March 1 newsletter of the American Academy of Pediatrics states that the academy has signed a new contract with the Department of Health, Education, and Welfare which would greatly expand and improve the Headstart medical consultation services.

The contract, which extends the program through July 1973, contains two new provisions which I think are of interest to all Members of Congress: First, the academy will hire and train 12 regional health specialists who will develop and coordinate health services to fit the needs of local program personnel and will participate in policy development with the regional Headstart consultants and the Regional Office of Child Development; and, second, the contract calls for a self-evaluation of Headstart at the local level.

Mr. President, we are all aware of the efforts of the academy to improve conditions for our Nation's children; therefore, I ask unanimous consent that the article describing the contract in more detail be printed in the RECORD.

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

ACADEMY SIGNS NEW CONTRACT WITH HEW EXPANDING HEAD START MEDICAL CONSULTATION SERVICES TO 1973

The American Academy of Pediatrics has signed a $1,134,600 contract with the Office of Child Development, Department of Health, Education, and Welfare, renewing and expanding the AAP Head Start medical consultation program originally initiated in 1967. The contract will extend the program through July, 1973.

The new Head Start contract was initiated and developed by the Academy's Department of Community Services and represents a major step forward by the Academy to insure that health services provided Head Start children throughout the country adequately meet the health needs of these children, their families and their communities.

The Head Start contract features two new provisions which were not included in the original program.

REGIONAL HEALTH SPECIALISTS

One provision will enable the Academy to hire and train twelve regional health specialists to develop and coordinate health services training and technical assistance systems to serve the needs of local program personnel. The regional health specialists will participate in general policy making and program development with the regional Head Start consultant and the regional Office of Child Development.

They will assist local program personnel in obtaining and using medical assistance funds; train personnel in the use of planning and budgeting guides, and train program staff in self-evaluation techniques, program budgeting and planning of training and technical assistance needs. Besides training Head Start program personnel, the regional Health specialist will monitor local Head Start programs to ensure their smooth and effective operation.

SELF-EVALUATION

The other new provision calls for individual self-evaluation of Head Start programs at the community level. Through this mechanism, Head Start medical consultants and program staff will review and critically assess the program's operation in detail. This procedure will enable Head Start consultants, regional health specialists and program staff to effectively develop and implement new techniques as needed to ensure better quality child health care.

These two new provisions in the Head Start contract will further enable consultants to pinpoint and resolve administrative and other types of problems more quickly and efficiently. Thus the consultant will have additional time to provide extensive medical services to Head Start children through a more economic and efficient overall program.

CONSULTANTS' DUTIES

Under the provisions of the renewed contract, the Head Start medical consultant will be able to more effectively: assist in the development of applications submitted by the community; meet with local planning committees to map out Head Start programs; maintain contact with program medical directors; follow-up and evaluate programs, and maintain liaison with OCD regional and national offices.

Consultants will work with the Office of Child Development representatives responsible for funding and evaluating Head Start health programs, helping them interpret the needs of the children, the resources of the community, and the success of Head Start programs. The consultant will supplement rather than replace the medical and administrative skills available in each community.

FURTHER INFORMATION AVAILABLE

Anyone wishing further information about the Head Start medical consultation service program or desiring to serve as a consultant should contact: Mr. Edmund N. Epstein, administrative director, Head Start Medical Consultation Service, American Academy of Pediatrics, P.O. Box 1034, Evanston, Ill. 60204.

CLEARCUTTING IN THE MONONGAHELA NATIONAL FOREST

Mr. CHURCH. Mr. President, one of the problems that has arisen in the management of our national timberlands is that of clearcutting—a logging practice in which all timber is removed from a particular area. Last April, the Public Lands Subcommittee of the Senate Committee on Interior and Insular Affairs began a series of hearings on the management of our national timber lands.

The subcommittee has taken extensive testimony on clearcutting as it is practiced in the eastern hardwood forests, as it is practiced in the southern pulp forests, as it is practiced in the Douglas-fir stands in the Northwest, and as it is practiced in national forests on steep slopes at high altitudes in the West. Although there are different views as to the conclusions that the subcommittee should reach, there is no question that clearcutting is being practiced in areas where it should not be. On the steep slopes of the Bitterroot National Forest in Montana and Idaho, slow-growing timber stands at high altitudes have been clearcut and have not been adequately reseeded. The result, an economically and esthetically unsatisfactory management of the Bitterroot Forest, contradicts our national policy of forest management-multiple use for perpetual yield.

One of the first to call attention to our problems with clearcutting was the distingushed Senators from West Virginia (Mr. RANDOLPH). He pointed to the destructive effects of clearcutting, particularly in his home State of West Virginia. He has sought better management of the Monongahela National Forest, 820,000 acres of forest land accessible to the 55 percent of the American public living east of the Mississippi.

Unfortunately, there is some indication that the Forest Service continues to practice clearcutting in the Monongahela National Forest. Senator RANDOLPH, in a letter to the New York Times editor on February 29, 1972, stated that even-aged timber management—or clearcutting—continues to be a major thrust of the Forest Service's program for the Monongahela National Forest. I join Senator RANDOLPH in supporting the recommendation of the West Virginia Forest Management Practices Commission in calling for uneven-aged management of the Monongahela.

I ask unanimous consent that Senator RANDOLPH's letter to the New York Times, published on February 29, 1972, be printed in the RECORD.

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

FOREST SERVICE PRACTICES

TO THE EDITOR:

Edward Cliff, Chief of the U.S. Forest Service, took exception to your recent articles on forest management which stated, "Bulldozers and tractors are boring into some of the last remnant of pristine wilderness." He responded, saying the Forest Service now administers 9.9 million acres in the wilderness preservation system—"hardly a last remnant."

What Chief Cliff failed to point out was

that over 97 per cent of this land is west of the Mississippi River and legislation for another 1.2 million acres in the West has been introduced in Congress. Apparently there is a problem in defining where and what is a last remnant of wilderness.

The 26,477 acres east of the Mississippi must serve as wilderness for 66 per cent of our country's population. Consequently, the 17,993,022 acres of eastern forests are being subjected to the timber demands through even-aged harvest practices which are dominating the multiple-use, sustained-yield concept.

The 820,000-acre Monongahela National Forest, located in eastern West Virginia, is within 500 miles of 55 per cent of the nation's population. Many citizens are looking for a "remnant of wilderness" to shed urban wearies and relax. There is not one acre in this forest set aside under the Wilderness Preservation Act and many portions of this ecological paradise have given way to an indiscriminate timber harvesting practice—clearcutting.

The Cranberry Back Country, located in the southern portion of the Monongahela National Forest, must be preserved in its unique and primitive state. The Forest Service, since 1964, awarded timber contracts despite pleas from the public that such cutting would destroy its chance for wilderness recognition.

Earlier, clearcutting in the Gauley Ranger District near Richwood nearly destroyed the local wildlife habitat, recreational potential, drainage systems and the land. This tragic mistake prompted Chief Cliff, in testimony before the Senate Subcommittee on Public Lands, to state:

"In 1964 and until recently, we stated that even-aged management would be the basic system of management in the so-called general forest zone. This has been changed. Our policy now is to use a variety of methods, with no one method as primary."

Actually, little has changed. Contracts awarded since Chief Cliff's testimony are significantly weighted toward even-aged management and uneven-aged management continues to be ignored on the general forest zone, which constitutes over 80 per cent of the forest. This is diametrically opposed to the recommendations of the West Virginia Forest Management Practices Commission, established by the West Virginia Legislature, which urged uneven-aged management be used as the primary harvest method on the Monongahela.

JENNINGS RANDOLPH.

PLIGHT OF THE MENTALLY RETARDED

Mr. KENNEDY. Mr. President, the Willowbrook State School on Staten Island in New York is the world's largest institution for the mentally retarded. In recent months there has been considerable concern with conditions at this institution. Time magazine, for example, stated:

Actually, Willowbrook, the world's largest institution for the mentally retarded, is a school in name only. It is instead a grim repository for those whom society has abandoned.

Miss Constance Bedson, of Bayside, N.Y., wrote me about Willowbrook, enclosing a poem she composed after watching a TV program about the institution. I believe her poem is edifying to all of us concerned with the plight of the mentally retarded, and I ask unanimous consent that her letter and poem be printed in the RECORD.

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

BAYSIDE, N.Y.,
February 3, 1972.

Senator EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: Last night on ABC–TV I saw a program about Willowbrook and Letchworth institutions for Retarded Children.

It led me to write "Willowbrook." I am enclosing a copy. I hope very much you will please kindly read it.

Senator Kennedy, could you Please do Something to help?

Sincerely,

Miss CONSTANCE BEDSON.

WILLOWBROOK

(By Constance Bedson)

I saw him there. The Child.
Retarded. Huddled he was.
And naked. On the bare floor he was.
Hiding his face. From the World did he hide it.
O we must reach the Moon.
And the Stars.
I saw him there. The Child Retarded.
O where were the Arms to embrace him?
And kind words in his ear?
Does he ever hear Laughter?
Or Music?
It takes Money.
It takes Money.
And we must journey to the Stars.
I see him there on the bare floor.
Huddled. Neglected. Alone.
I hear him wailing.
The Moaning.
They say the smell is terrible.
Is terrible.
And we must journey to the Moon.
The cold barren land.
At Willowbrook, New York.
There is a child. Huddled.
Hiding his face from the World.
O where are the Arms to Embrace him?
I hear the Wailing.

WILLIAM H. LAWRENCE—IN MEMORIAM

Mr. DOMINICK. Mr. President, all of us who knew him were saddened to learn of the death of William H. Lawrence on March 2. There is little one can add to what has been written and spoken about Bill Lawrence since his passing, but I want to express my sincere admiration for his intense dedication to a truly outstanding career in journalism which covered four decades. His endless pursuit of facts and close association with newsmakers in this country and abroad earned him a reputation as a most authoritative observer of the political scene. With his passing, we have lost an excellent reporter and a superb human being.

I extend my condolences to the members of the Lawrence family.

EVALUATION OF ORGANIZATION OF EXECUTIVE BRANCH

Mr. PEARSON. Mr. President, on the eighth of March, I introduced S. 3312, a bill to establish a commission to study and evaluate the organization of the executive branch of the Federal Government. I speak today to urge prompt consideration of that measure by the Government Operations Committee.

As I stated while introducing the bill, one of the most legitimate and serious criticisms of Americans is that their Government does not respond promptly and adequately to their needs. In the conduct of their personal business with Government agencies, individual Americans are often overwhelmed at the complexity of accomplishing such simple objectives as obtaining social security benefits, applying for veteran's educational or disability payments. Small cities or school districts are inundated with paper if they should be so audacious as to request Federal assistance for a local program. The Federal agencies themselves often become hopelessly snarled in their own red tape if one of their number should be so bold as to have an original, imaginative idea.

Seventeen years have passed since the second Hoover Commission completed its comprehensive examination of our Federal Government. In those 17 years, the personnel and agencies of the Government have expanded dramatically and, often, unnecessarily. Each of us knows that there is too much waste and mismanagement of money and human resources in our great bureaucracies. We know that too often they fail to carry out the programs under their jurisdiction. Unfortunately, we do not now have the information on hand to develop comprehensive proposals to reorganize the Government.

It has become regrettably apparent that the President's reorganization proposals will languish in committee due to partisan and substantive objections. We must search for other alternatives to accomplish the task. The proposals contained in S. 3312 provide that alternative.

The success of the Hoover Commissions is well known. Seventy-two percent of the recommendations of the first Hoover Commission were adopted as were 64 percent of the second. This is a time-tested method for undertaking a comprehensive evaluation of the Federal Government. It has worked twice in the past and it will work once again.

The need for Government reorganization is urgent. The President knows it. Congress knows it, and the American people know it best of all. The time to undertake the reorganization is now.

ADDRESS BY VERNON E. JORDAN, JR.

Mr. KENNEDY. Mr. President, I am pleased to bring to the attention of the Senate an excellent appraisal of the current plight of our Nation's urban residential communities and the need to reform our national approach to these problems.

Since he became executive director of the National Urban League, Mr. Vernon Jordan has consistently acted to resolve the Nation's most pressing human problems.

The principal thrust of Mr. Jordan's message addresses the problems of housing, welfare, jobs, and the many other urban ills in our contemporary society. He presents a clear and exacting descrip-

tion of the need to revise most of the policies that directly affect America's poor. And he sadly laments the failures in current executive leadership that have denied the benefits of adequate directives to the American public.

Mr. President, I ask unanimous consent to have printed in the RECORD the address by Vernon Jordan, executive director of the National Urban League, delivered to the United Neighborhood Houses Annual Conference on March 2, 1972.

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

ADDRESS BY VERNON E. JORDAN, JR.

The struggle to revitalize urban neighborhoods has been accompanied, as must any changes of substance be, by an upswell of grass-roots creativity, along with bureaucratic resistance and polarization. To a degree, the social stresses and strains are inevitable. "If there is no struggle," said Frederick Douglass, "there is no progress."

The problem of transforming urban neighborhoods from their present state of physical deterioration and social alienation is, above all, a political process. To be sure, there are facets that can be identified as economic, educational, social, and even philosophical, but insofar as concerns the conditions for change and the means to effectuate change, we are speaking about a profoundly political process.

The issues of the 1970s are complex and difficult ones, and their answers are to be found at the end of the long trail of the political process. In the 1960s, a burning civil rights issue was the right of black people to sit anywhere on a bus in the south. Today the equivalent of that relatively simple moral issue is where that bus route will go, whether blacks will have all manner of jobs in the bus company, from repairman to president and member of the board of directors, and what the fare will be. What once was an issuue that demanded a strategy of inciting public revulsion to blatant Jim Crow in one region of the country is now an issue that demands a strategy national in scope and political in character, insofar as its resolution involves a complex web of private companies, public companies, regulatory agencies, local, state, and national governments, local planning boards, and a host of other private and public agencies whose decisions are based on one phase or another of the political process.

The same holds true for the burning economic issues of our day, for the educational issues and for housing, criminal justice, and other major problems that are at once national in scope and local in impact. Such issues are political not only in the sense of electoral politics, but also in the sense of resolving the claims of conflicting interests. There are always two or more sides to every question and it has been the great failing of liberals and liberal thinkers that they seem to be overly prone to see all sides of the question and to be willing to compromise among them.

I would argue today that this is wrong. That when we address ourselves to questions of justice, to questions of redressing the wrongs of the past and present, and when we deal with moral issues such as housing for the poor, education for the deprived, work and welfare for the impoverished, and justice for the disinherited urban minorities, there can be no compromise.

I would suggest to you that this nation is in the grips of a profound time of testing whose central issue is whether the uncompleted social and moral revolution of the 1960s will be continued on a higher plateau, or whether the progress of the past decade will be rolled back and nullified. I would further suggest that any compromise on these basic issues not only will result in the death of this "Second Reconstruction", but will erode the faith of people in the political process itself. If the political institutions of this nation fail its minorities so completely, then democracy itself must wither away. If liberals choose short-term expediency and compromise of their most cherished beliefs, they will not only lose the support and faith of their constituents, but they will also undermine the validity of a political process that depends upon clear-cut choices and philosophical integrity.

And I must sadly suggest to you that there is every sign that this erosion of public confidence is taking place; that the white flag of surrender has been hoisted by yesterday's defenders of civil rights, and that the voices of those who could complete the revolution of the '70s are notoriously silent.

Let me just indicate four recent events that lead us to this conclusion. All deal with major issues crucial to the revitalization of our cities.

Recently a major civil rights bill came before the Senate. It would have armed the Equal Employment Opportunity Commission with the power to issue cease-and-desist orders to employers the Commission found to be engaged in discriminatory practices. Such a course would have been an enormous improvement upon the Commission's present lack of any enforcement powers and over the proposed alternatives, the long, involved, and costly process of action in the federal courts. The issue was clear cut, just as the old civil rights issues were. And just as in the past, the measure faced a filibuster. "Cease-and-desist" was cut from the bill, the filibuster was defeated, and a weaker bill passed.

Now let us turn the clock back several years and assume that the same bill reached the Senate floor five or six years ago, and was faced by a similar filibuster. I suggest to you that the supporters of civil rights would not have been so prone to compromise; I suggest to you that they would have stuck to their guns and put together the number of votes needed to end the filibuster, and I suggest to you that enough public opinion would have been mustered to support that course of action and to pressure wavering legislators not to yield their ground.

But in 1972, compromise was the order of the day and those to whom black people, other minorities, and women were looking to for support of their interests, meekly accepted the compromise route. It is my belief that they would not have done so in the past and should not have done so today. It is my belief that such a compromise of conscience amounts to a betrayal of those whose advancement is dependent upon progressive legislation and to the extent that the political process has failed them, their faith in it has withered.

Another issue that illustrates the surrender-prone nature of present-day liberals is that of welfare reform. There is today before the nation a broad plan for changing the present catastrophic system of welfare that is so largely responsible for de-vitalizing neighborhoods and brutalizing poor people. Yet, bad as the present system is, the proposed Family Assistance Plan amounts to a Family Destruction Plan, through its combination of inadequate benefits and repressive stipulations.

The failures of the so-called reform are rooted in the philosophy behind it: that poverty is caused not by the dislocations of our economic system and the inadequacy of public education, but by the moral flaws of the poor themselves. From this central assumption flow the major elements of the plan—that benefit levels be kept at punitively low amounts; that recipients are not capable of making rational choices and of managing their own lives and so must submit to bureaucratic direction of their actions; that poor people do not want to work and so must be forced to accept employment regardless of the nature and wages of such employment or of the disruption to the family that would result from it, and that recipients must waive their rights and liberties enjoyed by others because they are deemed untrustworthy.

It is clear to me that the plan before the nation is a bad one. It is no substitute for federal responsibility for an adequate minimum guarantee to all people, federally administered and financed, and it is no substitute for the kind of humane legislation and concern for ending poverty that must inform social legislation that will so deeply affect the lives of millions of people in every county, city and neighborhood in the nation.

For those of us concerned with the possible passage of such a disastrous welfare proposal, a logical course of action seems obvious—kill the present Family Assistant Plan, provide for emergency federal assumption of all or part of present welfare costs to provide needed fiscal relief to states and localities, and take the time to draft the kind of broad reform that is needed. But here again, the response of those who presume to speak for the voiceless has been feeble. About the only points of contention amount to quibbling over the plan's income floor, raising it a few hundred dollars, and perhaps softening some of the more objectionable restrictive features of the plan. Once again, compromise wins out and we are asked to settle for the best we can get. Once again, the crusading spirit and humane concerns take a back seat to expedience and short-term strategy. And the losers include poor people and the self-proclaimed principles of the compromisers, as well as the political process itself.

The controversy over busing is yet another major issue marking a retreat from this nation's struggle to free itself from the bonds of racial isolation. It is not a transportation issue. It may not even be an educational issue any more. It is clearly a racial issue, a civil rights issue. It is an issue that has been politicized with the result that parents and children are used as pawns in an effort to nullify the 1954 Supreme Court decision that held dual schools systems unconstitutional and inherently unequal.

The courts have ordered busing when, after 18 years of illegal segregation, school districts still have not broken down the dual system that still leaves segregation intact. The proposed Constitutional amendments are there, not to trivialize the Constitution, as many have charged, but to offer liberal legislators a way to vote for anti-busing legislation that's sugar-coated to obscure its effect of maintaining racial isolation, leaving them the option of declaring themselves against the Constitutional amendments. By appointing a top-level group to study ways to circumvent recent court decisions ordering integration and busing as one of the means to achieve it, the President has lent the weight of his office and the dignity of his position to those who have been defying the law of the land. And by refusing to stand on their principles and fight any legislation that would weaken the process of integration, liberal legislators have performed a hypocritical game with their constituents and with black people, whose faith in the democratic political process becomes endangered. While liberals, including some who would lead the nation were silent or absent, the Senate last week passed by only three votes a bill that would end busing and insure the revival and perpetuation of school segregation. And this week, that bill was defeated, but at the cost of a compromise that weakens desegregation efforts.

I say if we could use busing as a means to implement segregation and to defy the law, we can now use it to implement desegregation and obey the law of the land and the higher law of morality as well. The hysteria over busing is a phony issue. The real issue is whether this nation has the moral backbone to create a pluralistic, open society in which equality is not bargained away. In this issue, as in the

great civil rights issues of the 1960s, the very soul of the nation is at stake.

Finally, there is another current issue that marks a retreat from the battle to create that pluralistic, open society for which we strive. The issue involved in the proposed public housing project in Forest Hills transcends the narrow issue of a single project in a single neighborhood. It cuts to the very heart of the struggle to revitalize all of our neighborhoods by providing access to decent housing for those who now share their slum dwellings with vermin and with fear. Here, again, an issue which should seem clear-cut becomes veiled in self-induced complexities and compromises.

Let us forget the will of the particular neighborhood in question. Living on a city block does not give anyone the right to determine who shall live on the next block. Enjoyment of decent housing does not give anyone the right to determine whether or not someone else shall have access to decent housing. I don't recall anyone becoming overly concerned with the feelings and opinions of black people who were "urban-renewed" out of their homes to make way for luxury housing and office buildings. I see no reason, then, to become overly concerned that some people object to decent housing for the poor going up in their neighborhood.

And let us forget the various disagreements about the particulars of this specific project. I do not believe that it is concern for construction methods or the federal budget that is behind the long arguments about how marshy the project's land is or how expensive the building costs will be. Nor do I find any virtue in the sudden concern with building esthetics on the part of neighborhood critics who cheerfully accept the bland, plastic high-risers designed to rent at luxury prices in their neighborhoods.

The issue in Forest Hills is not whether the buildings are too high or the subways too crowded. The issue is access to decent housing for poor people and black people. The issue is whether an urban neighborhood shall be open only to white people or to people who make higher incomes. The issue is whether poor people will be allowed to live in all neighborhoods of the city or whether they will be confined to slums or to ghetto-locked projects.

I am aware of possible elements of the project that might have been improved. I am aware of the very real and rational concern about crime, although concern about crime must be separated from irrational fear and from the prejudged stigma that people, many of whom are fleeing crime-infested slums, will commit crimes sometime in the future. That must be labelled a myth that is used to create fear and bigotry instead of the openness and understanding that can revitalize our urban life.

There should be no compromise on Forest Hills. I say this because the desperate housing needs of 840 families must be met. I say this because compromise on Forest Hills will result in compromise elsewhere, with the result that black people and poor people will be further denied access to new housing. I say this because there is abroad in the land a spirit of compromise on the basic rights of black people and poor people, a spirit of withdrawal and retreat from the dreams and commitments of the 1960s. I say this because revitalization of the city and of urban neighborhoods is dependent on the fearless forging of a pluralistic society in which all can participate equally and in which all have access to the basic essentials of life. And I say this because I do not want to see this city and this nation retreat into a long dark night of fear, hypocrisy and injustice when we have within our grasp the resources and the moral imperative to do right by our fellow Americans.

Last week the President stood at the Great Wall of China, and he expressed the hope that "walls erected, whether like this physical wall or whether other walls, ideological and philosophical—will not divide the peoples of the world, that peoples regardless of differences in philosophy and background will have an opportunity to communicate with each other and to know each other. As we look at this wall," he said, "what is most important is that we have an open world."

To which I believe we can all say: Amen. And we should add that we must have not only an open world but an open society here at home; that communication between white and black must take place; that the poor must not be chained off into slums and ghettos but must be given access to the benefits of the society they've fought and died for, and that those who say they are our friends, those who stood by us in the past, must continue to fight for the right and maintain the integrity of their convictions in the face of temptations to expediency and desertion.

Compromise on the basic issues affecting black people, poor people, and the deprived in our system is equivalent to traitorous retreat in battle. Compromise does not mean accepting the inevitable; it means insuring that the worst will happen. It means encouraging those who would build Great Walls of the mind and physical Great Walls that separate and divide. It means a betrayal of the democratic political process by depriving a substantial segment of the population of access to satisfaction of their interests. And compromise on issues like "cease-and-desist," welfare reform, busing and scattered-site housing means that moral issues can be bargained away, that the moral fervor of the 60s has given way to moral cowardice in the 70s, and that the faith and dreams of black people will be sabotaged once more.

And this will take place in the face of the fact that to the extent that there is among the citizenry hope and faith in the American ideals they are held by those who suffered most and benefited least. Black people today, for all our righteous anger and forceful dissent, still believe in the American dream. We believe today as we once believed in the dungeons of slavery; we believe today as we once believed in the struggles of Reconstruction, we believe today as we held our faith through the dismal days of separation and segregation.

We believe because this is our land, too. And we must, in this year of doubt and confusion, remind a forgetting nation that this land is ours; that we have lived here since before the Pilgrims landed, and we are here to stay. This nation too often forgets that this land, this America, is sprinkled with our sweat, watered with our tears, and fertilized with our blood. It too often forgets that we helped to build America's power and glory, that we dug taters, toted cotton, lifted bales, sank the canals and lay the railroad tracks that linked ocean to ocean. It too often forgets we too, sing "God Bless America;" we too sing: "O beautiful for spacious skies, for amber waves of grain." We too, pledge allegiance to the flag and for what that flag is supposed to represent. We've died in America's every war and black men are dying tonight in disproportionate numbers in the rice paddies in Indo-China.

Yes, this land is our land and America will work for black people too, or it will not work for anyone!

And so it is black people, who, by our belief in the ideals of American democracy, can help this nation to overcome its crisis of spirit and enter a new era of hope and fulfillment.

Like the tree planteth by the rivers of water, we shall not be moved from our sacred mission to make this a land of freedom, justice and complete equality.

FOREIGN POLICY AND THE 1972 PRESIDENTIAL CAMPAIGN

Mrs. SMITH. Mr. President, a deeply thought-provoking statement on "Foreign Policy and the 1972 Presidential Campaign" has been made by Robert A. Scalapino and Paul Seabury, professors of political science at the University of California, Berkeley. They have authored this most serious and important paper in their capacities as members of the board of trustees of Freedom House, which it is my honor and privilege to chair.

I invite the serious study of this paper by every Senator as well as by all presidential candidates. I ask unanimous consent that the paper be printed in the RECORD.

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

FOREIGN POLICY AND THE 1972 PRESIDENTIAL CAMPAIGN

(By Robert A. Scalapino and Paul Seabury)

ORIGIN OF THIS PAPER

Senator Smith convened a Freedom House meeting in Washington last October to discuss American foreign policy in light of the forthcoming Presidential election campaign. The Board of Trustees had invited two of its members, Profs. Scalapino and Seabury, to prepare a working paper for the Senators. Titled "A Plea for Rational and Measured Dialogue," the paper warned that "miscalculation of our intentions by [America's] opponents has played a major role in bringing on the conflicts in which we have been engaged since World War II." The authors asked: "Must we run this risk again? Signs, unfortunately, point in that direction. Great chasms of disagreement over our role in world politics have been opened at home."

They continued, "A moratorium on foreign policy debate is neither possible nor desirable." But a moratorium is needed "upon the type of campaign that impugns the motives and character of others, or presents basic issues in drastically over-simplified, highly unrealistic terms. In stressful times it is tempting to charge one's opponents not merely with error, but also with criminality; to castigate them not merely as mistaken, but also as immoral." They added, "The capacity of an open society to contain its political differences within the realm of rational debate may well represent the most serious test posed to democracy in the late twentieth century." What will it avail, they asked "if the Presidency is won through the route of having destroyed confidence in one's competitors and thus an office is inherited demanding awesome decisions, but now shorn of public trust?" Americans need not be treated as retarded children—they can stand complexity, wrote the authors: "We must elevate the substantive, intellectual content of public dialogue on American foreign policy."

After the October meeting, the authors prepared the following paper, subscribed to by the above-named Senators. It is intended to provide a guide to fundamental American foreign policy issues. Freedom House hopes the Presidential candidates and their supporters will address themselves to this agenda as the campaign progresses.

INTRODUCTION

The image, influence and policies of America in the world of the late 20th Century can all be significantly affected by the 1972 Presidential campaign. The world habitually takes careful note of an American election. Abroad, many impressions of our political capacities and intentions will be shaped by the events surrounding the coming contest. Moreover, the impact of these events upon the American people themselves can scarcely be exaggerated. Few would deny some increased cynicism and hostility at home toward politics. There has been a disturbing trend in some quarters toward disinterest in active political participation; some evidence

of a contempt for democratic procedures; and an increase in violence.

Can we arrest these disturbing trends? In part, the responsibility now lies with our major political parties, and the individuals within them who seek our highest office. Will they raise the issues of truly critical importance to our future? Will they discuss these issues in a rational, informed and honest fashion? Can this election be made an educational process, and a cause for rededication to democracy, or will it be remembered as essentially a circus, featuring sleight-of-hand artists?

If the coming election is to elevate and strengthen democratic procedures, the most important issues must be treated with the seriousness, attention to fact, and recognition of complexity which they deserve.

Regardless of how one evaluates past and present American foreign policies, we currently stand at an important cross-roads. For nearly three decades, the United States, with bipartisan support, has assumed major international responsibilities on behalf of two overriding objectives: first, the creation of a basic political-military equilibrium between the non-Communist and the Communist forces—this has applied especially to those regions of signal importance to any international order, namely, Europe and East Asia—the regions out of which World War II had emerged; second, a program of aid and technical assistance, varying considerably in scope and content, to many late-developing countries, to improve their chances for political stability and economic growth.

The recent debate concerning American foreign policy stems at least as much from the successes as from the failures of these endeavors. It is now argued that the nations of West Europe and Japan, at present internally strong and prosperous, can bear a large share of responsibility for international order and development. Furthermore, the internal unity, and the international tactics of the Communist movement are said to be dramatically altered by events of the past two decades, thereby requiring new American approaches. Finally, internal developments now necessitate major shifts in American priorities, with greatly increased attention being given to the needs born out of the greatest on-going revolution of the 20th Century—the American revolution, and the advent of the world's first so-called "post-modern" society.

These assertions deserve serious, in-depth discussion. Most thoughtful individuals would agree that some element of "truth" is contained within each of them. The critical questions are the extent and the implications of that "truth." A more comprehensive balance-sheet should include those factors which countervail, or limit, or even negate these broadly conventional themes. If American interests are to be well served, our future foreign policies, and priorities between foreign and domestic arenas require realistic and comprehensive assessment of the total scene.

Our foreign policy debate, to date, falls far short of these requirements. Several straw-men are now hoisted up before the American public. Some of them have powerful emotional appeal. But they falsely represent the current issues of foreign policy.

The most impressive fabricated straw-man recently has been that of the United States, after 1945, as the world's policeman. Its repeated depiction does not make it real.

Under Democratic and Republican administrations, the United States has continuously made major distinctions with respect to the degree and type of commitment abroad. Rightly or wrongly, our central concern has been West Europe and East Asia. Long ago, we made it clear (unhappily, for many people in the area), that America could undertake no commitment to East European self-determination. Our role in Africa has essentially been minor. Our commitments to the Middle East and to Latin America have been important, but limited, and special in character. Even without regions deemed important to our own national interests, and to world peace, our commitments have been partial—with an acceptance of the neutrality and hostility of certain states within the region. A debate over the nature and extent of our foreign commitments has always been legitimate, but it will not be forwarded by starting from a false premise.

Another frequently advanced assertion is that the United States has been guilty of an arrogance of power, with an uncontrollable urge to shape the lives of other people to our own values and institutions, and to damn those who will not follow our political, social, or economic way of life. There is a quotient of ethnocentrism in any society or individual. Undoubtedly, the United States has projected its own values into the setting of other states. Yet on balance, America's dilemma has not arisen from an arrogance of power, but from our great indecision as to how to use the massive power at our disposal. Rarely in history has a nation dominant in power and wealth been so restrained in the use of that power, so limited in its basic objectives, so internationalist in its goal.

Have we really insisted that nations receiving our assistance pattern their institutions and values after ours? Some of the critics who see American foreign policy as based upon arrogance and egocentrism ironically also charge that we have confined aid to "dictatorships and reactionary regimes," implying that we should only traffic with those governments which can be styled as Western-styled democracies. Were such a severely moralistic standard applied, fruitful interaction between the United States and much of the non-Western world would indeed be inhibited, as would constructive relations between ourselves and the now diverse Communist states.

A more grave objection to this particular straw-man exists. Those who allege that American aid goes primarily to dictatorship often are unable to distinguish between quasi-open political systems characteristic of many of the emerging states, and the closed, highly structured, rigorously authoritarian systems characteristic of those fully mobilized societies that we call Communist or Fascist. They are silent about the sharp differences between North and South Vietnam; North and South Korea. They frequently apply a double standard whereby efficient totalitarian regimes silencing all opposition, permitting only one political party to operate, allowing only one ideology to prevail, mysteriously appear more democratic than their struggling counterparts—where opposition, even if frequently abused or muted, can be clearly heard and seen. A quite-silent Rumania or a North Vietnam is spared their attack; a Taiwan or a South Vietnam, scenes of open ferment, are abused. They consistently employ a double standard, one favorable to those regimes least free and least open, seemingly on the premise that what one cannot see or hear won't hurt one.

One final straw-man should be revealed. Recently, the thesis has been widely disseminated that American foreign policy since 1945 has been continuously dominated by a "cold war paranoia," and hence, has rested upon fundamentally irrational and extremist premises. One does not need to defend all American policies of the post-1945 era, or indeed, all of the uses to which anti-Communism has been put, to label this assertion as both false and dangerous. Stalin existed. He was not invented by cold warriors. The documentation upon Soviet and Cominform policies of the immediate postwar era is now extensive. On balance, it conclusively negates the thesis that American policies were primarily responsible for the breakdown in American-Soviet relations, the need for NATO, the concern over the type of aggression reflected in the Korean War, and subsequently in Hungary and Czechoslovakia.

Every American hopes that we are moving into a better era, one holding the prospect for peaceful coexistence and the substitution of cooperation for militancy. Who does not want major progress on disarmament? Who opposes a broad agreement among nations, irrespective of their socio-political systems, to eschew aggression, to cease interference in the internal affairs of other nations, and to tackle mutually the great social and economic problems of our times? Progress in these directions, however, will not be advanced by those who shout *mea culpa*, and urge America to negotiate from weakness and a sense of guilt over past misdeeds. Nor can they successfully rewrite the history of the last three decades, oblivious to the essential facts of that era, in an effort to vindicate their current political views.

The qualifications of any individual running for the Presidency who relies heavily upon one or more of these straw-men should be seriously questioned. Such a person will be evading the real issues, and cheating the American people by refusing to come to grips with the complex nature of our times.

II. EUROPE

The basic success of our postwar European policies can be seen from two vitally important, but often overlooked facts. First, we have avoided a nuclear war for nearly three decades. And we have accomplished this despite the persistence of a number of unsolved, highly volatile problems focusing upon Europe, and continued differences of major proportions in the political systems now operating on this continent. Second, the nations with which we have been most closely aligned since 1945 have shown remarkable vitality and growth. Surviving two "civil wars" in the 20th Century, each of which ended in a global holocaust, the states of West Europe have shown impressive signs in recent years of abandoning war as a means of settling continental disputes, moving away from the cycle of recurrent political crisis at home, developing a greater sense of European community, and showing an encouraging capacity for economic and social growth.

The condition of the "developed" states is of critical importance to the health of the entire world. Peace and prosperity hinge in considerable measure upon the values, strength, and will of the United States, the nations of Western Europe, and Japan. Broadly speaking, we have thus far sustained a climate of peace through the achievement of a political-military equilibrium with potential opponents, and through a shared prosperity extending outward to all nations.

We have also reinforced each other's political values. The West European states are open societies, committed to constitutional and democratic procedures. They are also the repositories of technological and industrial skills devoted principally to the internal betterment of their people. Most of them, indeed, could be classified as welfare states. Unlike certain states in the totalitarian world, moreover, they have repudiated both the doctrine and the practice of political/military expansion at this point.

The progress achieved in Europe has been closely connected with the American commitment there, first in economic terms, subsequently, in a political-strategic sense. Naturally, the substantial American presence has posed its own problems, especially in the economic realm. Continuous consultations and adjustments are in order.

The major issues to be discussed in the coming Presidential campaign, however, relate not to our economic relations with Europe, vital though these are, but to our strategic relations. Let us pose the central issue directly. Shall American contributions to European defense be drastically cut in the name of détente, reduced defense spending, and domestic needs? Shall there be a substantial and unilateral American military withdrawal from Europe, and an abandon-

ment of the historic policy of seeking to maintain a political-military equilibrium there?

Those who advocate such a policy generally advance two lines of argument. First, they insist that in the current climate of detente, the risks are limited. Are there not numerous signs that the Soviet Union wants an accommodation with West Europe? Has not Brandt's *Ostpolitik* been brilliantly successful? Indeed, some of the more strident voices in the American political arena are now prepared to write off current policies as a typical example of "cold war paranoia," proclaiming that there is no need for the United States to be concerned about the defense of 250 million Europeans against 240 million Russians who have much to fear from 750 million Chinese.

Second, it is argued that if they regard their security as threatened, the West Europeans now have the resources, and the political instruments to bolster their defenses. It is asserted, indeed, that an American withdrawal might abet European unity, and the willingness to make greater mutual commitments to the defense of the West. Has not the United States carried too great a share of the responsibility for too long, thereby blunting West European initiatives?

On the surface, these arguments seem highly persuasive. When the total picture is revealed, however, their merits become debatable.

Despite major internal gains noted earlier, the states of West Europe have less control over broad international events than at any time in modern history, including events that impinge directly upon their economic well-being, political stability, and military security. The age of European domination of the world is over, but Europe is still heavily dependent upon that world. For example, some 75% of its energy imports come from the Middle East at present, but its leverage upon Arabs or Israelis is exceedingly slight. Similarly, any major upheaval on the Eurasian continent within the now badly fractured Communist bloc would be likely to have immediate repercussions, especially in central Europe; yet the capacity of the West European nations to influence the course of such events is probably very limited. In certain respects, West Europe has become hostage to events in the broader non-European arena, with corresponding limits upon its true independence, or capacity for a totally self-sustained security policy.

It is of at least equal importance, however, to note the paradoxical nature of recent trends within Europe itself. Hand in hand with increasing political détente has gone growing strategic imbalance. From 1962 to 1968, U.S. forces in the European theater shrank from 462,000 to 300,000 with no appreciable change in the military strength of West European forces. Meanwhile, in the past four years, Soviet forces in Europe have grown from 26 to 31 divisions. And while the number of American ICBM's in Europe has remained static since 1967, the number of Soviet missiles has nearly doubled during that same period, with Soviet-European theater missiles currently 50% greater in number than those of NATO.

Nor does this complete the picture. The Russians have made it clear that in so far as they are concerned, political détente itself is likely to be dependent upon the willingness of each West European state to deal with them as an individual entity. Any move toward the increased integrated defense of Europe by Europeans will be regarded by the Soviet Union as an unfriendly act, and one detrimental to the prospects of détente. The Soviet Union, in sum, naturally wants a West Europe as divided as possible, and with suitably limited military power, and this appears to be the current Russian price for any broader accommodation.

Thus, a precipitate American withdrawal from Europe will pose a painful dilemma upon our allies, and one that is likely to produce greater political polarization. Should West Europe accept the position of hostage to Soviet good intentions, and opt for "neutralism," accepting the fact that the strategic equilibrium of recent decades has been broken in favor of the Russians? Or should it take the risks of a substantial rearmament program, cognizant of the likelihood of Soviet displeasure and the uncertainty of the American commitment?

On balance, the complete evidence strongly suggests that if a meaningful, negotiated détente in Europe is to be achieved—namely, one that preserves the independence and security of the Western democracies—serious consideration must be given to mutual, balanced force reductions by West and East. This is not to argue that the European states should make no additional military commitments, nor that the US commitments should remain constant for all times. It is to assert that those who advocate a rapid, unilateral American force reduction in Europe, with a resulting serious imbalance there, must consider the following problem: would not such an action force upon our West European allies the harsh choice between accepting accommodation with the Soviet Union essentially on the latter's terms, or at least on terms making Europe dependent upon Soviet goodwill; or taking the risks of a more thorough military integration of West Europe, a step almost certain to be resisted strenuously by the Russians, and hence likely to create a series of crises from which the United States would not be able to remain aloof?

Our candidates should speak to these basic and complex issues.

III.—AMERICAN-SOVIET RELATIONS

Relations with the Soviet Union, being of such vital importance, deserve special attention. Here, it is crucial that we not substitute our wishes for the current realities. It is now commonplace to assert that the cold war is over, and in addition, that bipolarism has been replaced by the greater importance of triangular or quadrilateral relations.

Once again, such statements are not without a significant element of truth, but the actual situation is considerably more complicated. We *are* in a period of major transition. The near-universal conflict between America and Russia characteristic of our earlier relations is fortunately giving way to a more differentiated picture. Relations between the US and the USSR today cannot be drawn in a lineal manner. Rather, they must be depicted as circles of accord and discord, areas of agreement or near-agreement, and regions of total or near-total disagreement.

In recent years, the areas of agreement or near-agreement have grown. Such a development is most pronounced in the European theater, but its manifestations are to be seen elsewhere, including in the field of disarmament. However, it should scarcely be necessary to point out that in most instances, it is we who have thus far made the bulk of the basic concessions leading to American-Soviet accommodation. In Europe, our willingness to abandon the principle of self determination, and move toward acceptance of the post-World War II status quo has paved the way for such détente as has occurred. In the disarmament discussions, our acceptance of strategic parity rather than strategic superiority has raised the chances for limited agreements. As yet, it is difficult to find corresponding concessions from the Soviet side, although these, we can hope, will be forthcoming.

Meanwhile, there remain many explosive issues upon which American and Soviet views and policies sharply diverge. As is well known, the Soviet Union is the principal military supplier for the North Koreans, the North Vietnamese, and the Arab states, and while the Russians have exhibited some caution in escalating the conflicts in which these states are involved, they have done very little to help settle the disputes. On the contrary, they have generally lent their weight to the cause of a full Communist (or Arab) victory. Czechoslovakia and the so-called Brehznev Doctrine proclaiming that no state has a right to leave Socialism are further instances of the chasms that separates us and the Russians on certain issues.

Nor is the situation eased by Soviet rhetoric. It is ironic that while exhortations issue from American sources to avoid at all costs anti-Soviet or anti-Communist rhetorical attacks, the Soviet media continue unabatedly to feature the highly ideological, utterly simplistic anti-American propaganda of the past. Here too, the concessions have thus far been largely one-sided. Perhaps this is true in part because the Communist world is seeking desperately to cling to the myth of a monolithic ideology, even while being forced to acknowledge pluralistic national interests and socio-political institutions within its bloc. Hence, ideology—and propaganda—remain a deep reservoir of conservatism, a relic of the past.

If the cold war is not completely dead, at least from the Soviet perspective, neither is it correct to pronounce bipolarism totally superseded by new political constellations. Broadly speaking, it is true that the international influence of both the United States and the Soviet Union has declined within the decade, as the result of a variety of factors: the growing strength and self-confidence of other states; serious policy cleavages in the case of the Communist bloc; and a decline in American commitment, will and credibility. It is thus appropriate for certain purposes to see relations among the United States, the USSR, Japan, West Europe and China as taking on new importance; in other instances, some partial combination of these forces is of the greatest significance.

Nevertheless, in so far as military power is concerned, we still live essentially in a bipolar world, and even with respect to political power or influence, this remains more true than is currently realized. In these respects, moreover, there are some oft-slighted, disturbing facts. First, of all the major states, the Soviet Union alone today is rapidly expanding its international commitments. Whether one looks to East Europe, the Middle East, Asia or Africa, old linkages have been tightened and new ones fashioned. Necessarily, this expansion of commitments or assumption of new risks will affect Soviet definitions of her security interests, and quite possibly, the role of professional military men in her decision-making processes.

Thus, while we have accepted the concept of equality in security weapons with the Russians, have they accepted that principle? And what is the meaning of the very rapid expansion of conventional arms on the part of the Russians, an expansion that has brought some respected Americans to assert that we are on the verge of being out-distanced by Soviet power? When to these facts one adds the further fact that most of the political concessions—and *all* of the big ones—involving American-Soviet accommodations have come from the U.S., certain hard issues can no longer be avoided.

The age ahead will almost certainly be an era of continuous, intense negotiations, with negotiations between ourselves and the Russians of central importance. Two broad issues are likely to dominate the horizon: "peaceful coexistence" and disarmament. While desperately needed, approval still appears distant for mutually acceptable rules for the peaceful coexistence of states having different socio-political systems and holding to different basic political values. Such rules would include a definition of concepts like aggression and interference in the internal affairs of other states. In the absence of these rules, we shall continue to face the reality that external pressures on existing states are defined by us as aggression and by the Communists as national liberation. At the same

time, we shall be engaged in a step-by-step effort to reach agreement on weapons control including, ultimately, research and development in the military field. These issues, to be sure, clearly involve many states, but American-Russian discussions are likely to be the determining factor.

Under what conditions are promising results most likely to be attained? Already, voices are heard advocating that we commence the age of negotiations by making a wide range of additional concessions. It is proposed that the American defense budget be slashed drastically, that all American ground forces be removed from Asia, and that forces in Europe be reduced by one-half; that priorities be directed almost wholly toward our purely domestic concerns, with space as well as international commitments cut drastically.

Is it conceivable that such a course of action would yield the results which its proponents claim? Would a weaker, withdrawing, neo-isolationist America be able to reach meaningful agreements with an expanding, militarily superior Soviet Union? The answers to questions such as this will determine whether the negotiations of the 1970's will produce measured, equal concessions or unilateral losses; peace or war. Everything we have learned from modern history tells us that peace in our time will not be gained through the isolationist route, and that negotiating from weakness with a nation like the Soviet Union can only be nonproductive. Our hopes, our very survival ride with the successful outcome of the great negotiations that lie ahead. Proponents of unilateral American disarmament could become the unwitting progenitors of the next great global crisis.

Here are other issues that warrant the most intensive discussion as our Presidential campaign gets under way.

IV. ASIA

Today, with all eyes focused upon the great China adventure, it is easy to lose sight of old ties of transcendent importance. Our relations with Japan are vital, whether measured in terms of economic, political or security concerns. It cannot be denied, however, that these relations have deteriorated in recent years, with distrust and recriminations growing. The serious fissures in American-Japanese relations that have lately developed can be attributed to errors on both sides. In the economic realm, the Japanese were too slow to undertake trade and capital liberalization measures long overdue. On the political side, the United States has damaged its credibility severely by refusing to take the Japanese government fully into its confidence on matters relating to China policy, and by the fact that some of its highest officials are prone to make anti-Japanese statements in private, statements reaching the Japanese quickly.

Thus, a basic issue is posed. Is there any conceivable advantage to us in the breakdown of the American-Japanese alliance, and if not, how can that alliance be strengthened? Peking has made it clear that one of its goals is indeed the dismantling of the American-Japanese ties, and strangely, there are some Americans who appear to think that the time is ripe to replace close cooperation between the US and Japan with a looser set of multilateral relations in the Pacific, involving the Soviet Union and the People's Republic of China. As was noted earlier, many critical issues must ultimately be handled multilaterally. It is entirely possible, indeed essential, that to bilateral ties be added a network of broader multilateral relations. At a time, however, when we are at odds with the two Communist giants on almost every critical issue relating to the Asian-Pacific area, and when our interests and those of Japan generally coincide, we must seriously question the abandoning of the American-Japanese alliance for a will-o'-the-wisp.

Let us then set aside the recent past, and look to the future. At some point, if our economic interests are to be more satisfactorily coordinated, should not we and the Japanese take the lead in establishing a Pacific Community: an association of the more advanced Pacific-Asian states, so that issues relating to trade, investment, and foreign aid can be thoroughly discussed and long-range approaches undertaken? The present ad-hoc "solutions," reached in the midst of crisis, are politically damaging and economically superficial.

It is appropriate to expect Japan to take a larger role in the defense of her own territory, and those areas immediately adjacent to Japan critically affecting Japanese security. It is also reasonable to assume that Japan will show an ever greater interest in providing technical assistance to select areas of the late developing world, especially in Asia. The economic and political health of such states has a direct bearing upon Japan's hopes for continued economic growth. Japan, however, should not be expected to play the American role in Asia. Only a greatly increased perceived threat from such a state as China, or the drastic decline in American credibility could move Japan toward nuclear power, and the urge to play an independent political-military role in Asia in the near future. One cannot rule out such possibilities, but the more likely product of current trends is the addition of modest political-military increments to a foreign policy based fundamentally upon economic relations: *or* a more dangerous development, namely, a period of mounting confusion and indecision, marked by greatly increased polarization of opinion internally, as doubts about American credibility grow and uncertainties concerning Communist intentions increase. Such a development, in effect, would mean no policy, and amount to a major contribution to a political-military disequilibrium in Asia.

In all probability, Japan will continue to explore a more complex set of international relations as supplement to, rather than substitution for, her present alliance with the United States. The China issue will continue to be both painful and crucial. If Peking continues her present rigid policy, demanding that Japan concede the incorporation of Taiwan into China prior to any state-to-state negotiations, normalization of relations will be difficult. Perhaps Chinese terms will be softened with the advent of a new government in Tokyo. In any case, in her dealings with China, Japan has only two cards in her hands of significance: the possibility of some rapprochement with the Soviet Union, and the capacity to review her current military commitments.

The time may be ripe for Russo-Japanese accord, limited but important, whereby political relations would be normalized, old territorial issues resolved, and new economic ties pertaining to Siberia created. Much will hinge upon Russian decisions, for the keys to such an accord are in their hands. Given the current Russian interest in the containment of China, however, such a development would not seem improbable.

Meanwhile, relations between the United States and Japan remain the single most vital relation which we have in the Pacific-Asian area, of supreme importance both to prosperity and to peace. Surely the issue of how to sustain and improve those relations should figure in the coming campaign. Any serious examination of American policies should weigh these and other complex factors.

Our relations with Japan, however, do not constitute the only issue of significance in Asia. At great sacrifice, the United States sought to protect two small Asian states against aggression, and undertook pledges to other states, both through its Southeast Asia Treaty Organization ties and through bilateral agreements. The political-military equilibrium that has emerged in East Asia in considerable measure is the product of American policies over the past twenty-five years. When these policies have been clear, moreover, and American credibility has been high, they have served to deter aggressors and prevent war. The two wars in which we have been involved in Asia since 1945 have both been the products of an initial miscalculation on the part of aggressors as to American intentions.

It would be ironic indeed if the United States were to abandon the efforts to achieve a balance of power in Asia at the very time when that goal is in sight and when both the major Communist states, the Soviet Union and the People's Republic of China, have accepted the basic importance of such a balance. If there is to be peace in this critical region of the world, it must come through power equilibrium, as both Moscow and Peking by their recent actions tacitly acknowledge. Thus, the Russians via their alliance with India and their overtures to Japan, as well as to many of the small non-Communist states of Asia, have finally accepted the validity of American policies now more than two decades old. And China, through her ties with Pakistan and her acceptance of American overtures, as well as the dramatic reversal of her highly ideological stance during the so-called Cultural Revolution, has moved down the same path.

Compare further the political situation within East Asia of the early 1960's and that of today. Note the shift in the foreign policies of the Chinese People's Republic from the exclusive concentration upon the Afro-Asian-Latin American world and the effort to set up a "non-white" substitute for the United Nations to an acceptance of more complex relations involving us among others and direct participation in the U.N. This is but one example among many which could be drawn from the great arc stretching from India to Japan. In these terms, American policies in Asia since 1945 should be accounted a success in the broadest sense, notwithstanding the errors and the costs.

Naturally, these changes warrant alterations in American policy itself. However, the theme of neo-isolationists that we do not and cannot understand Asia is, first, untrue and, second, a rather curious manifestation of Western ethnocentrism.

Now, American policy toward Asia has been formulated anew. The central themes of our present policy are as follows: We shall continue to maintain our treaty commitments with our allies, and play the role of a concerned Pacific-Asian nation. Each of our allies shall be expected to be responsible for its own basic defense; our primary responsibility will relate to the prevention of massive, external aggression, relying upon our nuclear deterrent, and our air and naval power. The United States will not involve itself in the internal affairs of other states, including civil wars.

Is this doctrine servicable for the 1970's, and what are its precise implications? On the one hand, there are those in the United States who favor a sweeping American withdrawal from Asia, one that would in effect abandon our treaty commitments and return our position to that of the 1920's and 1930's. On the other hand, among other allies, without exception, there has been a mounting concern either of a sell-out, namely, an accommodation with China or Russia at the expense of their interests, without their involvement or consent, or the steady erosion of the American will to remain in the international arena, and hence the inability to live up to treaty commitments irrespective of formal pledges.

It should be clear that this situation is fraught with danger, because it could produce the same type of miscalculations on the part of either opponent or ally that have led to such bloodshed and agony in the past. The costs of an absence of trust in the American commitment, moreover, range over a wide field. We have recently seen two small allies, the Republic of Korea and Thailand,

undergo internal political changes which amounted to a tightening of central controls and a movement away from parliamentarism. One of the seldom appreciated aspects of a credible America in Asia was the fact that we enabled small states to experiment with quasi-openness even while they felt threatened externally. To take such risks when the United States seems less reliable is infinitely more difficult.

Our commitments to the Republic of Korea will surely be one test of our credibility. To remove all American forces from South Korea without any international agreements guaranteeing the integrity of the Republic would be widely interpreted as an act of abandonment. It would have repercussions throughout Asia adverse to the non-Communist states. The current evidence suggests that Kim Il-song intends to pursue the strategy of Vietnam with respect to the South, seeking to establish there a Communist movement, using such indigenous forces as can be garnered together with southern returnees, and then proceeding to provide organizational, financial, and ultimately military aid from the North. Thus, the defense of South Korea will hinge upon both internal and external developments. At this point, however, an American presence is as psychologically crucial for Korea as is the American presence to West Germany.

The situation with respect to Taiwan is more complicated. Our position is that the ultimate disposition of the Taiwan issue should be determined by the Chinese people themselves, but that this issue should not be settled by force. To insure the latter provision, we have a military defense agreement with the present government, the Republic of China on Taiwan. It can be expected that Peking will apply maximum pressure upon the United States in an effort to force us to acquiesce in the incorporation of Taiwan into the mainland by whatever means is required. As noted earlier, the pressure upon Japan in this respect is already intense.

But there is an alternative. It is widely agreed that if the people on Taiwan could have a choice, they would opt overwhelmingly for independence. Few of them have strong ties with the mainland, and in the past two decades, Taiwan has been moving away from, not toward the People's Republic of China, whether the measurement be economic system, political values, or cultural attachments. Nor have the Chinese Communists always failed to recognize the distinction between China and Taiwan. As late as 1944, from Yenan, they sponsored a League for the Independence of the Korean and Formosan Peoples.

No one can foresee the precise evolution of events on Taiwan. However, if, in the aftermath of the Chiang Kai-shek era, the fifteen million people of this island are given the opportunity to move toward independence by internal developments, the United States must not be placed in the position of opposing this movement. It would be ironic indeed if, after expending so much blood and treasure in an effort to enable the peoples of South Korea and South Vietnam to have some role in determining their own future, we were, by our actions, to deny that right to the people of Taiwan.

Throughout Asia, and in certain quarters in this country, there is a persistent rumor that we ultimately intend to sell out the Taiwanese in the interests of an accommodation with the Chinese Communists. No single issue at present contributes more to the credibility gap between our Asian allies and ourselves. Our values as well as our word are at stake in this instance, making it imperative that we know where the candidates for the Presidency stand on this matter.

Meanwhile, Southeast Asia continues to be our gravest immediate problem. A major American initiative has just been made public, a proposal proffered to the Communists in October 1971 in the course of months of secret negotiations. That proposal—a checklist of the fundamental Vietnam issues—encompassed the following basic points: a specific date for the withdrawal of all American forces from Vietnam contingent upon an agreement that would include provisions for the release of all prisoners of war and the initiation of an immediate ceasefire throughout Indochina; the holding of new presidential elections in South Vietnam, under international supervision, with all South Vietnamese including the Communists permitted to participate; an agreement that the political future of South Vietnam will be determined by the South Vietnamese people themselves, free from external interference, and that all parties would respect the 1954 Geneva agreements on Indochina, and those of 1962 on Laos; finally, the international supervision of the military aspects of the agreement, and the application of the principles of peaceful coexistence to the various Indochina states, with the armed forces of each state remaining within their own national frontier.

A settlement broadly based upon those terms would insure the legitimate rights of Communists and non-Communists alike. Obviously, some of its provisions would be extremely difficult to implement or enforce. Its execution would require an element of trust or, more accurately, mutual interest on all sides in seeing the Indochina conflict ended. Does such an interest exist?

It has become tragically clear that Hanoi insists upon coupling political and military conditions in such a fashion as to require the unconditional surrender of the United States and its allies. The Communists have finally stated to the world what they have long proclaimed to their own people: no compromise, no concessions, no substitute for total victory. Thus, once again, American credibility as well as American values and policies are at stake. Some of our political leaders, aware of the deep weariness of our people and the unpopularity of this war, are now prepared to accept Communist terms, and surrender the basic principles which have previously underlaid our position. They should be required to spell out in detail what they believe to be the consequences of such a surrender upon our future relations with our allies; with the Communists, Russian, Chinese and other; and with the so-called "neutrals." They should be asked to assess the probable impact of such a course of action upon the American people themselves, as well as the likely results within Indochina. This is not merely a desirable action for candidates; it is a duty.

The current American proposals proffering conditions for an internationally supervised free choice in South Vietnam in conditions of peace warrant bipartisan support on their merits. They are, indeed, close to the terms which the Communists themselves once proclaimed as desirable. Moreover, if such support were forthcoming, it might disabuse Hanoi of its illusions concerning American views and bring us closer to the goal of an authentic peace in Southeast Asia. To support Hanoi's demands for surrender, on the other hand, is to prolong this war and make more difficult the task of any future President. Thus every candidate should candidly spell out his position on this issue, its likely benefits, and its implicit risks and costs.

South Asia has represented another zone of trouble in recent months. Here, we have witnessed the tragic proof of the fact that few "civil wars" of major consequences can remain civil, given the stake of the neighboring powers. The brutal and unsuccessful efforts of the Pakistan government to smash the Bangladesh movement failed, and in the failure presented both huge problems and certain opportunities to India. The Indian government, therefore, invaded East Pakistan on behalf of the Bangladesh "rebels" and in a brief period of time, with what appears to be massive public support from the indigenous people, defeated the military forces of Pakistan. While the Indian invasion was overwhelmingly criticized by the UN, no effective action to produce a ceasefire could be taken, in part because of staunch Soviet support for the Indian position, and also because India had no intention of stopping short of military victory, once the action had been determined.

Whatever one's position, the South Asia crisis makes clear certain facts of international life today. We have no effective international peace-keeping mechanism. Despite the many useful functions which it performs, the United Nations does not and cannot play that role, at least in its present form. Hence, the prevention of conflict, or the containment of conflict once it breaks out remains essentially dependent upon the type of deterrents involved in a military-political equilibrium first in the region, then in the world. This is the most basic lesson to be drawn from the South Asia conflict of 1971, and it should be taken to heart as seriously by every American as it is by every Russian and Chinese leader.

Thus, the Soviet-Indian alliance more than counterbalanced the Pakistan-China alliance under the circumstances that prevailed, even when the United States sought to provide a certain political tilt toward Pakistan, regarding Indian action as aggression irrespective of its rationale. As the Russians have carefully noted in the aftermath, the Chinese had neither the desire nor the capacity to raise a credible deterrent to Indian actions, nor did we. Consequently, a clear-cut Soviet-Indian victory ensued, although the long-range results of that victory remain obscure.

The India-Pakistan war of 1971 was another limited war for limited objectives, with all of the parties involved directly or indirectly having little or no interest in seeing that war escalate into a broader conflict. Moreover, that war again raised all of the issues that will be crucial in the decades ahead if we are to move toward an era of peace. Once again, the necessity of defining the rules for peaceful coexistence, and seeking some means of enforcing these rules is underscored. What constitutes interference in the internal affairs of another state? What is an appropriate definition of aggression? How does one define "civil war?" What are the means by which respect for the sovereignty and integrity of another state are to be judged?

Either we shall address ourselves to these issues in concert with other Pacific-Asian states, or we shall face the prospect of recurrent crises, and bloodshed of the type which we recently have witnessed. It would be of great service not merely to the American people, but also to the international community, if our Presidential candidates could address themselves to this major and supremely important task.

Perhaps the South Asia crisis is a convenient vehicle to raise another far-reaching issue difficult to define, and even more difficult to resolve. Throughout American history, it is probable that the differences among us with respect to foreign policies have stemmed less from cleavages over ideology or basic principles and more from a set of emotional commitments (or antagonisms) toward various countries derived from personal experience or perceptions. The battles between the Old China Hands and the Old Japan Hands at certain points were classic, nor is this necessarily all in the past. Similarly, India has had its American brides of Gandhi (both Mahatma and Indira). It has also had its American antagonists who have an emotional set against India. (In this respect, certain Indian leaders—with their own deep prejudices against America—have been far from helpful.)

There is no easy way of separating one's private emotional convictions from the task of determining what foreign policies stand the test of adherence to broad principles,

a correct assessment of the facts, and service to our national interests. It is equally difficult for the academician, the policy adviser, and the President—but an airing of this issue, as we prepare to move into intense, multilateral negotiations on many fronts would not be amiss. We cannot afford to have our leadership labelled either pro- or anti-Indian, Chinese, Japanese or Russian.

As noted earlier, the United States has never been policeman to the world. There is no automatic reason why we should become involved in a partisan role, or in a major sense in certain areas, or in certain disputes. Neutrality in some instances is not only a viable policy but the best policy. There are a number of reasons for believing that this would constitute the best policy for the United States in South Asia today. In any case, another set of specific issues, and the principles that underlie them, await exposition before the American people.

V.—AMERICAN-CHINESE RELATIONS

Our relations with the People's Republic of China warrants some separate attention, despite the earlier references to it. First, our policies toward China must always be regarded as part of, not apart from our broader Asian policies. Obviously, we cannot be successful if our China policy conflicts sharply with our interests and goals with respect to other parts of Asia. It was entirely proper for us to offer China more normalized relations, and to cooperate in permitting China's involvement in the United Nations. It can be argued that the price paid was too high, with the ouster of Taiwan from the UN setting a very unhealthy precedent. However, the gamble was worth taking that with greater involvement, the Chinese People's Republic will gradually find a greater stake in being a member of the international community, and increasingly develop policies of a pragmatic, flexible character.

There appear to be few issues of substance at present upon which the United States and the Chinese People's Republic can reach agreement. Peking has stated flatly that it intends to support the North Vietnamese and North Koreans fully, and to demand the settlement of the Taiwan issue on its terms. Moreover, its high density rhetoric has not abated. Chief targets continue to be "American imperialism" and "Japanese militarism," with the language used being completely intemperate. Thus, on the eve of his trip as a state guest, the President was accused of "deceitful lies" and "disgraceful opportunism," scarcely a promising beginning to our bilateral relations. Much has been said concerning Asian "face," and the importance of being careful not to cause embarrassment or loss of prestige, the need for proper manners. It might not be amiss early in our new relationship to suggest that there is such a thing as American "face" as well.

Perhaps it is also time to discuss in depth the advantages and disadvantages of summitry. Understandably, every President in recent years has coveted at least one foreign policy "moon shot," a dramatic meeting with some counterpart, fully covered by the world's media and transmitted to history books. The advantages of such meetings are presumably the establishment of some personal tie between top decision-makers, a "feel" for the other side's mood and temperament, as well as for the issues of greatest significance, and most importantly, a focusing of public attention upon the issues at hand. The most successful summit meetings are no doubt those that have served as catalytic agents affecting the timing of accords, by activating in advance the total decision-making processes of the parties involved. In sum, summitry, when it is most successful, stimulates a process.

The hazards of summitry, however, are substantial. In point of fact, few, if any, of the summit meetings during the past decade or more have been fruitful. Some have been fiascoes. Public expectations are raised, only to have disillusionment follow. Both sides seek to obtain the maximum political advantage out of the meeting for themselves, with one eye on the world community, and the other on their domestic constituency. Misperceptions are fostered, as in the Vienna Kennedy-Khrushchev meeting of 1961, requiring a lengthy "reconstruction" process. Finally, such meetings may sow grave doubts in the minds of other nations that secret deals are being made affecting them without consultation. Thus, on balance, the case for summitry is a mixed one at best, and it would be appropriate to bring the full balance-sheet before the American people in a dispassionate, rational manner.

Possibly, relations with China will parallel in some measure the history of relations with the USSR. Initially, the areas of possible agreement and accommodation will be small, those of disagreement and conflict large. Gradually and in the course of a changing world and domestic environment, more areas of accommodation hopefully can be found. The process will be slow, uneven, and in some degree, unpredictable. Nor will progress be inevitable. Indeed, recurrent crises in relations might be expected, serious deteriorations entirely possible.

To appreciate these likelihoods will make possible the patience—and the firmness—that are going to be essential in our relations with the People's Republic of China. The Chinese Communists have responded to American overtures for a variety of reasons: their deep antagonism and fear of the Soviet Union, and the near-equal concern over Japan—probably the primary reasons; the decision to abandon isolation and to participate in the international community so as to have greater leverage, especially with the non-Western world; and possibly, the belief that advantage can be taken of "the crisis" in American foreign policy, that by applying maximum pressure upon the United States now, certain developments can be prevented: the independence of Taiwan, a rising role for Japan in Asia, and the stabilization of certain non-Communist states in Indochina.

It can be assumed that the Chinese People's Republic will continue to pursue its diplomacy at three levels: state to state, people to people, and comrade to comrade. Already, its intensive efforts to woo the overseas Chinese community in the United States, together with the use it is making of select "friends" who are accorded early visiting privileges—along with a few "straights," signal some of the complications of the immediate future. Cultural and economic interactions are likely to be heavily impregnated with politics—especially in the cultural sphere—for the foreseeable future.

Meanwhile, the political future of China itself will remain clouded in uncertainty. It is extraordinary that at this point, we do not know precisely what caused the most recent political crisis at the top, resulting in the ouster of Lin Piao, Mao's heir-apparent. Nor do we currently know which other top leaders have been removed, and the nature of the present top power structure. We can only assume that the future of China hinges upon the unity of the army, still playing a crucial role in governance despite Mao's efforts to curb its independent power, and upon the alliances that can be fashioned among key political-military personnel in the aftermath of Mao's demise. Dramatic developments, however, some of which might affect China's basic foreign policies, cannot be ruled out. The Soviet Union, it might be noted, continues to hope that such events will occur, and result in a rapprochement with Moscow.

It is by no means clear that we as a people are prepared for the new era in American-Chinese relations. Myth and romanticism have always surrounded the subject of China—and an excess of emotions, pro and con. It would be unfortunate if we were now to move from a position of rigid hostility to one of naive infatuation—only to suffer deep disillusionment once again. In no sphere of our foreign policy is it of greater importance to seek out and present the hard data pertaining to values, attitudes on both sides, and policies, thereby preparing ourselves for a long, tortuous road, and forestalling any dream that a broad American-Chinese accord settling the problems of Asia lies immediately ahead.

Where are the points at which we might hope for concrete progress first in our relations with China, and what are the broad goals toward which we should aim? Clearly, the realm of cultural relations—of having contact at a variety of levels—is one feasible point of departure, and upon the fairness governing cultural relations may hinge other developments. Economic intercourse is another possible opening, although US-China trade is likely to be very limited for the foreseeable future. Cooperation in certain specialized fields, such as health, weather prediction, and scientific agriculture may strike a common interest. From the beginning, however, a common definition and acceptance of the principles of peaceful coexistence in Asia, and Chinese participation in disarmament discussions should constitute our broad goals. These objectives must be central to our China policy now, and in the future.

VI.—THE MIDDLE EAST

Yet another crisis seems both persistent and dangerous in our times, namely the cold/hot war between Israel and the Arab nations. The Middle East represents a very special problem. It is deeply involved in our domestic politics. Israel enjoys the active financial and political support of a number of our Jewish citizens who retain religious or cultural ties with it. Pro-Israel forces are well organized, articulate, and influential. Arab spokesmen have therefore persistently charged before the world that the United States has always succumbed to "Zionist" pressures, and is incapable of seeing the issues fairly. Most Arab leaders, indeed, believe that Israel is a creature of the United States, and that we must be considered the implacable foe of Arab nationalism and Arab interests.

The internal pressures that have operated in this field, however, have not been wholly one-sided. Major American oil interests existed within the Arab world, counselling "a balanced approach" to the Israel-Arab issue, or one that favors Arab interpretations. Since the 1940's, furthermore, American administrations have sought friendship in the Arab world, among moderate forces, those anxious to establish firm bases for regional peace, economic progress, and independence from Soviet domination. In recent years, the role of such moderates has been weakened by the "leftist" and "anti-American" trend within the Arab world, and reduced scope for private American entrepreneurs. Certain countervailing forces here still exist. There can be little doubt, however, that in American domestic politics, the advantage goes to the Israeli side.

Nevertheless, recurrent crises between the United States and Israel on critical policy issues have occurred in the administrations of both major parties. One need recall only the deep resentment of the Johnson administration over Israeli actions at the time of the Six Day War, and the subsequent tension that has periodically marked the intensive negotiations taking place.

Any American President taking office on January 1, 1973, can expect to find the Middle East problems as thorny and, quite possibly, as dangerous to world peace as any which he will confront. Consequently, every candidate should make clear his views on policy in this area. Again, the facts are at once

critical and complicated. The present situation is ominous, with the drift toward war once again taking place—prevented only by the endemic weaknesses and divisions that mark the Arab world, hence the knowledge of the Arab leaders that they could not win a war at this point. Even so, as recent events have shown, the current situation helps to build up the extremists in such countries as Egypt, and Anwar Sadat comes under seige from young enthusiasts who want revenge. An atmosphere of neither peace nor war might continue indefinitely. Yet an explosion could take place at any point, one involving not merely Israel and the Arab states, but also the United States and the Soviet Union.

Up to date, our policy essentially has been one of seeking to guarantee Israel military sufficiency, so as to prevent an Arab attack, while at the same time, counseling Israeli acceptance of a comprehensive peace settlement that would look toward Arab recognition of the existence of Israel and international guarantees of Israeli security in exchange for the return of most, if not all of the territory taken from the Arabs during the Six Day War, and some resolution of the refugee problem.

Thus far, however, this approach has been stoutly resisted both by Israel and by portions of the Arab world. The Israel government insists upon direct negotiations with the Arab states, and declines to rest its security upon international guarantees. The thorny refugee and territorial questions remain further down the road but totally unresolved. Meanwhile, the Palestine guerrilla movement, and its not insignificant support throughout the Arab world, demand the liquidation of Israel and the liberation of Palestine. They oppose any negotiated settlement. As recent events in Egypt have shown, moreover, this position may well gain popular support throughout the Arab world if a settlement is delayed, irrespective of the hazards of another war for the Arabs.

The United States is too deeply involved in this controversy and too likely to be adversely affected by the current drift of events to allow developments to go unheeded until we are forced into another major crisis. The following basic principles, many of which have constituted our past policies, warrant a full airing and discussion at this point. Any final peace settlement must involve the acceptance by Israel in the course of the Six-Day War, eignty, but the negotiations formula itself should be flexible, taking into account the political realities of the area and providing for simultaneous agreement on the other major issues: (1) return of territories taken by Israel in the course of the Six Day War, with such adjustments as seem warranted in the light of Israel's essential security requirements; (2) a major refugee resettlement and rehabilitation program with international sponsorship and financial support; (3) if regarded as desirable and necessary by Israel and Arab governments, deployment of international forces to patrol and maintain the sanctity of the borders established; (4) a general armaments limitation agreement for the area, involving guarantees by the major arms suppliers, namely, the United States and the Soviet Union; and (5) a broadly gauged technical assistance program for the Arab States, through international aegis, with American participation.

It is not sufficient at this point to dismiss the Middle East in a few well-chosen sentences, blandly promising support in varying degrees for the state of Israel. This crisis will not go away of its own accord, and it could threaten the whole of US–USSR relations, despite the clear indication that neither we nor the Russians want a major confrontation over this issue. Our candidates owe it to the American people to discuss the specifics of an American position in this arena.

VII.—CREDIBILITY, SECRECY AND THE MEDIA

To raise the above issues is by no means to exhaust the range of specific and general foreign policy issues that warrant discussion in this campaign. Clearly, our policies toward Latin America deserve reexamination. A number of issues confront us in Africa, some of them involving very basic questions of principle. Our attention has been directed only at those regions and problems which presently are of crucial importance.

One final issue, however, must not be omitted. It is an issue encompassing both the foreign and domestic policy fields, and of as much consequence to our survival as any issue currently on the horizon. We can no longer relegate the problem of media-government relations to a position of secondary concern, or to the realm of polemics.

Intensive competition and periodic antagonism in media-government relations are inevitable in a free society. A government, any government, will seek to protect itself and its decision-making processes by selective secrecy and news management. Sometimes, this will be essential to our national interests; sometimes, it will be primarily in the interests of those holding power. In any case, the official dissemination of information can be expected to have a bias toward the "positive." The bias of the media is equally clear. By defining news as essentially the most sensational or spectacular event of the moment, and not infrequently regarding news as in competition with other forms of entertainment for a mass audience, major distortions are perpetrated. Evolutionary developments are given short shrift. Crisis is featured and bad news drives out good.

With the advent of television, action and counteraction between media and government have steadily mounted. We have finally reached a point where in an effort to prove that the government has deceived the public, certain newspapers and journalists have decided that they, not the government, have the right to determine what documents should be classified and what should become public property. In effect, portions of the media have now taken it into their own hands to determine what serves or damages our national security, and our international reputation.

What are the likely consequences of such action? First, the unauthorized publication of stolen classified documents constitutes an open invitation for the breakdown of the decision-making process of the American government. If those within government dissatisfied with the decisions reached are encouraged to purloin documents in violation of the law, release them to sympathetic or opportunistic sources, and take their case in this highly irregular manner not merely to the American public but to every government in the world, friendly or otherwise, we are in grave danger. Yesterday, it was Vietnam. Today, it is India. Tomorrow, it may be Canada, Israel, the United Arab Republic, or the USSR. Under such circumstances, how can any government trust us, and more importantly, how can we trust ourselves?

If no foreign leader can be certain that words uttered privately to our officials, and subsequently encased in a confidential document will not suddenly be published, will we not see a drastic decline in frankness at this crucial level? And will this not also happen within the American government itself? If the minutes of any given confidential conference may shortly be revealed to the world, can we expect communications and ideas to flow freely between senior and junior officials? Will not the President himself become more and more isolated from the very levels of government which he should hear?

Thus, it is nonsense to assert that the test of whether a classified document should be published ought to rest merely with whether it overtly damages our national security. The issue goes far beyond this.

None of this is to argue that the fault lies wholly with the media. Of course there are too many classified documents, and there has always been a tendency for overclassification. Pressure can and should be continuously applied here, but not in the form of vesting in purely random hands, decisions pertaining to our security and national interest. As noted earlier government conceals and dissimulates on occasion, sometimes for *bona fide* security reasons and sometimes to protect its own political interests. Policies can be challenged, however, and errors exposed without destroying the right of the government to protect its decision-making processes and make the final decisions on what should remain confidential.

No candidate for the Presidency in these critical times can evade a position on this critical issue. It affects his own potential authority as office holder. Media-government relations cannot continue down the path of recent years without increasing hazards to all of us. There are no simple answers to this problem, but quotations of the First Amendment on the one hand, and assertion of persist anti-administration bias on the other will simply not suffice. We are in a new era of communications, one posing some of the most difficult problems ever faced by a society that is at once probing the frontiers of freedom and seeking to play a major and responsible role in a dangerous and deeply divided world.

If America is to act responsibly on the world stage, our Presidential candidates must lead the way.

THE FREEDOM HOUSE PUBLIC AFFAIRS INSTITUTE

A research and publication center to help clarify our democratic goals. It studies the weaknesses and vices of our society and suggests correctives to strengthen our democracy.

The Institute was inaugurated in the fall of 1967 with the calling of a conference of Asian specialists who produced a report on policy alternatives, "The United States and Eastern Asia." It was widely publicized and has been republished many times by academic institutions and public agencies.

Current Institute programs include a major analysis of the performance of the mass news media.

The PAI is also helping to develop an international committee of scholars to meet the university emergency in the U.S. and abroad.

Freedom House has been supported for more than 30 years by its contributing members and by grants for special projects from individuals and foundations. For tax purposes, all contributions are deductible from up to 50% of a donor's adjusted gross income. Members and supporters receive reports and other publications useful as guides to individual and group action on public affairs.

EISENHOWER CONSORTIUM FOR WESTERN ENVIRONMENTAL FORESTRY RESEARCH

Mr. ALLOTT. Mr. President, the U.S. Forest Service and nine Rocky Mountain and Great Plain universities have joined forces to fight environmental problems through a new cooperative program called the Eisenhower Consortium for Western Environmental Forestry Research. The president of the consortium is Dr. Robert Dils, dean of the College of Forestry and Natural Resources at Colorado State University in Fort Collins. Dean Dils and his colleagues have high hopes that this new organization will provide some answers and land management guidance to some of the environ-

mental and land use problems we face in the West. In order that Senators may know the details of this cooperative venture between Government and education, I ask unanimous consent that the Department of Agriculture announcement of this consortium be printed in the RECORD.

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

FOREST SERVICE, UNIVERSITIES JOIN FORCES TO FIGHT ENVIRONMENTAL PROBLEMS

WASHINGTON, Feb. 28.—The Forest Service, U.S. Department of Agriculture, today announced it has established a cooperative forestry research program for the West designed to combine activities of the agency and a number of Western educational institutions in solution of environmental problems.

Forest Service Chief Edward P. Cliff said the cooperative program will be called the Eisenhower Consortium for Western Environmental Forestry Research. It will involve the Forest Service's Rocky Mountain Forest and Range Experiment Station, headquartered at Fort Collins, Colo., and nine Rocky Mountain and Great Plains universities. They are: Northern Arizona University at Flagstaff, Arizona State University at Tempe, University of Arizona at Tucson, Colorado State University at Fort Collins, University of Colorado at Boulder, New Mexico State University at Las Cruces, University of New Mexico at Albuquerque, Texas Tech University at Lubbock, and University of Wyoming at Laramie.

A similar Forest Service program has been developed in the eastern United States at the Northeastern Forest Experiment Station. It is designated the Pinchot Institute of Environmental Forestry Research.

Dr. Robert E. Dils, Dean of Colorado State University's College of Forestry and Natural Resources has been named first president of the new western Consortium.

Chief Cliff said the Consortium will combine and coordinate research efforts of the interested colleges and universities and the Forest Service "to solve the problems of man and his interactions with the environment." He said these problems are most urgent in the central and southern Rocky Mountains and the adjacent high plains.

Examples of planned research include:

Determination of social, economic, and ecological consequences of industrialization, residential development, and recreation-related activities in wild land environments.

Development of methods for monitoring and controlling changes in environmental characteristics of forests and related lands that occur as a result of man's activities.

Evaluation of probable future demand for wild-land-related recreation and associated activities, and development of appropriate management techniques.

Development of methods of achieving broad public understanding of man's relationships with and needs for products or experiences from forests and associated wild lands.

A part of the Consortium program will involve grants for research to participating universities for studies selected by an executive committee made up of one Forest Service representative and four from the participating universities.

EQUAL RIGHTS FOR MEN AND WOMEN

The ACTING PRESIDENT pro tempore (Mr. HUGHES). Under the previous order, the Chair lays before the Senate the unfinished business, which the clerk will state.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 208) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ERVIN. Mr. President, I yield myself such time as I may use out of the amount allotted to those who oppose this proposed amendment.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

Mr. ERVIN. I think it would not be amiss for me to read to the Senate an editorial which appeared in the Winston-Salem Sentinel on August 19, 1970, a few days after the House of Representatives passed the amendment which its supporters call the Equal Rights amendment, and which one of its wise opponents has called the Unisex amendment.

The editorial reads as follows:

Sen. Sam Ervin wants to rescue the nation from the worst results of a proposed "woman's rights" amendment which the House of Representatives passed last week with precious little investigation and only superficial debate.

The amendment has powerful support in the Senate, and Ervin apparently is reconciled to its passage in some form. Rather than try to defeat it, which in the name of common sense is what should be done, he is attempting to qualify it in a way that would prevent the invalidation of laws that discriminate in favor of women.

Every state has a considerable number of such laws on the books—laws pertaining, for example, to divorce proceedings and alimony payments. Passage of the amendment likewise would bring into question the federal prohibition against drafting women into the armed services.

There is no indication that the House did much probing into the nature of the existing statutes before acting on the amendment. But it is a fair guess that many such laws would, on the ratification of the amendment, become a matter for adjudication in the courts.

Why this proposal should have such overwhelming support may long remain one of the mysteries of the 91st Congress. This Congress has done a number of foolish things, but not usually with so little thought for the consequences.

Sen. Ervin's is an old-fashioned sentimentalist about many things—certainly about the Constitution and probably about women—but if he will stick to his guns maybe he can persuade the Senate to repair the damage wrought by the House.

Don't bet on it, however. Earth knows no fury like a woman scorned—except a woman with the cry of "liberation" on her lips.

Mr. President, I have had a number of conversations with militants of the extreme wing of women's lib. They have been unable to convince me that God made a mistake when He created two sexes instead of one, and that the most effective way to repair this mistake of God is to adopt a constitutional amendment under which the daughters of America could be drafted for compulsory military service or enlisted for combat service and sent into battle to have their fair forms blasted into fragments by the bombs and shells of the enemy. That is precisely what this amendment, if submitted to the States and ratified by the States, would do, as I shall demonstrate, according to the very words of some of the most ardent advocates of the amendment.

Mr. President, I am somewhat at a loss to understand why there should be so much support for the equal rights, or unisex, amendment. I am sure it is not created by the kind of threat which I received from a good lady in New Jersey in the form of a press release. She issued a press release to the effect that she had formerly resided in North Carolina and that if I dared to continue my opposition to this amendment, she would go down to North Carolina the next time I sought reelection to the office of Senator and defeat me.

She also stated in her press release that I was wasting my time, anyway, in opposing the amendment, because Senators—other than myself—did not dare to oppose the amendment or to support any amendments to the amendment.

I am sure that the good lady expressed a very low estimate of the moral and political courage of Senators and that that is not the reason why the amendment finds so much support in the Senate.

I must confess, however, that I cannot understand several things about the movement for this amendment. One of the things I cannot understand is why the business and professional women wish to deprive their sisters who perform labor other than intellectual labor and their sisters who elect to become wives and mothers—and who unfortunately become widows—of the legal protections which the laws of 50 States throw around them. I am somewhat at a loss to understand why men are so unchivalrous as to join them in their effort to rob their sisters of these rights and these protections and these exemptions which the experience of the human race has shown are necessary to promote the existence of mankind on this earth and the development of children who come into being in the most helpless state of any creatures.

I think I could demonstrate to anyone who would listen with an unbiased mind that this amendment would destroy the social structure on which America rests. Despite the strong support which the amendment enjoys, I remain adamant in my opposition to it. I was brought up on the King James version of the Bible. The King James version of the Bible states in one place that it enjoins parents to bring up a child in the way it shall go and states that when the child is old, it will not depart from it. As my father used to say, the child will depart from it often until he becomes old.

But since I have acquired a certain amount of antiquity, I am reminded on this occasion of something that appears in the King James version of the Bible. I refer to verse 2 of chapter 23 of Exodus, where it states:

Thou shalt not follow a multitude to do evil.

For that reason, I cannot support the equal rights, or the unisex amendment, because I think it would have a most serious impact upon the social structure of America and for that reason, in my opinion, would constitute evil.

THE EQUAL RIGHTS AMENDMENT: A POTENTIALLY DESTRUCTIVE AND SELF-DEFEATING BLUNDERBUSS

Mr. President, the Senate is asked to join the House in submitting to the States the proposed equal rights amendment, which specifies:

Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

The professed objective of most of the advocates of the amendment is a worthy one. It is to abolish unfair or unreasonable discriminations which the law makes against women.

No one believes more strongly than I that discriminations of this character ought to be abolished.

Any rational consideration of the proposed equal rights amendment raises these questions:

First. What unfair or unreasonable discriminations does the law make against women?

Second. Is it necessary to amend the Constitution to abolish these unfair or unreasonable legal discriminations?

Third. Is it desirable to add the equal rights amendment to the Constitution?

I will discuss these questions in their numerical order.

UNFAIR DISCRIMINATIONS

The accepted traditional customs and usages of society undoubtedly subject women to many discriminations.

If it should be added to the Constitution, the equal rights amendment would have no effect whatever upon discriminations of this character. Inasumch as they are not created by law, they cannot be abolished by law. They can be altered only by changed attitudes in the society which imposes them.

When I have sought to ascertain from them the specific laws of which they complain, the advocates of the equal rights amendment have cited some outmoded State statutes which constitute legislatively forgotten relics of a bygone age.

Among these laws are State statutes which forbid a wife to become a surety for third persons without her husband's consent, or which prefer the father over the mother in the granting of letters of administration on a child's estate, or which impose weightlifting restrictions on working women, or which bar women from operating saloons, or acting as bartenders, or engaging in professional wrestling.

Legislatures would undoubtedly repeal statutes of this character if any demand were made upon them to do so. Moreover, statutes of this character would certainly be adjudged invalid by the courts under the unanimous decision handed down by the Supreme Court in *Reed* v. *Reed*, 404 U.S. 71, on November 22, 1971. In that case, the Supreme Court held in express terms that State legislation violates the equal protection clause of the 14th amendment if it treats differently men and women who are similarly situated.

I respectfully submit that resorting to an amendment to the Constitution to nullify State laws of this character would be about as wise as using an atomic bomb to exterminate a few mice.

If it should be added to the Constitution, the equal rights amendment would apply to the admission policies of public institutions of higher learning, but not to those of private institutions of that nature.

With the exception of a few State-supported military colleges, virtually all State institutions of higher learning are coeducational. Despite this, some militant proponents of the equal rights amendment complain that State institutions of higher learning discriminate against women by denying them enrollment.

In the final analysis, this complaint rests upon decisions of Federal courts that the equal protection clause of the 14th amendment does not nullify a South Carolina law which restricts admission to the State military college known as The Citadel to men, and a Texas statute which restricts admission to one of the State's 18 institutions of higher learning only; that is, a military school known as Texas Agricultural and Mechanical College, to men.

It is extremely doubtful whether any substantial number of women believe that these decisions and these State laws enslave them, or impair their educational opportunities in any unfair or unreasonable way, or justify adding the equal rights amendment to the Constitution to eliminate these laws and decisions and destroy the reasonable protections the equal protection clause of the 14th amendment permits the States to accord to women.

I submit that it would be a far easier task for the militants who raise a hue and cry about these laws to persuade South Carolina and Texas to alter them to their liking than it is going to be for them to induce South Carolina, Texas and 36 other States to ratify a constitutional amendment, which is designed to convert men and women into identical legal beings, and to rob their sisters who become wives, mothers, and widows, of the reasonable protections which the fifth and the 14th amendments permit Congress and the States to give them.

From my study of the subject, I am convinced that most of the unfair or unreasonable discriminations against women arise out of the different treatment given men and women in the employment sphere.

No one can gainsay the fact that women suffer many discriminations in this sphere, both in respect to the compensation they receive and the promotional opportunities available to them.

REMOVAL OF LEGAL DISCRIMINATION BY STATUTES

While many of these discriminations are based on the mores of society and can be removed only by changed attitudes of people, some of them arise out of law or an absence of law, and can be eliminated by acts of Congress and acts of State legislatures if such acts are enforced after they are enacted.

The overwhelming majority of the most profound lawyers in America advocate the elimination of discriminations against women by the statutory method. This method, they say, is wise because it will enable legislative bodies to proceed in an orderly way, and thus avoid the constitutional and legal chaos which the adoption of the equal rights amendment would visit upon the Nation.

Let me point out that Congress has done much in recent years to abolish discriminations of this character insofar as they can be abolished at the Federal level. It has amended the Fair Labor Standards Act to make it obligatory for employers to pay men and women engaged in interstate commerce or in the production of goods for interstate commerce equal pay for equal work, irrespective of the number of persons they employ.

I add at this point that under present-day interpretations of the interstate commerce clause, Congress has jurisdiction to legislate with respect to virtually every business or commercial undertaking anywhere within the borders of the 50 States.

Congress has also decreed by the equal employment provisions of the Civil Rights Act of 1964 as amended that there can be no discrimination whatever against women in employment in industries employing 15 or more persons, whose business affects interstate commerce, except in those instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the enterprise. Furthermore, it is to be noted that the President and virtually all of the departments and agencies of the Federal Government have issued orders prohibiting discrimination against women in Federal employment.

Moreover, State legislatures have adopted many enlightened statutes in recent years prohibiting discrimination against women in employment.

If women are not enjoying the full benefit of this Federal and State legislation and these executive orders of the Federal Government, it is due to a defect in enforcement rather than a want of fair laws and regulations.

The validity of what I have just said is emphasized by the fact that during the immediate past Federal courts have invoked the supremacy clause of article VI of the Constitution to invalidate a number of State laws because of their inconsistency with the provisions of the Fair Labor Standards Act and the Civil Rights Act of 1964 prohibiting discrimination in employment on account of sex.

NO AMENDMENT IS NECESSARY

This brings me to the second question; that is, whether a constitutional amendment is required to abolish unfair or unreasonable legal distinctions between the rights and responsibilities of men and women. I submit the answer is an emphatic "No."

The due process clause of the fifth amendment forbids the Federal Government to deprive any person of life, liberty, or property without due process of law. The due process and equal protection clauses of the 14th amendment forbid a State to "deprive any person of life, liberty, or property without due process of law," or to "deny to any person within its jurisdiction the equal protection of the laws."

Properly interpreted these constitutional provisions nullify any Federal or State laws which make unfair or unreasonable distinctions between the legal rights and the legal responsibilities of men and women. For this reason, no constitutional amendment is necessary.

The equal protection clause became a

part of the Constitution in 1868. Candor compels the confession that for some time thereafter the Supreme Court put some unenlightened interpretations upon the effect of the equal protection clause. For example, it held in *Bradwell* v. *Illinois*, 16 Wall. 130 (1873), that the equal protection clause did not deny to a State the power to refuse to license women to practice law; and it held in *Minor* v. *Happersett*, 21 Wall. 162 (1875), that the equal protection clause did not invalidate a State law which granted the right to vote to men and denied it to women.

Mr. President, I add at that point that these enlightened opinions based upon the equal protection clause of the 14th amendment by the Supreme Court shortly after the equal protection clause became part of the Constitution are as dead today in their practical effect as a dodo bird.

As Bernard Schwartz makes manifest in his recent commentary upon the Constitution, these and similar decisions are now outmoded and would not constitute controlling precedents in any cases involving the validity of State laws under the equal protection clause.

I ask unanimous consent that statements made by Mr. SCHWARTZ in his commentary in respect to the use of sex as a classification in legislation be printed after my remarks in the body of the RECORD.

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

(See exhibit 1.)

Mr. ERVIN. The equal protection clause embodies a simple and sound principle. It requires a State to treat in like manner all persons similarly situated regardless of their race or their sex or any other considerations. The clause does not require identity of treatment. It permits a State to make distinctions between persons subject to its jurisdiction if the distinctions are based on some fair or reasonable classification, and all persons embraced within the classification are treated alike. It merely outlaws unfair or unreasonable discrimination.

Mr. President, I reiterate my assertion that the equal protection clause of the 14th amendment invalidates every State law which makes any distinction between the legal rights and the legal responsibilities of men and women unless that distinction is based upon fair or reasonable grounds.

The Supreme Court of the United States has held in *Bolling* v. *Sharp*, 347 U.S. 497, and other cases that the due process clause of the fifth amendment imposes the same obligations on the Federal Government that the equal protection clause imposes on the States.

As a consequence, I assert without fear of successful contradiction that the due process clause of the fifth amendment invalidates every act of the Congress and every action of a Federal department or agency which makes a legal distinction between the rights and responsibilities of men and women unless that distinction is based on fair or reasonable grounds. And in the statement which I have asked unanimous consent to have printed in the RECORD from the commentary of Bernard Schwartz, it is quite clearly stated that the equal protection clause of the 14th amendment and the due process clause of the fifth amendment invalidates every Federal and every State law which makes a legal distinction between the rights and responsibilities of men and women unless that legal distinction is designed for the purpose of offering protection to women.

My conviction that the fifth and 14th amendments outlaw every unfair and unreasonable legal distinction between the rights and responsibilities of women is shared by the overwhelming majority of the lawyers of America. Moreover, it is fully sustained by the unanimous opinion of the Supreme Court of the United States in *Reed* v. *Reed*, 404 U.S. 71, which was handed down on November 22, 1971.

Prior to the Reed case, many of the most knowledgeable legal authorities in the Nation expressed the opinion that the fifth and 14th amendments nullify all laws either Federal or State which discriminate unfairly or unreasonably against women.

Let me quote only a few of them.

The late Dean Roscoe Pound of the Harvard Law School, who was one of the greatest legal luminaries America has ever known, made this statement with respect to the fifth and 14th amendments, and the proposed equal rights amendment:

> With respect to the proposed constitutional amendment I feel very strongly that it is a mistake to pile up specific prohibitions in addition to the general guaranties of the Bill of Rights. The guaranty of due process in the Fifth and Fourteenth Amendments secures against arbitrary and unreasonable legislation of every sort, whether on the part of Congress or of State Legislatures. With this protection against arbitrary and unreasonable legislation it certainly ought not to be necessary to add specific prohibitions. If the things aimed at are arbitrary and unreasonable there is already protection against them; if they are reasonable they ought not to be inhibited.

That is the end of the quotation from the statement made by Dean Roscoe Pound in opposition to this very amendment which confronts the Senate at this moment. According to Dean Pound's statement, the effect of the adoption of the so-called equal rights amendment would be to nullify the beneficient provisions of the due process clause of the fifth amendment and the 14th amendment, which extend fair and reasonable protections to women, and would make irrational, unfair, and unreasonable laws constitutional.

The Senator from North Carolina finds himself in complete agreement with one of his former teachers, Dean Roscoe Pound, in the thought that this Nation does not need a constitutional amendment which would make irrational, unfair, and arbitrary laws constitutional.

Bernard Schwartz stated in his recent Commentary on the Constitution of the United States:

> That a law based on sexual classification will normally be deemed inherently unreasonable unless it is intended for the protection of the female sex.

Leo Kanowitz, author of the book "Women and the Law, and the Unfinished Revolution" who formerly opposed and now advocates the adoption of the Equal Rights Amendment on psychological rather than legal grounds, testified before the Senate Judiciary Committee on September 11, 1970. On that occasion, I put to him the following question, and received from him the following answer:

> "Senator ERVIN. Professor, I have enjoyed my discussion with you on the intellectual plane and I don't think you made any change in your position except you now urge the ratification, whereas you opposed ratification before. I think your positions on the law as expressed here today and as expressed in these other writings is perfectly consistent. In other words, I think you have made it plain that you think, just like I believe, that if the due process clause of the Fifth Amendment and the equal protection clause of the Fourteenth Amendment were properly interpreted they would outlaw every arbitrary and every invidious discrimination made by law against women in our society."
>
> "Mr. KANOWITZ. That is correct, sir."

As will hereinafter appear, Mr. Kanowitz entertains the opinion that virtually all of the legal distinctions made between the legal rights and responsibilities of men and women are based upon the functions they perform and not upon sex, and for that reason the equal rights amendment would have little effect on existing legal distinctions.

The decision in the Reed Case was presaged by the decision of the Supreme Court in *Hoyt* v. *Florida*, 363 U.S. 57 (1961), which declares:

> We address ourselves first to appellant's challenge to the statute on its face.
>
> Several observations should initially be made. We of course recognize that the Fourteenth Amendment reaches not only arbitrary class exclusions from jury service based on race or color, but also all other exclusions which "single out" any class of persons "for different treatment not based on some reasonable classification."

To be sure, some militant advocates of the equal rights amendment condemn the decision in the Hoyt Case. In the ultimate analysis, they are displeased with it because the Florida statute, which the Court sustained, did not compel wives to desert their housekeeping duties and mothers to forsake their children in order to serve on juries in State courts.

The Reed Case involved the validity under the equal protection clause of an Idaho statute which gave the father preference over the mother in the granting of letters of administration to administer upon the estate of a deceased child. By an unanimous decision, the Supreme Court adjudged that the Idaho statute violated the equal protection clause because it provided "dissimilar treatment for men and women" who were "similarly situated."

In reaching this sound conclusion, the Supreme Court declared:

> In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the leg-

islation, so that all persons similarly circumstanced shall be treated alike."

The Reed case constitutes a final decision of the Supreme Court on this point, and it makes as clear as the noonday sun in a cloudless sky that the equal protection clause of the 14th Amendment makes unconstitutional every State law which makes any legal distinction between men and women, unless that law is fair and reasonable.

The Reed case makes it indisputable that the equal protection clause invalidates any State law making any unfair or unreasonable distinction between the legal rights and responsibilities of men and women, and thus sets the matter at rest.

On last Friday a very distinguished lawyer stated his dissatisfaction with the Reed case because the judges in the Reed case did just what all judges do—they confined that ultimate ruling to the case presented to them. This distinguished lawyer said they ought to have stricken down in this one decision all of the State laws making arbitrary or invidious discrimination against women, even though those State laws were not called to the court's attention and were not in issue in the case.

Manifestly, courts cannot engage in the exercise of such widespread powers until they acquire legislative as distinguished from judicial powers and functions. But I do assert, without fear of successful contradiction, that under the ruling in the Reed case, every State law which makes an arbitrary or an unreasonable or an unfair distinction between legal rights and responsibilities of men and women will be stricken down as unconstitutional.

I ask unanimous consent that a copy of the Reed case be printed in the body of the RECORD after the conclusion of my remarks.

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

(See exhibit 2.)

Mr. ERVIN. What has been said makes it indisputable that the fifth and 14th amendments will nullify every Federal and State law which makes unfair or unreasonable discriminations against women.

Many legal scholars predict, I think quite rightly, that the Reed case will ultimately result in the elimination of all State laws making unfair or unreasonable discriminations against women.

Since its rendition, I have received a letter from one of America's foremost legal scholars, Philip B. Kurland of the Law School of the University of Chicago, which makes the following statement:

> I am still of the opinion that a constitutional amendment to afford equal rights for women is both unnecessary and undesirable. * * * I am also of the view that a sound program of legislative reforms would be more, especially under the mandate now received from the Supreme Court in *Reed* v. *Reed*, to eliminate more of the grievances that women have against their roles frequently imposed on them in our society. Legislation can get at specific problems in a way that no constitutional provision can.

I have also received a letter from another most knowledgeable person, Paul A. Freund of the Law School of Harvard University, which makes the following declaration:

> In view of the Reed decision, however, I believe more strongly than ever that the subject should be left to be worked out under the equal protection clause, as are other questions of group classification. The equal protection guarantee, together with the ample legislative powers of Congress, is the best avenue to achieve meaningful equality of the sexes under law. This approach is greatly to be preferred to one that would force all the manifold legal relationships of men and women, from coverage under selective service to the obligation of family support, into a mold of mechanical unity.

OBJECTIVES OF MILITANT SUPPORTERS OF THE EQUAL RIGHTS AMENDMENT

While undoubtedly the objective of most of the supporters of the equal rights amendment is merely to abolish unfair or unreasonable legal discriminations against women, this is not the objective of its most militant advocates.

Their objective is clearly revealed by an article which appeared in the Yale Law Journal for April 1971. This article was written by Prof. Thomas I. Emerson and three recent graduates of the Yale Law School, Barbara A. Brown, Gail Falk, and Ann E. Freedman.

I deem it appropriate to note at this time that the four authors of this article are strong advocates of the equal rights amendment and are fully competent, from a professional standpoint, to inform the Senate of the United States exactly what the equal rights amendment will do to our constitutional and legal and social structures.

The distinguished Congresswoman from Michigan (Mrs. GRIFFITHS) and the distinguished Senator from Indiana (Senator BAYH) have heaped praise upon this article, which is hereinafter referred to by me as the Yale Law Journal. In sending a copy of the article to all Members of the House of Representatives, Congresswoman GRIFFITHS states that:

> It will help you understand the purposes and effects of the Equal Rights Amendment. * * * The article explains how the ERA will work in most areas of the law.

Senator BAYH inserted a copy of the article in the CONGRESSIONAL RECORD, and commended its reading by Members of the Senate in a statement which declared it to be "a masterly piece of scholarship."

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

Mr. ERVIN. Yes; I yield to my distinguished friend from Indiana.

Mr. BAYH. I do not want to interrupt the thorough, scholarly, and noteworthy discussion of this issue by my friend from North Carolina. Just as I described his presentation as noteworthy and scholarly, I do not agree with all its aspects. If the Senator will read the full context of the RECORD at the time I introduced the discussion to which he refers, he will see that I said that I did not agree with all the aspects discussed, or all the points and positions taken in the article.

Mr. ERVIN. Well, I will admit that my good friend did make a small disclaimer, but Mrs. GRIFFITHS, the leader of the ERA in the House, made no such disclaimer at all, and I will read exactly what was said by my good friend from Indiana:

> Mr. President, for 48 years the equal rights amendment has been pending before Congress. We all know that the history of this proposal has been one of inaction and delay on the part of Congress. Finally, however, we have at long last begun to see some action.
>
> The House will soon vote on the amendment, and I am assured that they will be able to cast off the crippling amendments added by the House Judiciary Committee. Thus, this measure will soon be before the Senate once again.
>
> In order to help Senators in studying this proposal, I ask unanimous consent to have printed in the RECORD an article entitled "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," published in the Yale Law Journal. This piece, written by Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman, presents a well-documented case in support of the proposed amendment. While I do not necessarily agree with every opinion expressed therein, I found it to be a masterly piece of scholarship which deserves to be brought to the attention of every Senator and the public.

That is the end of the quotation from the statement of my distinguished friend.

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

Mr. ERVIN. I yield.

Mr. BAYH. I appreciate the fact that the Senator accurately rephrased what I said in the RECORD. The article particularly appealed to me as an articulate discussion of the history of equal rights legislation during the past 49 years. I feel it is important for all of us to know what has gone on in the past. In addition, this is a detailed analysis of the theory of nullification and expansion as it relates to the impact of the amendment on existing laws.

Mr. ERVIN. Mr. President, I hesitate to disagree in small measure with my friend from Indiana, as he says he disagrees in small measure with this article. The Senators speaks of it as a discussion of legislative history. I say it is rather a prediction and interpretation of what constitutional and legal chaos will be done to our constitutional, legal, and social structures by this amendment which my good friend from Indiana advocates and these four authors advocate.

Mr. BAYH. If the Senator will permit me one final interruption, I ask that he and any of our other colleagues who might be interested in the legislative history look at the CONGRESSIONAL RECORD, volume 117, part 27, pages 35040–35041. I think everyone will see the legislative history to which the Senator from Indiana was referring.

Mr. ERVIN. I trust that my good friend will explain wherein he disagrees with this article which he inserted in the CONGRESSIONAL RECORD and stated, in substance, that it would help Senators to understand what this amendment would do to our country.

The Yale Law Journal article clearly reveals that the objective of the militant supporters of the Equal Rights Amendment is to nullify every existing Federal and State law making any distinction whatever between men and women, no matter how reasonable the distinction may be, and to rob Congress and the

legislatures of the 50 States of the legislative power to enact any future laws making any distinction between men and women, no matter how reasonable the distinction may be.

This is made clear by the following three quotations from the Yale Law Journal:

First:

> The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. This means that the treatment of *any* person by the law may not be based upon the circumstance that such person is of one sex or the other. (p. 889) . . . the principle of the Amendment must be applied comprehensively and *without* exceptions. (p. 890)

Second, quoting another passage:

> Only an *unequivocal ban* against taking sex into account supplies a rule adequate to achieve the objectives of the Amendment. (p. 892) . . . prohibition against the use of sex as a basis for different treatment applies to *all* areas of legal rights. (p. 891) . . . From this anaylsis it follows that the constitutional mandate must be absolute. (p. 892)

The third quotation is as follows:

> Our legal structure will continue to support and command an inferior status for women so long as it permits any differentiation in legal treatment on the basis of sex. (p. 873) . . . Equality of rights means that sex is not a factor. (p. 892)

These quotations show the objective of the equal rights or the unisex amendment, and that the basis of that objective is to deny to Congress and to the legislatures of the 50 States the power to even recognize that men and women have physiological or functional differences, when they undertake to pass laws.

We often hear the old adage that justice is blind, as applied to courts of justice; but I say this means that all the legislative bodies in the United States, including Congress and the 50 State legislatures, must be totally blind and not see that there is any such thing on this earth as sex when they legislate, and that they must treat men and women exactly alike even though the good Lord made them different in some respects.

This analysis of the objective of the militant proponents of the equal rights amendment is confirmed by their demand that the Senate pass the amendment without altering one jot or title of it and their threat to visit political retribution upon any Senators who dare vote for any amendment which would permit Congress to exempt women from compulsory military service or from service in combat units of the Armed Forces, or any amendment which would authorize Congress or State legislatures to extend economic or social protection to women in general or wives, mothers, or widows in particular, or any amendment which would authorize Congress or State legislatures to safeguard the privacy of women or girls, or any amendment which would permit Congress and the States to continue in force laws punishing men for committing sex crimes on women or girls.

FUNCTIONAL DIFFERENCES BETWEEN MEN AND WOMEN

In appraising the objective of the militants, we are confronted by the question whether there is any rational basis for reasonable distinction between men and women in any of the relationships or undertakings of life.

We find in chapter 1, verse 27 of the book of Genesis this statement which all of us know to be true:

> God created man in his own image, in the image of God created he him; male and female created he them.

For this reason, I share completely this recent observation of a legal scholar:

> Use of the law in an attempt to conjure away all the differences which do exist between the sexes is both an insult to the law itself and a complete disregard of fact.

While I believe that any laws making unfair or unreasonable distinctions against women should be repealed by legislative bodies or judicially annulled by the courts under the provisions of the fifth and 14th amendments, I have the abiding conviction that the law should make such distinctions between men and women as are fairly or reasonably necessary for the protection of women and the existence and the development of the race.

When He created them, God made physiological and functional differences between men and women. These differences confer upon men a greater capacity to perform arduous and hazardous physical tasks. Some wise people even profess the belief that there may be psychological differences between men and women. To justify their belief, they assert that women possess an intuitive power to distinguish between wisdom and folly, good and evil.

To say these things is not to imply that either sex is superior to the other. It is simply to state the all-important truth that men and women complement each other in the relationships and undertakings on which the existence and development of the race depend.

The physiological and functional differences between men and women empower men to beget and women to bear children, who enter life in a state of utter helplessness and ignorance and who must receive nurture, care, and training at the hands of adults throughout their early years if they and the race are to survive, and if they are to grow mentally and spiritually. From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed upon men the primary responsibility for providing a habitation and a livelihood for their wives and children, to enable their wives to make the habitations homes, and to furnish nurture, care, and training to their children during their early years.

In this respect, custom and law reflect the wisdom embodied in the ancient Yiddish proverb that God could not be everywhere, so he made mothers. The physiological and functional differences between men and women constitute life's most important reality. Without them human life could not exist.

For this reason, any country which ignores these differences when it fashions its institutions and makes its laws is woefully lacking in rationality. Yet, this amendment is based upon the theory that our country must be compelled to ignore these differences when it fashions our institutions and our laws by the equal rights, or the unisex, amendment.

Our country has not thus far committed this grievous error. As a consequence, it has established by law the institutions of marriage, the home, and the family, and has adopted some laws making rational distinctions between the respective rights and responsibilities of men and women to make these institutions contribute to the existence and advancement of the race.

OBSCURITY OF THE EQUAL RIGHTS AMENDMENT

In the nature of things, lawmakers use words to express their purposes. Courts must ascertain from their words the purposes of the lawmakers. In his famous opinion in *Towne* v. *Eisner*, 245 U.S. 418, 425, Justice Oliver Wendell Holmes made this trenchant observation:

> A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.

During my many years as a lawyer, a judge, and a legislator, I have discovered that many words have many meanings, and that the purpose they are intended to express must be gathered from the context in which they are used. I have also learned that the most difficult task which ever confronts a court is determining the meaning of imprecise words used in a scrimpy context.

The word "sex" is imprecise in exact meaning, and no proposed constitutional amendment ever drafted exceeds the equal rights amendment in scrimpiness of context. The amendment contains no language to elucidate its meaning to legislators or to guide courts in interpreting it. When all is said, the equal rights amendment, if adopted, will place upon the Supreme Court the obligation to sail upon most tumultuous constitutional seas without chart or compass in quest of an undefined and unknown port.

The imprecision of the word "sex" as used in the proposed amendment is clearly revealed by these definitions set forth in the recently published "American Heritage Dictionary of the English Language":

> 1.a. The property or quality by which organisms are classified according to their reproductive functions. b. Either of two divisions, designated male and female, of this classification. 2. Males or females collectively. 3. The condition or character of being male or female; the physiological, functional, and psychological differences that distinguish the male and the female. 4. The sexual urge or instinct as it manifests itself in behavior. 5. Sexual intercourse.

When one undertakes to ascertain the obscure meaning of the ambiguous equal rights amendment in an impartial, intellectual, and unemotional manner, he is inevitably impelled to the conclusion that it is susceptible of several different and discordant interpretations.

If it should accept the fourth and fifth definitions of the term "sex" as set forth in the dictionary, the Supreme Court could reach the conclusion that the equal rights amendment merely annuls existing and future laws visiting upon the adulterous acts of women different legal consequences from those it visits upon such acts of men.

If it should accept the first, fourth, and fifth definitions of "sex" as set forth in the dictionary, the Supreme Court could

reach the conclusion that the amendment is only concerned with sex per se, and has no application whatever to legal distinctions made between men and women on the basis of their respective functions in the relationships and undertakings on which the existence and development of the race depend.

A learned student of the constitutional aspects of sex-based discrimination in American law, Prof. Leo Kanowitz, accepts this interpretation. He had this to say in his book on "Women and the Law, and the Unfinished Revolution":

It is submitted that the adoption of the Equal Rights Amendment would not fundamentally change the picture. While the proposed amendment states that equality of rights shall not be abridged on account of sex, sex classifications could continue if it can be demonstrated that though they are expressed in terms of sex, they are in reality based upon function.

If it should accept the third definition of "sex" as set out in the dictionary, the Supreme Court could reach the conclusion that the equal rights amendment annuls every existing Federal and State law making any distinction between men and women, however reasonable such distinction might be in particular cases, and forever robs the Congress and the legislatures of the 50 States of the constitutional power to enact any such laws at any time in the future.

This is the interpretation which I fear the Supreme Court may feel itself obliged to place upon the House-passed equal rights amendment.

When he testified before the Senate Committee on the Judiciary in opposition to the equal rights amendment on September 10, 1970, Prof. Philip B. Kurland pointed out that the equal rights amendment merely provides that "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." He stated that the language of the proposed amendment is too barren to elucidate its meaning; that he thought the difficulty of its construction did not arise out of the use of the word "sex," but rather from the use of the word "equality"; that almost a century ago Sir James Fitzjames Stephen asserted in his book "Liberty, Equality, and Paternity" that the word equality is a word so wide and vague as to be by itself almost unmeaning; and that nothing that has happened in the intervening years has done anything to make the word specific.

I am not alone in my fear that the Supreme Court may reach the conclusion that the equal rights amendment annuls every existing Federal and State law making any distinction between men and women, however fair or reasonable such distinction might be in particular cases, and forever robs the Congress and the legislatures of the 50 States of the constitutional power to enact any such laws at any time in the future.

When the equal rights amendment was under consideration in 1953, Roscoe Pound of the Harvard Law School; Albert J. Harno of the University of Illinois Law School; Charles Warren, noted constitutional lawyer and author of "The Supreme Court in U.S. History"; Leon Green of the University of Texas Law School; Dorothy Kenyon, distinguished lawyer and one-time judge of Municipal Court of New York City; Monte M. Leman, noted constitutional lawyer; E. Blythe Stason of the University of Michigan Law School; Harry Shulman of the Yale University Law School; William H. Holly, U.S. district judge; Everett Frazer of the University of Minnesota Law School; Walter Gellhorn of the Columbia University Law School; Glenn A. McCleary of the University of Missouri Law School; and Douglas B. Maggs of the Duke University Law School, joined one of America's greatest legal scholars, Paul A. Freund of the Harvard Law School, in a statement opposing the equal rights amendment upon the ground that they feared that this devastating interpretation might be placed upon it if it should be adopted. This statement made these indisputable observations:

If anything about this proposed amendment is clear, it is that it would transform every provision of the law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court of the United States. Every statutory and common law provision dealing with the manifold relation of women in society would be forced to run the gauntlet of attack on constitutional grounds. The range of such potential litigation is too great to be readily foreseen, but it would certainly embrace such diverse legal provisions as those relating to a widow's allowance, the obligation of family support and grounds for divorce, the age of majority and the right of annulment of marriages, and the maximum hours of labor for women in protected industries.

Not only is the range of the amendment of indefinite extent, but, even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably, the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships. A more flexible view, permitting reasonable differentiation, can hardly be regarded as the object of the proposal, since the Fourteenth Amendment has long provided that no state shall deny to any person the equal protection of the laws, and that Amendment permits reasonable classifications while prohibiting arbitrary legal discrimination. If it were intended to give the courts the authority to pass upon the propriety of distinctions, benefits and duties as between men and women, no new guidance is given to the courts, and this entire subject, one of unusual complexity, would be left to the unpredictable judgments of courts in the form of constitutional decisions.

Such decisions could not be changed by act of the legislature. Such a responsibility upon the courts would be doubtless as unwelcome to them as it would be inappropriate. As has been stated, however, the proposal evidently contemplates no flexibility in construction but rather a rule of rigid equality. This branch of the dilemma is as repelling as the other.

After analyzing in some detail the laws whose validity might be jeopardized by the equal rights amendment, the statement concluded with these observations:

The basic fallacy in the proposed Amendment is that it attempts to deal with complicated and highly concrete problems arising out of a diversity of human relationships in terms of a single and simple abstraction. This abstraction is undoubtedly a worthy ideal for mobilizing legislative forces in order to remedy particular deficiencies in the law. But as a constitutional standard, it is hopelessly inept. That the proposed equal rights amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty.

Mr. President, I ask unanimous consent that a copy of the statement be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. ERVIN. When the equal rights amendment was first proposed by the Woman's Party way back in 1924, Justice Felix Frankfurter, who was then a member of the faculty of the Harvard Law School, made some remarks concerning it which merit the attention of the Senate. I quote his words:

Miss Crystal Eastman challenges the gallantry of men by offering as a poser in connection with the "equal rights" amendment of the Woman's Party, the question: "How would you feel about it if you were a woman?" Her question assumes a power of imagination which, alas, has been denied to mere men just because he can only think within his own skin. Therefore, I can't tell her how I would feel about it as a woman. It may be more relevant for me to tell her how I feel about it as one who cares, I suspect, as deeply as a man can care for the elimination of unjustifiable differentiations in law between men and women, but one who also happens to be a lawyer and perhaps familiar with what law can do and what law cannot do, in the significant details that matter.

The legal position of woman cannot be stated in a single simple formula, especially under our constitutional system because her life cannot be expressed in a single simple relation. Woman's legal status necessarily involves complicated formulation, because a woman occupies many relations.

The law must have regard for woman in her manifold relations as an individual, as a wage-earner, as a wife, as a mother, as a citizen. Only those who are ignorant of the nature of law and of its enforcement and regardless of the intricacies of American constitutional law, or indifferent to the exacting aspects of woman's industrial life, will have the naivete or the recklessness to sum up woman's whole position in a meaningless and mischievous phrase about "equal rights." Nature made man and woman different; the Woman's Party cannot make them the same. Law must accommodate itself to the immutable differences of nature. For some purposes men and women are persons and for these purposes the law should treat them as persons, subjecting them to the same duties and conferring upon them the same rights. But for other vital purposes men and women are men and women—and the law must treat them as men and women, and, therefore, subject them to different and not the same rules of legal conduct.

The unjustifiable legal differentiations as to women still existing in different States vary greatly from State to State. Now that women have the vote, these discriminations will readily yield to correction by appropriate State action, provided the attempts at reform are preceded by an effective analysis of the legal situation in each State, an understanding formulation and remedies and an adequate educational exposition of the evils and remedies as a preliminary to legislation. But in a binding effort to remove remaining differences in the law, in the treatment of women as compared with men which do not rest on necessary policy based on inherent differences of sex, the Woman's Party would do away with all differences

which arise from the stern fact that male and female created He them. The Woman's Party cannot amend nature. But it can add considerably to the burdens already weighing too heavily upon the backs of women, the industrial workers, who are least able to bear them.

This was a wise statement. It is based on reality. Justice Frankfurther rightly said that most laws should treat men and women as persons having no sex and for that reason should operate upon them in like manner. However, I believe in many of the relations of life the only intelligent course to pursue is to recognize that mankind was created male and female and no law and no constitutional amendment can obviate that truth.

Today in relationships in life wherein sex does matter, men and women should be treated by law in rational manner and in a reasonable manner, and in a different manner where nature and reality required different treatment.

THE DESTRUCTIVE POTENTIALITY OF THE EQUAL RIGHTS AMENDMENT

Time and space preclude me from an attempt to picture in detail the constitutional and legal chaos which would prevail in our country if the Supreme Court should find itself compelled to place upon the equal rights amendment the devastating interpretation feared by these legal scholars, whose statements I have quoted at some length.

Frankly, I do not see how the Supreme Court can do otherwise. The equal rights amendment contains no exceptions or limitations, and applies in absolute terms to every situation falling within its scope.

The Congress and the legislatures of the various States have enacted certain laws based upon the conviction that the physiological and functional differences between men and women make it advisable to exempt or exclude women from certain arduous and hazardous activities in order to protect their health and safety.

Among Federal laws of this nature are the Selective Service Act, which confines compulsory military service to men; the acts of Congress governing voluntary enlistments in the Armed Forces of the nation which restrict the right to enlist for combat service to men; and the acts establishing and governing the various service academies which provide for the admission and training of men only.

Among the State laws of this kind are laws which limit hours during which women can work, and bar them from engaging in occupations particularly arduous and hazardous such as mining.

If the equal rights amendments should be interpreted by the Supreme Court to forbid any legal distinctions between men and women, all existing and future laws of this nature would be nullified, even though the courts might find them to be fair or reasonable.

The Yale Law Journal makes it clear that one of the primary purposes of the Equal Rights Amendment is to deprive Congress of the legislative power to draft men for compulsory military service unless it drafts women for compulsory military service on exactly the same terms, or to sanction the voluntary enlistment of men for service in combat units of the armed service unless it authorizes the enlistment of women in such units on precisely the same terms. Moreover, the Journal makes it obvious that another of the objectives of the amendment is to convert Annapolis, West Point, and the other service academies into coeducational war colleges.

The Journal further asserts, in substance, that if the equal rights amendment is added to the Constitution substantial numbers of women will be enrolled in the Armed Forces to serve in combat and all other roles on exactly the same terms and under exactly the same circumstances as men; that these women will suffer the loss of their privacy and sometimes become pregnant and bear illegitimate children; and that the equal rights amendment will prohibit the discharge from the armed services of any single woman for pregnancy or childbearing, no matter how often she becomes pregnant or how many bastards she bears.

I am satisfied that the veterans who waded in the icy water in the trenches until their feet bled during the First World War, the veterans who endured the heat of North Africa and the Anzio beachhead and the cold of the Battle of the Bulge during the Second World War, and the veterans who fought in the mountains of the steaming swamps of Southeast Asia during the conflicts in Korea and Vietnam are implacably opposed to having the equal rights amendment subject American girls to similar experiences. And I am sure that the fathers and mothers of the daughters of America agree with them.

At the present time Congress has the discretionary power to draft or refuse to draft women and the discretionary power to enlist or refuse to enlist women for combat service. Congress should retain this discretionary power.

America faces a precarious world. Powerful nations indicate their desire to extinguish the lights of liberty throughout the earth. As a consequence, America must maintain military might throughout the foreseeable future.

There has never been a more inopportune time in the history of our country for a constitutional amendment which will put Congress in a straitjacket and compel it to make a choice between having no Armed Forces at all or mingling men and women in our Armed Forces on exactly the same terms for exactly the same service.

In a moment of truth or a moment of pessimism more than a hundred years ago a British politician, T. B. Macaulay, made this statement about the members of the House of Commons:

The members are more concerned about the security of their seats than about the security of their country.

I hope that no truthful or pessimistic person will be prompted by any votes on the equal rights amendment to make a similar remark about Members of the Congress.

Sometimes I question the soundness of my conviction that women should not be converted into combat soldiers. If the militant women who demand that Congress submit the equal rights amendment to the States without changing a dot over an *i* or a cross over a *t* have the capacity to frighten the enemy like they frighten male politicians, the enemy might hoist the white flag without firing a shot.

The common law and statutory law of the various States recognize the reality that many women are homemakers and mothers, and by reason of the duties imposed upon them in these capacities, are largely precluded from pursuing gainful occupations or making any provision for their financial security during their declining years. To enable women to do these things and thereby make the existence and development of the race possible, these State laws impose upon husbands the primary responsibility to provide homes and livelihoods for their wives if they fail to perform this primary responsibility. Moreover, these State laws secure to wives dower and other rights in the property left by their husbands in the event their husbands predecease them in order that they may have some means of support in their declining years.

If the equal rights amendment should be interpreted by the Supreme Court to forbid any legal distinctions between men and women, it would nullify all existing and all future laws of this kind.

As appears from pages 936 to 954 of the Yale Law Journal, the equal rights amendment is expressly designed to nullify the State laws which give these economic and social protections to wives, mothers, and widows, and to provide in their stead that the rights and responsibilities of men and women in the areas covered by the nullified laws shall be absolutely coequal.

There are laws in many States which undertake to better the economic position of women. I shall cite only one class of them; namely, the laws which secure to women minimum wages in many employments in many States which have no minimum wage laws for men, and no other laws relating to the earnings of women.

If the equal rights amendment should be interpreted by the Supreme Court to prohibit any legal distinctions between men and women, it would nullify all existing and future laws of this kind.

In addition there are Federal and State laws and regulations which are designed to protect the privacy of males and females. Among these laws are laws requiring separate rest rooms for men and women in public buildings, laws requiring separate restrooms for boys and girls in public schools, and laws requiring the segregation of male and female prisoners in jails and penal institutions, and I might add, institutions for the mentally ill.

If the equal rights amendment should be interpreted by the Supreme Court to forbid legal distinctions between men and women, it would annul all existing laws of this nature, and rob Congress and the States of the constitutional power to enact any similar laws at any time in the future.

Moreover, there are laws which make it punishable as crimes for men to seduce innocent and virtuous women under promises of marriage, to have carnal knowledge of girls under the age of consent, and to transport women in inter-

state or foreign commerce for immoral purposes. The militant advocates of the equal rights amendment assure us that women and girls do not stand in need of the protection offered by laws of this nature, and that the amendment, if adopted, will invalidate them.

With one exception, everything I have said concerning what the equal rights amendment will do to existing Federal and State laws is fully supported by the article entitled "The Equal Rights Amendment—A Constitutional Basis for Equal Rights for Women," which appears in the April 1971, issue of the Yale Law Journal.

I wish the time at my disposal made it possible for me to read this 114-page article to the Senate. I must content myself, however, with calling to the attention of Senators some excerpts from the article relevant to what I have said.

Mr. President, I ask unanimous consent that these excerpts be printed in the body of the RECORD after the conclusion of my remarks.

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

(See exhibit 4.)

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

Mr. ERVIN. Yes, I am glad to yield to the distinguished Senator from Louisiana.

Mr. LONG. Mr. President, I appreciate the information the Senator has made available to us. Like the Senator, not only do I wish to accord women equal treatment wherever they are being denied equal treatment or being denied rights which could properly be claimed for them, but I do not find any appeal whatever to the suggestion that we should deny women the protection of the laws which were passed with their problems in mind. I have in mind laws which protect separate property of women, such as we have in Louisiana under our community property system, which was derived from the French law, the old Napoleonic Code, laws that would limit the number of hours a woman might be required to work in certain capacities.

I think it ridiculous to place in doubt the draft laws or to infer that a woman is subject to being drafted into the military equally with men. I do not believe a majority of women are, and I know a majority of men are not, in favor of requiring that a woman pay alimony to her husband if she might be able to earn more money than he.

There are just many situations in which the equal rights amendment would deny women rights that they have now and would impose burdens that I believe a majority of us here in Congress do not want to impose on women.

That being the case, why do we have to vote for something that denies women rights they presently have, such as this measure would propose to do? Why can we not vote for something that provides that equal pay for equal work is what we are seeking to implement? Why could we not vote for something that would help free women from the house and make it more practicable for them to engage in a profession, if they want to do it, and help provide child care, which the Senator from Louisiana has tried to do, rather than pass something that has all sorts of unintended consequences?

Mr. ERVIN. The only reason why we cannot sit down and rationally discuss this matter and pass a measure which would insure absolute freedom to women without bringing about harm to those women who need the protections is that extreme advocates of this measure refuse to have any other amendment considered.

As a matter of fact, I read an article in the New York Times Magazine section yesterday, written by a professor in the University of Michigan, which stated that his research convinced him that not more than 3 percent of the women in the United States want this amendment passed. I shall put in the RECORD later the results of a poll by one of the foremost polling organizations in the United States, the Elmo Roper organization, which shows that the overwhelming majority of women in the United States are opposed to the amendment.

This amendment is advocated by a national organization of business and professional women. I belong to several national organizations, and I imagine that that organization is similar to the organizations I belong to, and that a handful of members or delegates to the national convention adopt national policies with little or no concern of the desires of the entire membership of the organization. I have seen, for example, a couple of hundred delegates to the American Bar Association adopt as programs of the American Bar Association programs which I knew the overwhelming majority of the members and lawyers in the American Bar Association were opposed to.

I stated in my opening remarks that I cannot understand why these business and professional women should demand the passage of this amendment, because the business and professional women who do not elect to become wives and mothers have complete freedom, under present law, to compete on an absolute equality with men in any of the undertakings of life. Why these women, who have such complete freedom for themselves, want to rob their sisters of the protections which the law gives those whose work is not entirely intellectual in nature, or those who elect to become mothers and wives, or who unfortunately become widows, is something that is not intellectually comprehensible to me.

Mr. BAYH. Mr. President, will the Senator permit me to join in this colloquy?

Mr. ERVIN. Mr. President, I would hate to have my time exhausted by the Senator, but I shall yield to him provided he shows a disposition not to trespass upon eternity.

Mr. BAYH. The Senator from Indiana is not seeking to interfere with eternity. I do not think any constitutional amendment would be able to do that.

Mr. ERVIN. This amendment is intended to rob Congress and all of the States of their powers to protect women through eternity.

Mr. BAYH. I see that some women could come to the conclusion that we have been laboring in vain for an eternity in order to provide equality. I want to suggest that the well-taken questions directed at my friend from North Carolina are based on information that at least the Senator from Indiana feels may not be accurate.

Mr. ERVIN. I would have to say that the Senator from North Carolina bases most of the allegations he has made upon the article from the Yale Law Journal which the Senator from Indiana placed in the RECORD to assist the Senator from North Carolina and other Senators to reach correct conclusions on this particular amendment.

Mr. BAYH. I would like to think that the Senator from North Carolina would have to rely on the Senator from Indiana on this issue, but, quite the contrary, he can come to conclusions on his own. This whole matter was discussed a short time ago on "The Advocates" program. There is always a call-in period of a week and then the popular opinion is reported the next week. That poll showed that 73.3 percent of the viewers did indeed favor the equal rights amendment. In the State of Louisiana in particular there was a large percentage in favor of the equal rights amendment.

I do not want to suggest that my dear friend from North Carolina is trying to distort the proven facts. Like the blind man trying to describe an elephant from only one small part, the Senator is not conveying the total picture. But I do believe that what he is trying to convey here is his sincere belief.

The whole question of professional women having complete freedom is not borne out by the facts. A recent poll showed that a vast majority of teachers favor this amendment. Why is that? It is because a large majority of the teachers in this country are women. Yet, a shockingly small percentage of them obtain positions as principals. That is because they are denied equal access to the top of the ladder of the teaching and managerial professions.

Mr. ERVIN. I would say that all such a woman would have to do is bring a suit in court and show that she is equally qualified and it would be held that the exclusion from that principle would be in violation of the 14th amendment.

Mr. BAYH. Discrimination starts much earlier than that. It begins in the course of education when women are denied the opportunity of getting advanced degrees.

Mr. ERVIN. I thought the Senator was going to ask some questions instead of undertaking to enlighten me. I received so much enlightenment from the article that Senator put in the CONGRESSIONAL RECORD that I do not need any further enlightenment as to what this amendment would do.

Mr. BAYH. I was just trying to be helpful. It seemed to me that the Senator from Louisiana was asking questions of the wrong Senator.

Mr. ERVIN. I had a man down in North Carolina who protested my statement. He said he wanted an equal rights amendment passed so his wife would have to pay alimony to him and support him.

Here is what the women said in the

Elmo Roper poll. This Yale Law Review article said the amendment provides that women should be treated in all respects on equal terms with men. That question was submitted to the women by the Elmo Roper poll, and 83 percent of all of the women polled voted against it.

They were also asked whether a divorced woman should pay alimony to her husband if she has money and he has none, and 68 percent of all the women voted against that proposition.

I think the members of the organization which is backing this amendment, if they have husbands, must want to pay alimony to their husbands instead of having their husbands pay alimony to them. I think that must be the substance of it.

Mr. BAYH. I do not want to interrupt the colloquy between the Senator from North Carolina and the Senator from Louisiana, but I think careful examination of the Elmo Roper poll would show that the question was asked about women's liberation. Women's liberation in the minds of many people has a much different connotation from equal rights. There have been some extremists who do things in the name of women's liberation that offend both women and men, but we cannot help that.

Mr. ERVIN. Mr. President, I would have to take issue with my friend, because the questions were not asked about women's liberation, they were asked about the equal rights amendment.

I suggest it is a strange thing, in the light of the contention that women want to make men and women equal, that that poll would show that 84 percent of all the women thought that men should still hold doors open for women and give up their seats to women; and we are bound to have some members of women's liberation taking that position, because they must be stronger than 16 percent.

Mr. BAYH. If I may ask unanimous consent to put in the RECORD at this time——

Mr. ERVIN. No, I am not going to have the Senator's things put in the RECORD at this time. He can put them in on his time.

Mr. BAYH. Very well. I thought perhaps the Senator might want to put in the RECORD the questions that were asked on the Elmo Roper poll.

Mr. ERVIN. I will let the Senator from Indiana put in the RECORD whatever he wants to on his time, and I am going to put in the RECORD the things that I want to, including the questions asked in the Yale Law Journal.

Mr. BAYH. The Senator from Indiana will be honored to have his comments placed in the RECORD, even on the time of the Senator from North Carolina.

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

Mr. ERVIN. I yield.

Mr. LONG. This section that says that "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex," is that the same section we have been voting on for the last 20 years?

Mr. ERVIN. That proposal has been before Congress for approximately the last 50 years, and up until approximately the last year or so, they could not find any people who were unintelligent enough to buy it.

Mr. LONG. Is that the same section I have been voting on for these many years?

Mr. ERVIN. No, we have been voting for the Hayden amendment, which protects and preserves the rights and benefits given by law to women.

Mr. LONG. If I am correct—and I ask the Senator if this is true—we have had smething of this same sort before us for more than 20 years. I have been here for 23 years, and I have been hearing about it for at least 20 years. The same problem has been brought up time and again. Here is a myriad of laws passed to protect women, for their advantage as the weaker sex. It was not to hurt them but to help them. That is the way it ought to be. We have a lot of such laws in Louisiana, some of which we inherited from the French with the Code Napoleon. All those laws would be placed in doubt or stricken down by this amendment.

Is this the same thing we have been talking about for 20 years?

Mr. ERVIN. Yes; the Senator has been talking about it for 20 years, but Congress has been talking about it for 50 years. The Senator from Louisiana is a young man.

Mr. LONG. I have voted for the Hayden amendments when offered, and I have voted for the Ervin amendments, and I have never found even one-quarter of 1 percent of the women in my State who expressed any disappointment at my votes on such matters when I have had the opportunity to discuss it with them. Sometimes you do find someone in some corner of the State who is concerned with the fact that you did not want to buy the things just exactly as they were proposed, but I have yet to find anyone—not anyone—who was angry about the concern of some of us to protect certain rights which women have, which I believe ought to be preserved. I, for one, do not want to have women made to pay alimony to men. I know that the majority of men do not favor it, and the majority of women do not favor it. Can the Senator tell me why, in the name of all that is sensible, under the nice attractive language here, we could agree to say women must be required to pay alimony to men when the majority of men and the majority of women do not want it? Can the Senator tell me how that could come about?

Mr. ERVIN. It beats me. I say to the Senator, I cannot understand why anyone would think the Lord God Almighty made a serious mistake when he created two sexes instead of one, and that the most effective way to correct that mistake of the Lord God Almighty is to adopt an equal rights amendment which would compel the drafting of the daughters of America and sending them into battle, where their fair forms would be blasted into fragments by the bombs and shells of the enemy.

That is exactly what the advocates of this amendment say will happen if it is passed.

Mr. LONG. That brings up one more point that occurs to me: Do we not have the right to draft women now, if we want to draft them?

Mr. ERVIN. Surely, right now. All the women who want to be drafted would have to do is persuade one legislative body, the Congress of the United States, to draft them. Under this amendment, they are going to have to persuade Congress and 50 legislatures that they ought to be drafted. But they could just have one.

Mr. LONG. Let me ask the Senator, as a member of the Armed Services Committee, is he of the opinion that we have a need for obtaining any more women for the armed services than we have been able to obtain?

Mr. ERVIN. I do not think so. We have many women in the armed services in noncombatant units, but if this amendment were passed, they would have to go into combat and sleep in the same shelter halves with the men, and would have to sacrifice their privacy.

Mr. BAYH. Mr. President, would the Senator please read the section of the amendment to which he refers? I do not see all those things.

Mr. ERVIN. Mr. President, the Senator does not have to read the amendment. He wrote a letter to the Department of Defense, in which he asked them what the effect of this amendment would be, and the Defense Department told him that if this amendment were passed, women would have to be drafted and they would have to be enlisted for combat service, and they told him further in response to that letter that while they might be able to protect some of the privacy of women while they were in a permanent installation, when the women and the men went to the front together, there would be no way in the world to protect their privacy. If the Senator has forgotten the letter, I ask unanimous consent that the whole letter be printed in the RECORD at this point.

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

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, D.C., February 24, 1972.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: This refers to your letter of February 2, 1972, with respect to H.J. Res. 208 "Proposing an amendment to the Constitution of the United States relative to equal rights for men and women."

With respect to your first question, Mr. Rehnquist stated in his testimony before Subcommitee No. 4 of the House Judiciary Committee on April 1, 1971, that the President in 1968 endorsed the Equal Rights Amendment which is presently embodied in H.J. Res. 208 now pending before the Senate Judiciary Committee. The President and this Administration continue to wholeheartedly support the goal of establishing equal rights for women.

With respect to your second question, we, like the Department of Justice, believe it important that full consideration be given to the complications and litigation that might result should the amendment be adopted.

Depending on how the amendment was interpreted, the Department of Defense feels that two basic types of problems might arise—(1) those related to a requirement for assigning women to all types of duty, including combat duty, and (2) those related to whether or not separate facilities would be allowable and/or feasible to protect the privacy of both men and women.

At the request of the House Subcommittee

Chairman, Mr. Rehnquist sent a letter dated May 7, 1971 to the Subcommittee detailing the effect of the enactment of the Equal Rights Amendment on several areas of law including the military draft. With respect to the draft, the letter stated:

"The question here is whether Congress would be required either to draft both men and women or to draft no one. A closely related question is whether Congress must permit women to volunteer on an equal basis for all sorts of military service, including combat duty. We believe that the likely result of passage of the equal rights amendment is to require both of those results. As has been pointed out by many of the amendment's supporters that would not require or permit women any more than men to undertake duties for which they are physically unqualified under some generally applied standard.

"To what extent such integration of the services would extend to living conditions and training and working units is uncertain. Proponents have indicated that some segregation would be permissible."

Further, there is the possibility that assigning men and women together in the field in direct combat roles might adversely affect the efficiency and discipline of our forces.

On the other hand, if women were not assigned to duty in the field, overseas, or on board ships, but were entering the armed forces in large numbers, this might result in an disproportionate number of men serving more time in the field and on board ship because of a reduced number of positions available for their reassignment.

If this amendment allowed no discrimination on the basis of sex even for the sake of privacy, we believe that the resulting sharing of facilities and living quarters would be contrary to prevailing American standards.

Even if segregation of living quarters and facilities were allowed under the amendment, during combat duty in the field there are often, in effect, no facilities at all, and privacy for both sexes might be impossible to provide or enforce.

We appreciate the opportunity to share our concerns with you and state what the implications might be for the Department of Defense should the equal rights amendment be adopted.

Sincerely yours,

J. FRED BUZHARDT.

Mr. BAYH. Although the Senator from North Carolina is a member of the Armed Services Committee, he is also a very distinguished lawyer. I am sure he would be the first to suggest that J. Fred Buzhardt, general counsel at the Department of Defense, is not necessarily the final authority in this matter.

Mr. LONG. May I ask the Senator, if we do not want to draft women, why can we not amend this fool thing to say we will not draft women?

Mr. ERVIN. Because women who are above the draft age tell Senators they cannot dare to vote like that.

I had a group of them come to my office after I spoke on the Senate floor against this proposal; some members of their committee asked for an audience, which I granted, and they asked me why I spoke against this amendment.

I pointed out that women would be drafted and sent into combat, and these ladies, who were not quite as ancient as I am, though some of them were approximating that, said that that was exactly what they wanted, that they wanted to be drafted, they wanted to serve in combat.

I said:

Ladies, I have always tried to be a gallant gentleman. I have made a practice all my life never to refer to a lady's age. But looking at you ladies, I am compelled to conclude that, despite your very youthful appearances, you are at least a month above the draft age. If you want to persuade me that women want to be drafted and sent out like the men to face the bullets of the enemy and to have their fair forms blasted into fragments by the enemy's bombs, you are going to have to send some of the sweet young things within the draft age up here to persuade me on that point.

Yet, we have all these women who are above the draft age—some of them with a legal education, some of them so far above the draft age that they have finished medical school. But business and professional women want their little sisters drafted. They know that they themselves are exempt.

Mr. LONG. Can we agree that this amendment would have the effect of either striking down the laws that require men to pay alimony or, in the alternative, that it would then require that women pay alimony to men?

Mr. ERVIN. On exactly the same terms, the advocates of the amendment say. In other words, this amendment is based on the theory that the Lord God Almighty made a mistake when he made two sexes and that the two sexes must be converted into one, so far as they can be converted by law. That is exactly what the amendment proposes to do.

I am glad the Lord did create two sexes. I think it is one of the wisest things He has done. But, if He had the benefit of some of the Women's Lib at the time of the creation, He would not have arranged things that way. We would have a unisex.

[Laughter.]

Mr. LONG. It seems to me that, if we want to respect the will of the majority of men and the majority of women in this country—and why else we are here, I cannot figure out—we would amend this thing to say that this shall not be construed to require a woman to pay alimony to a man.

I am confident that the majority of men and women do not want that in Louisiana and that the majority do not want that in North Carolina and that the majority do not want that in the United States. I would be surprised to find such a State in the Union, although there may be one where that is the case.

Mr. ERVIN. They have the absolute right.

Congress now has the power to draft women or to enlist women for combat service, without any constitutional amendment. All these good women who want to be drafted—if there are any—have to do is come to Congress and persuade Congress that they be drafted. I would vote against it.

Mr. LONG. Let us consider one additional matter—the matter of women paying alimony to men. If my understanding is correct, the legislature of my State has had the power to require that women pay alimony to men as long as I have been on this planet, and so has every other State legislature. Is that correct?

Mr. ERVIN. They have had it ever since Louisiana became a member of the United States, and I believe they had it before that even under the Spaniards and French.

Mr. LONG. It was my good fortune to have a woman law teacher, Harriet Daggett. She was the one who suggested that it might be a good idea to require by law that women pay alimony to men. That suggestion had been kicking around, I am sure, for a long time. It was 30 years ago that she was suggesting that to our law school class.

So far as I can determine, that is a legislative proposal that would not get enough votes to wad a shotgun in the United States at any time in the last hundred years, notwithstanding which we are asked to put that into the fundamental laws of the United States by a constitutional amendment. Can the Senator tell me what sense that makes?

Mr. ERVIN. It does not make any sense to me, and it does not make any sense to the finest woman lawyer in the United States, Susan Marshall Sharp, who is now serving as Associate Justice of the North Carolina Supreme Court. Justice Sharp wrote me a letter in which she told me that she agrees with me fully on this point. She said that women who advocate the equal rights amendment are doing nothing in the world but ambushing themselves.

Mr. LONG. The Senator has done the Nation a service in bringing out the points he is making now.

It seems to me that during the past 20 years those who fought unsuccessfully to pass section 1 have been confronted with the frustration of finding that logic and commonsense would require that it be amended to specify what it did and did not mean. They have been so intellectually arrogant that they would not accept any amendment to make clear what this amendment means. At some point they should drop this matter or be willing enough to unbend to admit that if they want this to pass they should specify what it means and what it does not mean. They say:

No amendment. It must be passed this way, and nothing must be done to eliminate all the doubts and qualms you have about this matter.

I must say that it absolutely defies me how this matter comes in under one set of sponsors, and when they pass from the scene there is another sponsor—all saying the same thing: There must be no wrongful interplay of brain power; it must be voted for exactly the way it comes in here—notwithstanding the fact that they never have been able to get it through without some kind of amendments.

If they say that their amendment would not do that, why do they fear and why will they not accept an amendment that would clarify the question.

Mr. ERVIN. I think I can answer the Senator.

The answer is twofold. Some of the proponents of this amendment are very sincere people who think that all the amendment will do is to abolish unfair, unreasonable, and arbitrary legal discriminations against women. But the group that is really backing it, the ones who are demanding that all Senators, on pain of political penalty, vote for this amendment just as it is, without any amendment, say that when Congress makes a law relating to people or when a State legislature makes a law relating

to people, defining their rights and responsibilities, Congress and the State legislatures must blindfold their members so that they cannot see that the Lord created the human race, male and female. They say that every law must ignore the fact that there are two sexes and that there can be no discrimination or no distinction of any kind, no matter how reasonable, if they take into consideration the fact that the Lord God Almighty did create mankind male and female.

Mr. BAYH. I honestly believe—and I hope that the Senator from Louisiana believes—that describing those in the Senate who are supporting the equal rights amendment as being so intellectually arrogant as not to want any amendments is an exaggeration. If the Senator from Louisiana is really concerned about hearing the rationale on the other side of the argument, on the Senator from Indiana would be glad to deal with that.

I get the impression that this colloquy is a sort of pattycake-pattycake situation, in which we are really not trying to find the answers to the question being posed.

Mr. ERVIN. I would say that the colloquy going on between the Senator from Louisiana and the Senator from North Carolina is designed to shed light on everybody who is not blind.

Mr. LONG. May I say, in response to the point raised by the Senator from Indiana, that I was not referring to him when I was talking about intellectual arrogance. I was talking about the people who keep bringing this thing in, who were bringing this in before they heard of BAYH, of Indiana, or LONG, of Louisiana, those who insist that it be passed exactly this way, without changing a word or a punctuation mark, without even changing a comma to a semicolon. So that even though those are the latest dictates, I hasten to say I do not now see the comma or the semicolon being used in that section 1. That is the point I have in mind, without even making a technical change in it, to correct something that we would find could be improved.

Mr. BAYH. I will be glad to explain that to the Senator from Louisiana and why I feel strongly such changes should not be made——

Mr. ERVIN. I can tell the Senator from Louisiana why.

Mr. BAYH. Let the Senator tell him on his own time.

Mr. ERVIN. The Senator from Indiana is speaking on my time.

Mr. BAYH. Then I will take 30 seconds of my time to explain. I cannot speak for those who share my opinion outside this body, but I will tell the Senator from Louisiana why I do not believe the amendment should be changed later when I have more time.

Mr. LONG. Would the Senator explain why?

Mr. ERVIN. Listen to the arguments in support of the bill, and listen to some of these ladies who so strongly advocate its passage without the crossing of a single "t" or the dotting of a single "i." They will tell us that there is a State in the Union which has a law that prohibits women from engaging in professional wrestling and they want this amendment to wipe out that law. I do not know why they do not go into that State and have them repeal that law. But they cite several laws like that. Some of the women who back this amendment who do intellectual work solely, they want to fix it so that their sisters who do work which is physical as well as intellectual shall not be allowed to work overtime. They want to require a mother who is drawn upon to serve on a jury, to forsake her children to serve on the jury, or when a woman is asked to serve on a jury who is a housewife they want her to forsake her home in order to be able to serve on the jury.

Mr. BAYH. May I have 2 minutes on my own time to say this at this point——

Mr. ERVIN. I know that this is on the time of the Senator from Indiana.

Mr. BAYH. Yes. I do not want to interrupt the steady flow of this enlightened colloquy——

Mr. ERVIN. Why do you do it then?

[Laughter.]

Mr. BAYH. Because it has ceased to be steady or enlightening.

Mr. ERVIN. The Senator from Indiana is opposed to our enlightened statements?

Mr. BAYH. I do not want to interrupt my good friend from North Carolina. I know that he is sincere in his convictions, but he certainly is not qualified, despite his great expertise and his great intelligence, adequately to describe why the position of those who support this amendment differs from his own. I suppose that would also apply to the Senator from Indiana if he were asked to try to support the position of the Senator from North Carolina.

The facts are that those who support this amendment are not trying to do any of the things that have just been described, such as the business of alimony, overtime, taking mothers away from young children for jury service, and encouraging lady wrestlers.

[Laughter.]

For heaven's sake, that is a lightweight argument. What we are suggesting is that every woman should have an equal chance to serve or not serve on a jury. If she has children, she can go to a judge and explain the situation to him and be relieved of jury duty. She should have a chance to be treated equally.

Mr. ERVIN. The Senator from Indiana puts a different interpretation on the law.

Mr. BAYH. I want to say to my good friend, the Senator from North Carolina, and I yield myself 1 minute to say so, that——

Mr. ERVIN. If the distinguished Senator from Indiana wants to make a speech, I will temporarily retire from the floor and let him make his speech; otherwise, I would like to resume my own.

Mr. BAYH. I do not wish to interrupt the Senator——

Mr. ERVIN. The Senator is interrupting me so much that I cannot make my speech.

Mr. BAYH. I have been sitting here patiently and will continue to sit here patiently.

Mr. ERVIN. I have not noticed much patience on the part of the Senator from Indiana.

Mr. BAYH. Considering the wisdom of the arguments of the Senator from North Carolina, the Senator from Indiana really has been very patient. The only reason I am interrupting is that the answers of my good friend from North Carolina to the questions of the Senator from Louisiana have been so far short of their mark that I hope he will address them later to the Senator from Indiana, if it is not too inconvenient to either Senator.

Mr. ERVIN. The Senator from North Carolina is in possession of 114 pages of the Yale Law Journal which appeared in April of 1971 which the Senator from Indiana put in the RECORD and commended to other Senators as a means for their enlightenment as to the meaning of this amendment; and all of the 114 pages, except one little point, are in complete agreement with the interpretation I have been placing on this amendment.

Mr. LONG. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. I yield.

Mr. LONG. In view of the fact that the Senate has for more than 20 years now been consistently voting to say in effect that it found some danger in the amendment from which it wants to protect women; and that that being the case, it insisted on amending the amendment to protect women from the very danger that we are discussing here, how can anyone say it is not reasonable to argue that there are dangers inherent in this This is more true in view of the fact that the Senate has, for 20 years, been voting for amendments implicit in which was the fact that the Senate recognized the danger that the Senator from North Carolina is discussing here. The Senate recognized the very problems and the statutes that protect women that would be placed in danger in construction of the laws that would be required, if this amendment becomes law or passing amendments some of which were sponsored by the Senator from North Carolina to protect women. That being the case, how can anyone argue that the problem does not exist when the Senate has been recognizing it for 20 years, that it does exist?

Mr. ERVIN. That follows from the editorial I started to read which said that, "Hell hath no fury like a woman scorned except a woman with the cry of liberation on her lips."

The extreme advocates of women's lib demand two things: They demand that Congress in general, and the Senate in particular, take absolute orders from them, and that in considering this amendment they decline to vote for any amendment, that they take the amendment just as it is. Then they demand, after the amendment is adopted, that the court will hold under the amendment that no legislative body in the United States can even take into consideration such things as two sexes on this earth or in the United States when it passes any kind of law covering alimony, divorce, support of a family, custody of children, support of children. That is how extreme these women are with the cry of liberation on their lips.

Mr. LONG. I thank the Senator from North Carolina very much.

Mr. ERVIN. Thank the Lord that most

women are not like them, according to the Elmo Roper poll.

Mr. LONG. I thank the Senator from North Carolina and I shall continue to vote to guarantee rights for women wherever I feel that a case can be made for these rights. I must say, as one who tried to do all I could to help women in everything that seemed to be a problem, that I do not want to undo the things that have been done with their interest at heart. If we can agree on something and some language that would say that is the effect of this amendment, I would be willing to vote for it; but I am not willing to vote for something that would say there is no wisdom in the State legislatures of the entire United States, either now, or in the past, or in the future.

Mr. ERVIN. Mr. President, I would like to say that my amendment is not altogether perfect, but it is my recollection that when the ERA was before the Senate at a prior time, the Senator from Indiana said its effect would not be to draft women. He has now changed his opinion and said that it will require Congress to treat men and women equally with respect to the draft.

I come back to the only difference between the views I have been expressing and the views expressed in the 114-page Yale Law Journal article which my good friend, the Senator from Indiana, has printed in the RECORD——

Mr. BAYH. Mr. President, I did not hear the Senator from North Carolina.

Mr. ERVIN. Mr. President, I said that according to my recollection when I first heard the Senator from Indiana express his opinion on the amendment, he expressed the opinion that it would not necessarily require women to be drafted.

Mr. BAYH. Mr. President, at the time I first discussed this a year or so ago, that was my opinion. However, after studying the matter and after studying the debate on the floor of the Senate and House, I came to the opposite conclusion.

I think the Senator from North Carolina very eloquently expressed the fact that as far as he is concerned he hopes that he has more wisdom today than yesterday. I hope that is true as well in the case of the Senator from Indiana.

Mr. ERVIN. Mr. President, that reminds me of the story of the man or woman, one or the other——

Mr. BAYH. It does not make any difference.

Mr. ERVIN. It is a unisex amendment. It will not make a particle of difference. However, the story relates that a man applied for a job to teach geography in school. There was an argument at that time as to whether the world was flat or round. The school board was divided on that proposition. The man came before the school board and was asked what position he held. He said, "I leave that up to the school board, I teach either theory."

My good friend, the Senator from Indiana, said on December 16, 1969, that the ERA would require that women could be drafted. Then my good friend, Senator BAYH, changed his mind on this amendment and on October 13, 1970, he wrote a letter to all Senators of the United States to the effect that the draft laws do not apply to the amendment.

Now, this year, again Senator BAYH comes back, after having said that the world is flat and then round, and in March 1972, said the draft will apply to women.

That is the reason that I am hesitant to accept the interpretation put on the amendment by my good friend, because his interpretations sort of vary and perambulate from one point of view to another point of view. Mine never changes.

Mr. BAYH. Would the Senator care to interpret the question of whether women would be drafted under this amendment or not?

Mr. ERVIN. Sure.

Mr. BAYH. I accept that.

Mr. ERVIN. She would not only be drafted, but this article says that she would lose her right to privacy under the amendment.

Mr. BAYH. The Senator from Indiana does not accept that. Nor does the letter from the Department of Defense say that.

Mr. ERVIN. I would read into the Record the letter.

Mr. BAYH. Why does the Senator from North Carolina not put it in the RECORD now?

Mr. ERVIN. Because I want to finish this speech before I start another.

I will give the Senator a whole lot of information and I hope he will be willing—I know that he is able—to absorb it.

The Yale Law Journal disagrees with my analysis of the effects of the equal rights amendment in one particular only. It contends that the amendment will not nullify laws requiring segregated rest rooms for the sexes.

I submit there is no basis for this position. The amendment contains no exception or limitation, and is absolute in its terms. It must be remembered that constitutional amendments are interpreted according to the words in which they are couched, and not according to the assertions or wishes of their advocates.

My contention on this score is supported by a statement which wise women joined in submitting to the 91st Congress to express their opposition to the equal rights amendment. This statement expressly declares that the amendment will destroy "laws that require separate rest rooms and dressing rooms for women workers."

Mr. President, I ask unanimous consent that the entire statement presented to the 91st Congress by those wise women be printed in the RECORD after the conclusion of my remarks.

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

(See exhibit 5.)

Mr. ERVIN. Mr. President, moreover, my contention finds support in the letter which J. Fred Buzhardt, General Counsel of the Department of Defense, wrote to the Senator from Indiana (Mr. BAYH) on February 24, 1972. I have already had it printed in the RECORD. However, for the purpose of emphasizing this point, I would like to call attention to specific statements made by Mr. Buzhardt in response to an inquiry from my distinguished friend, the Senator from Indiana.

Manifestly the Department of Defense is much concerned about whether it will have to draft women or enlist women for combat service. So, Mr. Buzhardt said this in response to an inquiry from my good friend, the Senator from Indiana:

> The question here is whether Congress would be required either to draft both men and women or to draft no one. A closely related question is whether Congress must permit women to volunteer on an equal basis for all sorts of military service, including combat duty. We believe that the likely result of passage of the equal rights amendment is to require both of those results. . . .
>
> If this amendment allowed no discrimination on the basis of sex even for the sake of privacy, we believe that the resulting sharing of facilities and living quarters would be contrary to prevailing American standards.
>
> Even if segregation of living quarters and facilities were allowed under the amendment, during combat duty in the field there are often, in effect, no facilities at all, and privacy for both sexes might be impossible to provide or enforce.

MISGUIDED FAITH

Its advocates profess implicit faith in the potency of the equal rights amendment. They assert that it will usher in a new heaven and a new earth for American women. They are doomed to disappointment.

If I may borrow the words of Omar Khayyam, I will say that the equal rights amendment will undoubtedly shatter to bits what militant women deem "this sorry scheme of things entire," but will not "re-mold it nearer to the heart's desire."

The problems which life presents to women will remain and the effect of the amendment would be to diminish substantially the legislative power of the Congress and the legislatures of the 50 States to find solutions for such problems.

I am informed that the National Organization of Business and Professional Women has adopted the submission and ratification of the equal rights amendment as its project. I suspect that this organization is like some organizations to which I belong in which a handful of delegates to conventions adopt projects for the organization with little or no concern for the wishes of the membership of the organization as a whole.

Be this as it may, the equal rights amendment will not better a whit the position of the business and professional women who advocate its adoption. The reason for this is extremely simple.

The amendment will not remove any disabilities imposed upon women by the mores of society because these disabilities can be removed only by changing the attitudes of the people. Insofar as the law itself is concerned, business and professional women now have complete legal freedom to compete on terms of equality with men in all the relationships and undertakings of life.

MAJORITY OF WOMEN OPPOSE THE AMENDMENT

I am somewhat puzzled by the insistence of some of the supporters of the amendment that their sisters who become wives, mothers, and widows should be robbed of the legal protections which life and law have placed around them.

The overwhelming majority of American women oppose the equal rights amendment. This is made manifest by national polls conducted by experienced national pollsters.

Mr. President, I ask unanimous consent that the results of such polls and comments upon them to be printed in the RECORD after the conclusion of my remarks.

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

(See exhibit 6.)

Mr. ERVIN. Mr. President, there are 74,690,000 women of the age of 16 and upward in the United States. As a result of choice or necessity, 32,975,000—44.1 percent—of them are either working or seeking work outside of their homes. The remaining 41,715,000—55.9 percent—devote themselves exclusively to the keeping of their homes.

Millions of women in both of these groups find their deepest satisfaction and their highest fulfillment in enacting the roles of wives and mothers.

These women undoubtedly understand my love for the poem entitled "The Bride," which was composed by a gifted North Carolina poet, John Charles McNeill, whose beautiful poetry has not yet found its way into anthologies of verse; and a poem entitled "John Anderson My Jo," which was written by the Scottish bard, Robert Burns, who had such an uncanny capacity to describe the simple things which enrich life.

"The Bride" pictures a bride and groom standing at the threshold of their married life, and "John Anderson My Jo" portrays a long-married husband and wife nearing the end of their joint journey.

I deem it not amiss to quote these poems in full:

THE BRIDE

(By John Charles McNeill)

The little white bride is left alone
With him, her lord; the guests have gone;
  The festal hall is dim.
No jesting now, nor answering mirth.
The hush of sleep falls on the earth
  And leaves her here with him.

Why should there be, O little white bride,
When the world has left you by his side,
  A tear to brim your eyes?
Some old love-face that comes again,
Some old love-moment sweet with pain
  Of passionate memories?

Does your heart yearn back with last regret
For the maiden meads of mignonette
  And the fairy-haunted wood,
That you had not withheld from love,
A little while, the freedom of
  Your happy maidenhood?

Or is it but a nameless fear,
A wordless joy, that calls the tear
  In dumb appeal to rise,
When, looking on him where he stands,
You yield up all into his hands,
  Pleading into his eyes?

For days that laugh or nights that weep
You two strike oars across the deep
  With life's tide at the brim;
And all time's beauty, all love's grace
Beams, little bride, upon your face
  Here, looking up at him.

JOHN ANDERSON MY JO

(By Robert Burns)

John Anderson my jo, John,
  When we were first acquent,
Your locks were like the raven,
  Your bonie brow was brent;
But now your brow is beld, John,
  Your locks are like the snaw,
But blessings on your frosty pow,
  John Anderson my jo!

John Anderson my jo, John,
  We clamb the hill thegither,
And monie a cantie day, John,
  We've had wi' ane anither;
Now we maun totter down, John,
  And hand in hand we'll go,
And sleep thegither at the foot,
  John Anderson my jo!

Mr. President, I think these two poems depict in a beautiful fashion the association between bride and groom which the good Lord intended to be, and it is certain to warm the heart far more than the notion that men and women shall be divided into contending groups, each insisting on his or her legal rights.

CONCLUSION

Congress and the States should amend the Constitution advisedly and soberly, and not emotionally.

Constitutional amendments are for keeps. Unlike a statute, they cannot be easily repealed. Once adopted, they can be removed from the Constitution only by the amending process. Consequently, they are likely to remain in the Constitution, and either bless or curse the American people until the last lingering echo of Gabriel's horn trembles into ultimate silence.

After reading the article in the Yale Law Journal, Dr. Jonathan H. Pincus, associate professor of neurology at the Yale University School of Medicine, posed the question which now confronts the Senate:

Is the equal rights amendment to be the Tonkin Gulf resolution of the American social structure?

It is manifest that Dr. Pincus described the equal rights amendment correctly. Its probable effect is correctly summarized in a question I put to Prof. Philip B. Kurland and an answer he made to such question during the hearings of the Senate Committee on the Judiciary on the amendment. The question and answer were as follows:

Senator ERVIN. I take it from your statement that you are of the opinion that the most probable construction of the House-passed Equal Rights Amendment is that it would do these two things if ratified by the requisite number of States after submission by the Congress. First, it would nullify existing congressional and State laws which make distinctions between men and women which the legislative bodies considered to be reasonably justified by the physiological and functional differences between men and women, and second, that it would disable Congress and the legislatures of the 50 States ever to pass any such laws in the future unless the Constitution was amended to eliminate the House-passed amendment from the Constitution.

Professor KURLAND. I am afraid that is the way I read the meaning of the words that are set out in the House Joint Resolution.

I entreat Senators to take pause before they approve the "the Tonkin Gulf resolution of the American social structure."

I entreat them to remember:

The moving finger writes; and having writ,
Moves on: nor all your piety nor wit
Shall lure it back to cancel half a line,
Nor all your tears wash out a word of it.

EXHIBIT 1

BERNARD SCHWARTZ: A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES

(Part III, Rights of the Person, pages 527–538)

480—SEX

The very first case in the highest Court after the adoption of the Fourteenth Amendment in which a challenge of unconstitutional discrimination against an important class in the community was raised involved a claim on behalf of the equality of women. The case referred to—*Bradwell v. Illinois* (1873)—was decided the day after the already-discussed *Slaughterhouse Cases*. At issue in it was the refusal of the Supreme Court of Illinois to grant plaintiff's application for a license to practice law on the ground that it was a woman who made it. The high tribunal ruled that the Fourteenth Amendment had no restrictive effect upon the power of the states to limit the practice of law to members of the male sex. Two years later, the supreme bench reached the same result with regard to a state statute confining the suffrage to males.

These early decisions under the Fourteenth Amendment confirmed the fact that the men who drafted the Equal-Protection Clause never intended to place women upon a political and economic plane with men. The men of the post-Civil War period, as had been true of the Jacksonians before them, scarcely included women in their concept of equality. Instead, they were firm believers in what de Tocqueville termed "that great inequality of man and woman which has seemed . . . to be eternally based in human nature." In the law, their view was that expressed by Justice Bradley in the *Bradwell* case: "The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood."

Merely to state the Bradley view is to indicate how far out of line it is from present-day conceptions. To the jurist today, the restricted intention of the men who wrote the Equal-Protection Clause into organic law is much less important than the fact that (as emphasized in section 469) they used language of general, rather than particular, applicability. At the present time, at least, it is contrary to all the canons of constitutional construction to interpret a provision like the Equal-Protection Clause, which, by its own terms, is applicable "to any person," as one which covers only members of the male sex. At the very least, the language of the Equal-Protection Clause must include every human being in the community—and that irrespective of sex.

We must start, then, with the proposition that (whatever may have been the situation under the early cases) a woman must be considered a "person" within the meaning of the Fourteenth Amendment and hence fully encompassed within the constitutional guaranty of equality. More than that, we may say that (as seen in section 475) a classification grounded upon sex must now be considered inherently unreasonable when it is used as the basis for denying personal or property rights. A law which seeks to make rights and obligations turn upon sex must normally be deemed lacking in rational basis.

What this means is that, in accordance with present-day conceptions, no person may be denied equality before the law because of sex. That such interpretation of the Equal-Protection Clause makes for a drastic change in the law cannot be denied. For the case law

has consistently ruled that, even though women are "persons" within the scope of the Equal-Protection Clause, the protection which that provision affords them must be interpreted in the light of the disabilities imposed upon women at common law. Thus, as recently as 1966, a state court ruled that, until the common-law disqualification of sex is removed, women are not eligible to serve on juries—and that regardless of the Equal-Protection Clause.

Such ruling, continuing as it does the grossly unequal position of women at common law, can scarcely be considered consistent with the view which now prevails of the inherent value of the individual and the right to be dealt with on the basis of personal worth without the intrusion of extraneous characteristics such as sex. So far as property and personal rights (including political rights) are concerned, a law which discriminates against women solely because of their sex must normally be deemed one that is based upon an inherently unreasonable classification and hence violative of the Equal-Protection Clause.

The judges may not as yet go entirely as far as the view taken in this section. But it cannot be doubted that the exertion of governmental authority to maintain the supposedly inferior status of women in the law would now be stricken down in most cases. This would be true, for example, of statutory restrictions upon women's political rights (as by denying them the right to hold public office), or comparable limitations upon their economic rights (as by laws prohibiting them from engaging in ordinary businesses, professions, and occupations), or their right to share in the services and benefactions dispensed by the modern State (as by denying them the right to enroll in public educational institutions or to participate in a scheme of social insurance open to males).

Among the cases supporting the principles just stated is an important opinion of the Massachusetts court ruling invalid a statute prohibiting the employment in the public service of married women. Women, said the court, married or unmarried, are, like other persons, entitled to the benefit of the constitutional guaranty against arbitrary discrimination. For a statute to exclude from public employment of every nature all married women—irrespective of age, character, and capabilities—is for it plainly to work an arbitrary discrimination against such women. Such discrimination lacks a reasonable basis, for it cannot be said that sex and marital status are factors upon which the ability to perform the functions connected with any and all public employment does depend.

As far-reaching as any decision on the matter under discussion is one rendered in New York in 1962. It held that the refusal of the New York City Civil Service Commission to permit a policewoman to take an examination to qualify for promotion to the rank of sergeant, solely because of her sex, was illegal. The denial of eligibility solely because of sex was declared to be arbitrary and an abuse of discretion, "in light of present day conditions." To exclude women from a promotional job opportunity in the Police Department is to deny them the equality of privilege and opportunity that is required under the present-day interpretation of equal protection of the laws. Thus, even in a field such as police work (which, until recently, would have been considered exclusively the preserve of the male), classification based upon sex alone may be ruled violative of the constitutional command of equality.

481—SAME: PROTECTIVE SEXUAL CLASSIFICATIONS

Despite what has been said in the previous section, it is not completely correct to conclude that all governmental classifications based upon sex are automatically invalid. Instead, we must follow the analysis already suggested in section 475. We saw there that, though a classification based upon sex will normally be deemed inherently unreasonable and hence contrary to the equal protection guaranty, there is still one recognized purpose for which the sexual classification may be constitutionally employed.

The purpose referred to (as was indicated in section 475) is that of protection of the female sex in areas where women are inherently or traditionally a proper subject of governmental solicitude. Where the legislature acts to protect the weaker sex and there is a rational basis for the legislative judgment that such protection is necessary, there is no contravention of the Equal-Protection Clause. In the words of the supreme tribunal, in upholding a law fixing minimum wages for women, "This familiar principle has repeatedly been applied to legislation which singles out women, and particular classes of women, in the exercise of the state's protective power."

We must assume, to quote the high bench again, that "the protection of women is a legitimate end of the exercise of state power" and that the community may direct its lawmaking to attain such end. This means, of course, that, as already indicated, a sexual classification may be valid if its purpose is the protection of women.

The most obvious type of law falling within the principle just stated is one which takes account of the relative physical weakness of the female sex: "However confident a great number of people may be that in many spheres of activity, including that of the administration of government, woman is the full equal of man, no one doubts that as regards bodily strength and endurance she is inferior and that her health in the field of physical labor must be specially guarded by the state if it is to be preserved and if she is to continue successfully and healthfully to discharge her duties which nature has imposed upon her."

The common kind of statute which seeks to protect woman from the consequences of her relative physical weakness is the law which limits the hours during which she may work or prohibits her from engaging in occupations deemed particularly arduous or hazardous, such as mining. The validity of such laws has been beyond question since the landmark 1908 decision of the Supreme Court in *Muller* v. *Oregon* (already discussed, in connection with the governmental power to regulate the hours of labor, in section 304). The reasoning of the *Muller* opinion is essentially that urged in the analysis thus far in the present section. Emphasis is placed by the Court upon the fact that "woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence." The need to protect women from undue physical effort and danger fully justifies legislative action of the type under discussion: "Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained."

In addition to protective measures of the type just dealt with, which shield the female from the consequences of her relative physical weakness, the sexual classification may also be justified in comparable laws which seek to protect woman because of her traditionally weaker economic position: "It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him."

Foremost among protective statutes which seek to redress woman's unequal position in the struggle for subsistence—a position that, in the high bench's phrase, justifies "legislation to protect her from the greed as well as the passion of man"—have been laws guaranteeing minimum wages for women. Such laws (we saw in section 305) were upheld by the Supreme Court in *West Coast Hotel Co. v. Parrish* (1937). According to Chief Justice Hughes, who delivered the opinion there, "What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers?" And, if such protection is a legitimate end of the police power, the requirement of payment of a minimum wage in order to meet the very necessities of existence is plainly an admissible means to that end: "The Legislature of the state was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances."

A more recent type of protective statute, which goes even further than the minimum-wage law, is one which prohibits discrimination in the payment of wages to women, as by making it illegal to pay any woman a lesser wage than is paid to males similarly employed. The reasoning of the *West Coast Hotel* opinion should also apply to sustain such laws and they have, in fact, been upheld by the courts. Even more far-reaching are statutes which forbid any discrimination in employment because of sex. Such laws, designed to place women upon a place of economic equality (at least so far as employment is concerned) will be dealt with separately at the end of the next section.

If we follow the traditional police-power approach (fully discussed in Chapters 12 and 13), we may say that the protective statutes dealt with thus far may be justified as legislative attempts to protect the health, safety, and welfare (primarily the economic welfare) of women. The same approach should also sustain comparable legislative efforts to protect the morals of women. This means that, in all the areas discussed in section 282 where action by the legislator as guardian of public morals may be taken, measures protecting the morals of women may be enacted.

The principle just stated has been applied most frequently in laws relating to intoxicating liquors, with regard to which (we saw in section 282) there is a well-nigh plenary governmental power, because of the universally recognized impact of liquor upon public morals. The Equal-Protection Clause, the highest Court has affirmed, "did not tear history up by the roots, and the regulation of the liquor traffic is one of the oldest and most untrammeled of legislative powers." In laws regulating the sale of liquor, sexual classifications will be upheld where their purpose is to protect the morals of women. And that is true despite the changing conception of the place of the female which has all but eliminated the obloquy once attached to the consumption of intoxicants by women. "The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes, certaintly, in such matters as the regulation of the liquor traffic."

Under what has been said, laws have been upheld which forbid the sale of liquor to women, or prohibit such sale except under stated conditions. In addition, the denial to females of licenses to sell liquors has been ruled consistent with the equal protection guaranty; and the same result has been reached in cases involving laws prohibiting women from working as bartenders or in any employment in establishments which sell liquor. As the supreme bench put it in one of the cases referred to "bartending by women may, in the allowable legislative judgment, give rise to moral and social problems against which it may devise preventive measures."

In the case in which the statement just quoted was made, the high tribunal went so far as to uphold a state law which provided

for the licensing of bartenders but forbade the licensing of any female bartender unless she be "the wife or daughter of the male owner" of a licensed liquor establishment. Such law was sustained on the ground that it was based upon the legislative belief "that the oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protecting oversight." The Court declared that it was not in a position to gainsay such belief. The challenged law, which on its face involved an extreme discrimination against women, was thus also justified as a protection of the female sex.

Almost all of the cases concerning the legislative power to protect the morals of women involve regulation of the liquor traffic. Yet, as already intimated, there can be no doubt that the same authority exists in all the areas dealt with in section 282. where action under the police power to protect public morals may be taken. In a 1956 state case, for example, a statutory ban against female wrestling was sustained, as against the claim that it constituted an unreasonable discrimination against women in violation of the equal protection guaranty. Public amusements subject to the police power because of their effect upon the public morals (within the principles discussed in section 282) may be regulated on the basis of the sexual classification, with women excluded from participating in them—particularly where they involve an element of brutality or immorality.

In addition to direct protective statutes of the kind dealt with thus far, there are other laws which seek to accomplish a comparable purpose by exempting women from duties imposed by the community upon members of the male sex. The most common statute of this type is that relating to jury service. The relevant laws in many states provide an exemption—either absolute or qualified—for women from jury service. The highest Court has expressly upheld the constitutionality of such exemption, declaring that it is justified by woman's position as the center of home and family life. "We cannot say that it is constitutionality impermissible for a State acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities." The same reasoning sustains similar exemptions in the law, such as the traditional exemption of women from the coverage of statutes providing for compulsory military service.

In the cases covered in this section, laws based upon sexual classifications have been upheld because their purpose is the protection of the female sex. With regard to all of the ends that may be promoted under the modern conception of the police power—the furtherance of health, safety, morals, and welfare, under the all-embracing manner in which those social interests were seen to be conceived in Chapters 12 and 13—the legislator may act to protect that sex that is properly the legitimate object of governmental solicitude.

It should, however, be pointed out that the true justification of the cases discussed in this section is the fact that the social purpose behind the laws upheld is broader than the protection of the female sex alone. As the high bench expressed it in *Muller v. Oregon*, "the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race." The object sought by the protective laws discussed is quite as much for the benefit of the entire community as for the protection of the women covered. The wrong done to the female is more frequently done to the whole social order. Hence, the Supreme Court could say, the limitations imposed by laws of the type under consideration "are not imposed solely for her benefit, but also largely for the benefit of all."

482—SAME: OTHER SEXUAL CLASSIFICATIONS

The analysis in the last two sections indicates that a law based upon sexual classification will normally be deemed inherently unreasonable unless it is intended for the protection of the female sex. The view thus stated, it must be admitted, goes further than the jurisprudence under the Equal-Protection Clause. Yet it seems to be the only position consonant with the expanding notion of Equality of the Person that is a dominant theme of the contemporary society.

Many observers will, however, feel that the analysis in the last two sections does not take sufficient account of the differences which do exist between the sexes. As one judge puts it, "The plain testimony of the senses, a well-known French proverb, as well as numerous judicial decisions all vouch for the fact that a woman is different from a man."

Some will go even further and ask whether, in the words of a state court, the legislature may not provide "that there should be at least one island on the sea of life reserved for man that would be impregnable to the assault of woman. It had watched her emerge from long tresses and demure ways to bobbed hair and almost complete sophistication; from a creature needing and depending upon the protection and chivalry of man to one asserting complete independence. She had already invaded practically every activity formerly considered suitable and appropriate for men only. . . . In these circumstances, is it any wonder that the legislative assembly took advantage of the police power of the state in its decision to halt this ever-increasing feminine encroachment upon what for ages had been considered strictly as manly arts and privileges?"

Though the view thus expressed will doubtless strike a responsive chord in many mere males, it may scarcely be considered consistent with the notion of equality before the law. To exclude women by law from a field simply because it has traditionally been the preserve of the male sex is to reject the very concept of personal worth upon which the Equal-Protection Clause is grounded. Such an approach would really nullify all that has been said thus far on equality and sex, for it could be applied to bar women (regardless of their personal capabilities) from every line of endeavor.

At the same time, we must recognize that there is a possible area of sexual classification in the law which has not been touched upon in the previous discussion. It is illustrated by a 1958 Texas case. It arose out of an action to compel the enrollment of otherwise qualified female students at Texas Agricultural and Mechanical College, a state institution of higher learning operated as an all-male school. The record showed that there were then sixteen coeducational institutions of higher learning operated by the state, as well as Texas A. & M., operated for men, and Texas Women's University, an all-female school. In these circumstances, said the court, the state system of higher education does not discriminate between the sexes, but instead makes ample and substantially equal provision for the education of both men and women.

It cannot be gainsaid that a state system of education which excludes members of one sex must today be considered contrary to the Equal-Protection Clause. In the instant case, such complete exclusion was not at issue. The controlling question was rather "whether the State, as a matter of public policy, may as a part of its total system of higher education, maintain, for the choice and service of its citizens, one all-male and one all-female institution, along with sixteen institutions which are co-educational. We think undoubtedly the answer is Yes."

The differences between the sexes and the consequences of indiscriminate intermingling of the sexes, particularly at an early age, justify the separation of men and women for educational purposes: enforced coeducation is not compelled by the Equal-Protection Clause. Provided that provision be made for substantially equal educational facilities, there is no constitutional violation.

What is particularly interesting about the principle just stated is that it permits segregation of the sexes under a "separate but equal" approach of the precise type which (we will see in section 495) has been prohibited by the Supreme Court where segregation of the races is concerned. Separation of the sexes in educational institutions may be based upon rational considerations (such as pedagogical needs) which are absent where racial segregation is involved. In addition, separation of the sexes in schools and colleges does not have the discriminatory connotations which (we shall see in section 496) are inevitably connected with racial segregation.

The type of sexual separation that is permitted in educational institutions may also be allowed in other public institutions as well. Thus, it may not be doubted that there may be separation of the sexes in correctional and penal institutions, as well as in those operated by the military, including military educational institutions. One of the factors which influenced the Texas court in the case already discussed was the fact that the institution involved there was a state-supported military college, with students participating in a program of compulsory military training and subject to military discipline.

In all that has been said till now on the subject of sexual classification one must not assume that the law makes the error of those referred to by de Tocqueville, "who, confounding together the different characteristics of the sexes, would make man and woman into beings not only equal but alike. They would give to both the same functions, impose on both the same duties . . . ; they would mix them in all things—their occupations, their pleasures, their business."

As already seen, the law does allow sexual classifications to be made by government where that may be necessary to protect one sex in relation to all the broad social ends that may be attained under the police power, as well as to permit separation of the sexes in appropriate public institutions, such as those devoted to education. In addition, it must be recognized that there are certain situations controlled by law in which sexual classifications must play a part. In the New York case dealt with at the end of section 480, in which the absolute refusal on the basis of sex to permit a policewoman to participate in an examination for promotion to sergeant was stricken down, the court declared that, while the absolute female bar was invalid, "a distinction based on sex is permitted when the duties of the position or nature of the work involves or requires sex selection."

The principle stated by the New York court may be made more specific by reference to the provision of the civil service statute of that state which empowers the relevant agency to limit eligibility to civil service positions "to one sex when the duties of the position involved relate to the institutional or other custody or care of persons of the same sex, or visitation, inspection or work of any kind the nature of which requires sex selection."

Even if, on a strictly logical basis, it may be difficult to justify such provision in the light of the constitutional guaranty of Equality of the Person, common sense itself tells us that it is necessary to avoid an egregiously "preposterous . . . medley of the works of nature." Certainly, if, as already indicated, there may be sexual separation in appropriate public institutions, there may also be sexual classifications for employment in such institutions, particularly so far as those having custody and control over the students, inmates, and others in the institutions are concerned. More than that, it must be acknowledged that there are other occupations

which, by their very nature, may legitimately involve sexual qualifications. With regard to such occupations, it may not be enough to lay down objective qualifications, which do not include sex. It may be necessary to provide expressly that only those of the appropriate sex may be eligible. For example, while women may not reasonably be wholly excluded from police work, it is surely legitimate for the relevant authority to be given discretion to hire men to compose the bulk of a police force; and the same is true in the military field, where the command authorities must plainly be able to choose only men for most positions in the armed forces, especially those involving combat and particularly arduous duties.

The point just made must be applicable even in private employment that is affected by public authority, for example, through laws forbidding sexual discriminations in employment. In the already-discussed 1873 *Bradwell* case, Justice Bradley declared. "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." A century later, the law of the Creator is differently construed. In fact, we are now coming to assume exactly the opposite of the Bradley approach and to assert public power to ensure against sexual discriminations. The Equal-Protection Clause (as we have interpreted it in this and the previous two sections) bars such discriminations by governmental agencies, in legislation or other acts. In addition the legislator may seek to bar private discriminations, as by laws requiring that women not be paid less than men for comparable work or, more recently, by statutes prohibiting any sexual discriminations in employment.

The most important statute of the type referred to is the section of the Federal Civil Rights Act of 1964, which provides that "It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex."

The general authority of the legislator to proscribe economic discriminations based upon sex cannot, it is believed, at present be doubted. Such authority at the federal level may be sustained upon the same basis as (we shall see in section 506) that upon which the courts uphold the Civil Rights Act of 1964 as a whole. The basis referred to (we shall see in section 506) is both the power of the Congress to regulate commerce and that to enact legislation enforcing the Fourteenth Amendment, including its Equal-Protection Clause. In addition, insofar as the state power to enact such laws is concerned, such prohibitions of economic discriminations may be justified upon the same basis of protection of the weaker sex as the statutes discussed in the previous section.

It should, however, be pointed out that the prohibition laid down in anti-sexual-discrimination statutes of the type under discussion must be subject to an exception such as that already stated. Thus, the Civil Rights Act provision which, as stated, bars sexual discrimination in employment states expressly, "it shall not be an unlawful employment practice for an employer to hire and employ employees on the basis of . . . sex . . . in those certain instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."

Such an exception for employment which may legitimately be based upon sex selection appears necessary if the statutory prohibition is not to hamstring employers in a manner that does violence to the sensible carrying on of business activities. No objective criterion other than sex can be used by the employer who chooses to hire only male truck drivers or to employ only women in a lingerie department. A statute which went so far as to take away such employer choice for work which, by its nature, requires sex selection can scarcely be required by the constitutional command of equality. Use of the law in an attempt to conjure away all the differences which do exist between the sexes is both an insult to the law itself and a complete disregard of fact.

EXHIBIT 2

[Supreme Court of the United States—
No. 70–4]

ON APPEAL FROM THE SUPREME COURT OF IDAHO

Sally M. Reed, Appellant, *v.* Cecil R. Reed, Administrator, Etc.

November 22, 1971

Mr. Chief Justice Burger delivered the opinion of the Court.

Richard Lynn Reed, a minor, died intestate in Ada County, Idaho, on March 29, 1967. His adoptive parents, who had separated sometime prior to his death, are the parties to this appeal. Approximately seven months after Richard's death, his mother, appellant Sally Reed, filed a petition in the Probate Court of Ada County, seeking appointment as administratrix of her son's estate.[1] Prior to the date set for a hearing on the mother's petition, appellee Cecil Reed, the father of the decedent, filed a competing petition seeking to have himself appointed administrator of the son's estate. The probate court held a joint hearing on the two petitions and thereafter ordered that letters of administration be issued to appellee Cecil Reed upon his taking the oath and filing the bond required by law. The court treated §§ 15–312 and 15–314 of the Idaho Code as the controlling statutes and read those sections as compelling a preference for Cecil Reed because he was a male.

Section 15–312[2] designates the persons who are entitled to administer the estate of one who dies intestate. In making these designations, that section lists 11 classes of persons who are so entitled and provides, in substance, that the order in which those classes are listed in the section shall be determinative of the relative rights of competing applicants for letters of administration. One of the 11 classes so enumerated is "[t]he father or mother" of the person dying intestate. Under this section, then, appellant and appellee, being members of the same entitlement class, would seem to have been equally entitled to administer their son's estate. Section 15–314 provides, however, that "[o]f several persons claiming and equally entitled [under § 15–312] to administer, males must be preferred to females, and relatives of the whole to those of the half blood."

In issuing its order, the probate court implicitly recognized the equality of entitlement of the two applicants under § 15–312 and noted that neither of the applicants was under any legal disability; the court ruled, however, that appellee, being a male, was to be preferred to the female appellant "by reason of Section 15–314 of the Idaho Code." In stating this conclusion, the probate judge gave no indication that he had attempted to determine the relative capabilities of the competing applicants to perform the functions incident to the administration of an estate. It seems clear the probate judge considered himself bound by statute to give preference to the male candidate over the female, each being otherwise "equally entitled."

Sally Reed appealed from the probate court order, and her appeal was treated by the District Court of the Fourth Judicial District of Idaho as a constitutional attack on § 15–314. In dealing with the attack, that court held that the challenged section violated the Equal Protection Clause of the Fourteenth Amendment[3] and was, therefore, void; the matter was ordered "returned to the Probate Court for its determination of which of the two parties" was better qualified to administer the estate.

This order was never carried out, however, for Cecil Reed took a further appeal to the Idaho Supreme Court, which reversed the District Court and reinstated the original order naming the father administrator of the estate. In reaching this result, the Idaho Supreme Court first dealt with the governing statutory law and held that under § 15–312 "a father and mother are 'equally entitled' to letters of administration," but the preference given to males by § 15–314 is "mandatory" and leaves no room for the exercise of a probate court's discretion in the appointment of administrators. Having thus definitively and authoritatively interpreted the statutory provisions involved, the Idaho Supreme Court then proceeded to examine, and reject, Sally Reed's contention that § 15–314 violates the Equal Protection Clause by giving a mandatory preference to males over females, without regard to their individual qualifications as potential estate administrators. 93 Idaho 551. 465 P. 2d 635.

Sally Reed thereupon appealed for review by this Court pursuant to 28 U.S.C. § 1257 (2), and we noted probable jurisdiction. 401 U.S. 934. Having examined the record and considered the briefs and oral arguments of the parties, we have concluded that the arbitrary preference established in favor of males by § 15–314 of the Idaho Code cannot stand in the face of the Fourteenth Amendment's command that no State deny the equal protection of the laws to any person within its jurisdiction.[4]

Idaho does not, of course, deny letters of administration to women altogether. Indeed, under § 15–312, a woman whose spouse dies intestate has a preference over a son, father,

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[1] In her petition, Sally Reed alleged that her son's estate, consisting of a few items of personal property and a small savings account, had an aggregate value of less than $1,000.

[2] Section 15–312 provides as follows:

"Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order:

"1. The surviving husband or wife or some competent person whom he or she may request to have appointed.

"2. The children.

"3. The father or mother.

"4. The brothers.

"5. The sisters.

"6. The grandchildren.

"7. The next of kin entitled to share in the distribution of the estate.

"8. Any of the kindred.

"9. The public administrator.

"10. The creditors of such person at the time of death.

"11. Any person legally competent.

"If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate."

[3] The court also held that the statute violates Art. I, § 1 of the Idaho Constitution.

[4] We note that § 15–312, set out in n. 2, *supra*, appears to give a superior entitlement to brothers of an intestate (class 4) than is given to sisters (class 5). The parties now before the Court are not affected by the operation of § 15–312 in this respect, however, and appellant has made no challenge to that section.

We further note that on March 12, 1971, the Idaho Legislature adopted the Uniform Probate Code, effective July 1, 1972. CH. 111 (1971) Idaho Session Laws 233. On that date, §§ 15–312 and 15–314 of the present code will, then, be effectively repealed, and there is in the new legislation no mandatory preference for males over females as administrators of estates.

brother, or any other male relative of the decedent. Moreover, we can judicially notice that in this country, presumably due to the greater longevity of women, a large proportion of estates, both intestate and under wills of decedents, are administered by surviving widows.

Section 15–314 is restricted in its operation to those situations where competing applications for letters of administration have been filed by both male and female members of the same entitlement class established by § 15–312. In such situations, § 15–314 provides that different treatment be accorded to the applicants on the basis of their sex; it thus establishes a classification subject to scrutiny under the Equal Protection Clause.

In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. *Barbier* v. *Connally*, 113 U.S. 27 (1885); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Railway Express Agency, Inc.* v. *New York*, 336 U.S. 106 (1949); *McDonald* v. *Board of Election Commissioners*, 394 U.S. 802 (1968). The Equal Protection Clause of that Amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co.* v. *Virginia*, 153 U.S. 412, 415 (1920). The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a national relationship to a state objective that is sought to be advanced by the operation of §§ 15–312 and 15–314.

In upholding the latter section, the Idaho Supreme Court concluded that its objective was to eliminate one area of controversy when two or more persons, equally entitled under § 15–312, seek letters of administration and thereby present the probate court "with the issue of which one should be named." The court also concluded that where such persons are not of the same sex, the elimination of females from consideration "is neither an illogical nor arbitrary method devised by the legislature to resolve an issue that would otherwise require a hearing as to the relative merits . . . of the two or more petitioning relatives. . . ." 93 Idaho, at 514, 465 P. 2d, at 638.

Clearly the objective of reducing the workload on probate courts by eliminating one class of contests is not without some legitimacy. The crucial question, however, is whether § 15–314 advances that objective in a manner consistent with the command of the Equal Protection Clause. We hold that it does not. To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment; and whatever may be said as to the positive values of avoiding intrafamily controversy, the choice in this context may not lawfully be mandated solely on the basis of sex.

We note finally that if § 15–314 is viewed merely as a modifying appendage to § 15–312 and as aimed at the same objective, its constitutionality is not thereby saved. The objective of § 15–312 clearly is to establish degrees of entitlement of various classes of persons in accordance with their varying degrees and kinds of relationship to the intestate. Regardless of their sex, persons within any one of the numerated classes of that section are similarly situated with respect to that objective. By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause. *Royster Guano Co.* v. *Virginia, supra.*

The judgment of the Idaho Supreme Court is reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

EXHIBIT 3

(Statement of Paul Freund, Dean Pound, and other lawyers and legal scholars in opposition to the equal rights amendment)

These lawyers and legal scholars—regardless of party, and regardless of political or economic views—oppose the so-called equal rights amendment, and endorse the statement set forth herein, on the legal implications of the proposed amendment, prepared by Professor Paul Freund, of the Harvard Law School:

Roscoe Pound, School of Law, University of California, Former Dean, Harvard Law School.

Clarence Manion, Former Dean of the College of Law, University of Notre Dame, Indiana.

Albert J. Harno, Dean of the College of Law, University of Illinois.

Charles Warren, Constitutional Lawyer and Author of "The Supreme Court in United States History", Washington, D.C.

Walter Frank, Lawyer, New York City.

Leon Green, Professor of Law, University of Texas. Former Dean, School of Law, Northwestern University.

Dorothy Kenyon, Lawyer and former Judge of Municipal Court, New York City.

Prof. M. R. Kirkwood, Palo Alto, California.

Monte M. Lemann, Lawyer and former President, Louisiana State Bar Association, New Orleans.

E. Blythe Stason, Dean of the Law School, University of Michigan.

Harry Shulman, Sterling Professor of Law, Yale University Law School.

William H. Holly, United States District Judge, Chicago.

Everett Fraser, Emeritus Dean of Law School, University of Minnesota. Professor of Law, Hastings College of Law, University of California.

Walter Gellhorn, Professor of Law, Columbia University Law School.

Glenn A. McCleary, Dean of the Law School, University of Missouri.

Douglas B. Maggs, Professor of Law, Duke University Law School and Former Solicitor, U.S. Department of Labor.

The following statement on legal implications of proposed Federal equal rights amendment has been endorsed by the Deans and Professors of leading Law Schools and by the eminent attorneys, jurists, and constitutional lawyers listed above.

The proposed amendment to the Constitution reads as follows:

"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

"This amendment shall take effect three years after the date of ratification."

If anything about this proposed amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court of the United States. Every statutory and common law provision dealing with the manifold relation of women in society would be forced to run the gauntlet of attack on constitutional grounds. The range of such potential litigation is too great to be readily foreseen, but it would certainly embrace such diverse legal provisions as those relating to a widow's allowance, the obligation of family support and grounds for divorce, the age of majority and the right of annulment of marriages, and the maximum hours of labor for women in protected industries.

Not only is the range of the amendment of indefinite extent, but, even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably, the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships. A more flexible view, permitting reasonable differentiation, can hardly be regarded as the object of the proposal, since the Fourteenth Amendment has long provided that no state shall deny to any person the equal protection of the laws, and that Amendment permits reasonable classifications while prohibiting arbitrary legal discrimination. If it were intended to give the courts the authority to pass upon the propriety of distinctions, benefits and duties as between men and women, no new guidance is given to the courts, and this entire subject, one of unusual complexity, would be left to the unpredictable judgments of courts in the form of constitution decisions.

Such decisions could not be changed by act of the legislature. Such a responsibility upon the courts would be doubtless as unwelcome to them as it would be inappropriate. As has been stated, however, the proposal evidently contemplates no flexibility in construction but rather a rule of rigid equality. This branch of the dilemma is as repelling as the other. It appears to be accepted by what is currently the most authoritative statement on this Amendment—the Report of the House Judiciary Committee, H. Rep. 907, 79th Cong. 1st sess., on H. J. Res. 49 dated July 12, 1945. The majority of the Committee appears to recognize that under the Amendment the many laws protecting the safety and welfare of women in industry would necessarily fall. The Committee states: "To say the least of the matter, many of the large organizations of women represented in hearings before the committee have expressed a sincere desire to waive the so-called preferential benefits now accorded to women by various laws so as to permit them to follow economic activities from which they are now excluded."

It would not be feasible to attempt to enumerate the wide variety of laws and rules of the common law which would fall under the impact of the Amendment. Some conception of their scope may, however, be given by recalling the variety of relationships in which women stand in the community. These relationships may be summarized as (a) wage earner; (b) member of a family; (c) citizen; (d) individual. The law has recognized and attempted to deal with these relationships in a concrete way. Doubtless there are difficulties and anachronisms in the law which should be remedied. But the method adopted by the Amendment is to ignore the basis for all that has been at the foundation of these measures, and to substitute an abstract rule of thumb. The practical effect of such a course can be suggested by referring briefly to each of the four categories mentioned above.

(*a*) *As wage earners.* One of the most familiar forms of legislation is that which confers special protection on women in industry, through the prohibition of employment in hazardous occupations and through regulation of night work and maximum hours of labor. Presumably the long struggle to place these protective measures on the statute books would be set at nought by the adoption of the Amendment. Specifically, such statutes would apparently have to be held invalid as denying to women the equal "right" to work or as denying to men the

equal right of protection under the law, for, it is to be noted, the amendment requires equality of rights under the law, permitting either men or women to claim exact equality. How the problem would be met can only be left to conjecture. If a state legislature failed to revise the laws giving special protection to women in certain industries, it is left uncertain whether the entire pattern of industrial legislation would be torn apart by judicial decision or whether a court would undertake to legislate by raising the same protection for men. Surely the work of generations ought not to be left to this blind hazard.

(*b*) *As members of the family.* Legislation in the latter part of the nineteenth and early part of the twentieth century, commonly known as married women's acts, fairly universally, in this country removed the disabilities which the common law had placed upon married women with respect to the right to sue and be sued, the right to own separate property and the right to engage in commercial transactions. It is true that in some states certain remnants of these disabilities have persisted. In a few states, for example, a married woman may not become a surety for her husband's debts, on the theory that she might otherwise be imposed upon; if the reason which has led some states to retain this disability is not a sufficient one, the disability should of course be removed by further legislation.

Similarly, in a few states a married woman's earnings, while belonging to her if they result from work outside the home, are held to enure to the husband if they are produced by working inside the home. Whether this is a fair adjustment in view of the husband's primary duty to support the family may be a fairly debatable question, which again can be resolved by further legislation if further reform is thought desirable. The proposed Amendment would leave no room for legislative experiment along these lines, but would impose a requirement of absolute equality in the property rights of husband and wife.

More seriously, it would presumably abolish the common rule whereby a husband has the primary duty of support toward his family, and whereby in many jurisdictions failure to render such support is a ground for separation or divorce. Precisely how the law of support is to be transformed as a result of the Amendment is by no means clear. The concept of a primary duty does not lend itself to a rule of equality.

The very least that can be said is that the complex and delicate field of marital relationships and divorce, into which Congress has sedulously declined to enter in the past, would now be gravely affected by the tangential force of a constitutional amendment, which would not even rest on a study of the manifold problems involved.

It is worthy of note that the community property system of eight western states, which have evolved differently from the common law systems and which, in general, have recognized for a longer period the coordinate status of husband and wife, nevertheless contains inequalities which would doubtless be rendered invalid under the amendment. Thus the husband is generally regarded as a kind of managing partner with special powers not possessed by the wife in respect of community property. Legislation would doubtless be required to produce conformity with the dictates of the Amendment, and the ramifications of such legislation, particularly with respect to the special tax status of persons owning community property, cannot be predicted with certainty.

(*c*) *As citizens.* While the suffrage amendment and other legislation have generally guaranteed to women an equality of civil and political rights, there remain some gaps which it is undoubtedly one purpose of the Amendment to close. One of these is the distinction drawn in some states between the obligation of men and that of women for jury service. But whether the Amendment would in fact require a change in this field is itself uncertain, since it is fairly arguable that jury service is not a right but a duty and hence not within the scope of the Amendment. Indeed, the Amendment opens up a whole field of potential controversy turning on distinction between rights and duties.

(*d*) *As individuals.* A common legislative difference in the treatment of men and women concerns the age of majority, which is generally lower for the latter. This difference has long been accepted as reflecting physical realities. Presumably the distinction would no longer be valid. But if a legislature failed to change the law, the outcome would present something of a legal puzzle. If the age of majority for men is eighteen and women sixteen, it can hardly be foretold whether equality would require a lowering of the former or a raising of the latter. If the standard be that of the greater right, it could be asserted that the lower age for women provides a greater right to marry but at the same time a more restricted right to annul on the ground of minority. How a court would solve the conundrum is, like most problems created by the proposed Amendment, a matter purely of speculation.

The basic fallacy in the proposed Amendment is that it attempts to deal with complicated and highly concrete problems arising out of a diversity of human relationships in terms of a single and simple abstraction. This abstraction is undoubtedly a worthy ideal for mobilizing legislative forces in order to remedy particular deficiencies in the law. But as a constitutional standard, it is hopelessly inept. That the proposed equal rights amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty.

PAUL FREUND,
Professor of Law, Harvard Law School.

EXHIBIT 4

(What the Yale Law Journal for April 1971, says about the Constitutional and Legal Consequences of the Equal Rights Amendment)

Senators Birch Bayh and Marlow Cook, Congresswoman Martha Griffiths and Congressman Don Edwards, the leaders for the Equal Rights for Women Amendment, have all relied very heavily on the statements of Professor Thomas Emerson of the Yale Law School in explaining the Equal Rights for Women Amendment.

Representative Griffiths stated in a letter to all Senators that the *Yale Law Journal* of April 1971 which was written in part by Professor Emerson, "will help you understand the purposes and effects of the Equal Rights Amendment . . . the article explains how the ERA will work in most areas of the law."

Senator Birch Bayh has called Professor Emerson's *Yale Law Journal* article "a masterly piece of scholarship."

The leader of the House Judiciary proponents of the ERA and the author of the House Majority Report, Congressman Don Edwards, has called Professor Emerson "one of the outstanding constitutional lawyers in the United States" and has termed Professor Emerson's comments as "entering a new level of understanding about what the enactment of a constitutional amendment would in effect do to the quality of life in America."

Congressman Edwards is right. Professor Emerson does bring us to "a new level of understanding." I have excerpted some of Professor Emerson's remarks from the *Yale Law Journal* which have been praised by the sponsors of the Equal Rights Amendment and would constitute primary evidence of what they think the amendment will accomplish in American society and will constitute, because of Mrs. Griffiths' whole-hearted support of the article, primary legislative history of the ERA.

The following quotes are not Senator Sam Ervin's but are actual quotes from the Yale Law Journal article which has been approved and hailed by the supporters of the ERA. In other words, the supporters of the ERA say the Amendment will have the following effect. *I agree with them! This language is important legislative history!*

80 YALE LAW JOURNAL 871

General interpretation of the amendment

"The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. This means that the treatment of *any* person by the law may not be based upon the circumstance that such person is of one sex or the other." (p. 889)

" . . . the principle of the Amendment must be applied comprehensively and *without* exceptions." (p. 890)

2. "Only an *unequivocal ban* against taking sex into account supplies a rule adequate to achieve the objectives of the Amendment." (p. 892) ". . . prohibition against the use of sex as a basis for differential treatment applies to *all* areas of legal rights." (p. 891) ". . . From this analysis it follows that the constitutional mandate must be *absolute.*" (p. 892)

3. "Our legal structure will continue to support and command an inferior status for women so long as it permits *any* differentiation in legal treatment on the basis of sex." (p. 873) ". . . Equality of rights means that sex is not a factor." (p. 892)

Military

1. "The Equal Rights Amendment will have a substantial and pervasive impact upon military practices and institutions. As now formulated, the Amendment permits no exceptions for the military." (p. 969)

2. "Women will serve in all kinds of units, and *they will be eligible for combat duty.* The double standard for treatment of sexual activity of men and women will be prohibited." (p. 978)

3. "Neither the right to privacy nor any unique physical characteristic justifies different treatment of the sexes with respect to voluntary or involuntary service and pregnancy justifies only slightly different conditions of service for women." (p. 969)

4. "Such obvious differential treatment for women as exemption from the draft, exclusion from the service academies, and more restrictive standards for enlistment will have to be brought into conformity with the Amendment's basic prohibition of sex discrimination." (p. 969)

5. "These changes will require a *radical* restructuring of the military's views of women. (p. 969)

6. "The Equal Rights Amendment will greatly hasten this process and will require the military to see women as it sees men." (p. 970)

7. "A woman will register for the draft at the age of eighteen, as a man now does." (p. 971)

8. "Under the Equal Rights Amendment, all standards applied through (intelligence tests and physical examinations) will have to be neutral as between the sexes." (p. 971)

9. "The military will clearly have sufficient time during the period after ratification to make the minor adaptations, such as the expansion of gynecological services, necessary to comply with the statute." (p. 971)

10. "First, height standards will have to be revised from the dual system which now exists." (p. 971)

11. "The height-weight correlations for the sexes will also have to be modified." (p. 972)

12. Deferment policy "could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female would be deferred." (p. 973)

13. "If the rules continue to require discharge of women with dependent children, then men in a similar situation will also have to be discharged . . . The nondiscriminatory alternative is to allow both men and women with children to remain in the service and to take their dependents on assignments in noncombat zones, as men are now permitted to do." (p. 975)

14. "Distinctions between single and married women who become pregnant will be permissible only if the same distinction is drawn between single and married men who father children." (p. 975)

15. "Thus, if unmarried women are discharged for pregnancy, men shown to be fathers of children born out of wedlock would also be discharged. Even in this form such a rule would be suspect under the Amendment, because it would probably be enforced more frequently against women. A court will therefore be likely to strike down the rule despite the neutrality in its terms, because of its differential impact." (p. 975)

16. "Under the Equal Rights Amendment the WAC would be abolished." (p. 976)

17. "Women are physically as able as men to perform many jobs classified as combat duty, such as piloting an airplane or engaging in naval operations . . . there is no reason to prevent women from doing these jobs in combat zones." (p. 977)

18. "No one would suggest that . . . women who serve can avoid the possibility of physical harm and assault. But it is important to remember that all combat is dangerous, degrading and dehumanizing." (p. 977)

19. "Male officers are provided a dependents' allowance based on their grade and the number of dependents . . ." The Equal Rights Amendment will recognize "the husband of a female officer . . . as a dependent." (p. 978)

20. "Athletic facilities will also have to be made available to women personnel." (p. 978)

Criminal Law

1. "Courts faced with criminal laws which do not apply equally to men and women would be likely to invalidate the laws rather than extending or rewriting them to apply to women and men alike." (p. 966)

2. "courts will most likely invalidate sodomy or adultery laws that contain sex discriminatory provisions, instead of solving the constitutional problems by extending them to cover men and women alike." (p. 962)

3. "seduction laws, statutory rape laws, laws prohibiting obscene language in the presence of women, prostitution and 'manifest danger' laws . . . The Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social stereotypes." (p. 954)

4. "the statutory rape laws, which punish men for having sexual intercourse with any woman under an age specified by law . . . suffer from a double defect under the Equal Rights Amendment." (p. 957)

5. "To be sure, the singling out of women probably reflects sociological reality . . . Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young man's. *But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard . . .*" (p. 958)

6. "adultery laws also contain sex discriminatory provisions which would be impermissible under the Equal Rights Amendment." (p. 961)

7. "Courts may be expected to hold that laws which confine liability for prostitution to women only are invalid under the Equal Rights Amendment." (p. 963)

8. "Just as the Equal Rights Amendment would invalidate prostitution laws which apply to women only, so the ERA would require invalidation of laws specially designed to protect women from being forced into prostitution." (p. 964)

9. "a court would probably resolve doubts about congressional intent by striking down the (Federal White Slave Traffic—Mann Act)." (p. 965)

Domestic Relations

1. "The Equal Rights Amendment, continuing this trend, would prohibit dictating different roles for men and women within the family on the basis of their sex." (p. 953)

2. "Thus, common law and statutory rules requiring name change for the married woman would become legal nullities." (p. 940)

3. "These states could conform to the Equal Rights Amendment by requiring couples to pick the same last name, but allowing selection of the name of either spouse, or of a third name satisfactory to both." (p. 940)

4. "The Amendment would also prohibit the states from requring that a child's last name be the same as his or her father's, or from requiring that a child's last name be the same as his or her mother's." (p. 941)

5. "In ninety per cent of custody cases the mother is awarded the custody. The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent." (p. 953)

6. "physical capacity to bear children can no longer justify a different statutory marriage age for men and women." (p. 939)

7. "mere estimates of emotional preparedness founded on impressions about the 'normal' adolescent boy and girl are based on the kind of averaging which the Equal Rights Amendment forbids." (p. 939)

8. "The Equal Rights Amendment would not permit a legal requirement, or even a legal presumption, that a woman takes her husband's name at the time of marriage." (p. 940)

9. "a court would do away with the rule that refusal to accompany or follow a husband to a new domicile amounts to desertion or abandonment." (p. 942)

10. "A husband would no longer have grounds for divorce in a wife's unjustifiable refusal to follow him to a new home." (p. 942)

11. "the traditional rule is that the domicile of legitimate children is the same as their father's . . . The Equal Rights Amendment would not permit this result." (p. 942)

12. "In all states husbands are primarily liable for the support of their wives and children . . . the child support sections of the criminal nonsupport laws . . . could not be sustained where only the male is liable for support." (p. 944 and 945)

13. "The Equal Rights Amendment would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex." (p. 945)

14. "Two different systems have been adopted in the United States for distributing property rights within a family—the community property system and the common law system . . . As both systems currently operate, they contain sex discriminatory aspects which would be changed under the Equal Rights Amendment." (p. 946)

15. "Under the Equal Rights Amendment, laws which . . . favor the husband as manager (of community property) in any way, would not be valid." (p. 947)

16. "All states except North Dakota and South Dakota give women a nonbarrable share in her husband's estate, but a number of states fail to give the husband a corresponding legal claim in his wife's estate . . . the discriminatory laws would either be invalidated or extended." (p. 948)

17. "a court could invalidate (many grounds for divorce) without doing any serious harm to the overall structure of the states' divorce laws . . . These are pregnancy by a man other than husband at time of marriage, nonsupport, alcoholism of husband, wife's unchaste behavior, husband's vagrancy, wife's refusal to move with husband without reasonable cause, wife a prostitute before marriage, indignities by husband to wife's person, and willful neglect by husband." (p. 950)

18. "Like the duty of support during marriage and the obligation to pay alimony in the case of separation or divorce, nonsupport would have to be eliminated as a ground for divorce against husbands only . . ." (p. 951)

19. "The laws that grant a husband a divorce because at the time of marriage he did not know his wife was pregnant by another man would be subject to strict scrutiny under the unique physical characteristics tests." (p. 951)

20. "The Equal Rights Amendment would not require that alimony be abolished but only that it be available equally to husbands and wives." (p. 952)

21. 'the laws could provide support payments for a parent with custody of a young child who stays at home to care for that child so long as there was no legal presumption that the parent granted custody should be the mother." (p. 952)

22. The ERA could require "for maintenance to be paid from one spouse to the other if the spouse seeking maintenance lacks sufficient property to provide for *his* reasonable needs and is unable to support *himself* through appropriate employment." (p. 952)

Protective labor legislation

1. "Under the Equal Rights Amendment, courts are thus not likely to find *any* justification for the continuance of laws which exclude women from certain occupations." (p. 929)

2. "Laws which require employers to impose leave on pregnant employees for a specified period before and after childbirth, without providing job security or retention of accrued benefits, such as seniority credits . . . would fall" (p. 929) The article cites as an example which will be struck down in every state, "a school board regulation imposing maternity leave at least four months prior to the expected birth of her child." (p. 931)

3. "There is little reason to doubt, therefore, that courts will invalidate weightlifting regulations for women under the Equal Rights Amendment." (p. 935)

4. "This result (to invalidate maximum hours which apply only to women) would also be predicted from principles of statutory construction under the Equal Rights Amendment." (p. 936)

5. "the courts are likely to . . . equalizing both sexes under the Equal Rights Amendment by invalidating (a law protecting women from coerced overtime)." (p. 936)

6. "Laws which restrict or regulate working conditions would probably be invalidated" (p. 936)

Miscellaneous

1. "the government cannot rely upon the administrative technique of grouping or averaging where the classification is by sex . . . whatever the price in efficiency, the classification must be made on some other basis." (p. 891)

2. "It is obvious that the marginal relationship of the unique physical characteristics of pregnancy to the problem of absenteeism

would require invalidation . . . of a government regulation to reduce absenteeism by barring women from certain jobs.

3. Men will get extensive leave for child rearing because "if only women can get extensive leave for child rearing it becomes economically impossible for men to stay at home to care for children while their wives work." (p. 897)

4. "A rule allowing sick leave only to mothers when a member of their household is sick is a prohibited sex classification." (p. 898)

5. "a law might prohibit adults with primary responsibility for child care from working in managerial jobs, on the grounds that the function of caring for children was inconsistent with substantial occupational responsibility. Such a law or government regulation would constitute a serious evasion of the Equal Rights Amendment." (p. 898)

6. "Protection against indirect, covert or unconscious sex discrimination is essential to supplement the absolute ban on explicit sex classification of the Equal Rights Amendment." (p. 900)

7. "Thus the courts have power to grant affirmative relief in framing decrees in particular cases . . . such decrees could provide remedies for past denial of equal rights which take into account sex factors and give special treatment to the group discriminated against." (p. 904)

8. "affirmative action may appear, paradoxically, to conflict with the absolute nature of the Equal Rights Amendment. But where damage has been done by a violator who acts on the basis of a forbidden characteristic, the enforcing authorities may also be compelled to take the same characteristic into account in order to undo what has been done." (p. 904)

9. "There is no doubt that the Equal Rights Amendment would eliminate differentiation on account of sex in the public schools and public university systems." (p. 906)

10. "It would seem clear that the basic principles of state action would, as a general proposition, require that the state eliminate male domination from the educational system." (p. 907)

11. "states which grant jury service exemptions to women with children will either extend the exemption to men with children or abolish the exemption altogether." (p. 920)

EXHIBIT 5

THE "EQUAL RIGHTS" AMENDMENT: AN ATTRACTIVE SLOGAN BUT IS IT GOOD LAW?

(Statement presented to the 91st Congress by groups of women opposing the Equal Rights Amendment)

(What Does Equality Mean Under the Equal Rights Amendment: A few thoughtful questions.)

Question 1. Does the Equal Rights Amendment create new rights for women?

No, it does not. In fact, the Amendment—

Does not require equal pay for equal work.

Does not require promotion of women to better or "decision-making" jobs.

Does not provide free 24-hour community-controlled children's day care centers for working mothers.

Does not elect more women to public office.

Does not abolish abortion laws or make available safe birth control devices.

Does not convince men they should help with the housework.

And, furthermore, does not put a woman astronaut into space!

Question 2. Could the Equal Rights Amendment destroy some important women's rights?

Yes, it could destroy rights and cause new problems . . . by—

Creating new obligations for women to support their husbands and children.

Weakening men's duty to support their wives and children.

Wiping out laws fixing such benefits as minimum wages, maximum hours, and safety standards for women, simply because many of these laws don't apply to men.

Drafting women into military service.

Weakening the legal presumption that a woman should keep custody of her children and should receive financial support in the event of a divorce.

Endangering the tax-exempt status of non-profit "women only" institutions, such as the YWCA and Girl Scouts.

Destroying laws that require separate rest rooms and dressing rooms for women workers.

Question 3. Is this Constitutional Amendment really needed to achieve women's rights?

No. Because—

The Constitution already protects the rights of women, particularly under the 5th and 14th Amendments.

Unfair or discriminatory laws can be repealed by legislatures or challenged in the courts under these Amendments. That has already been done successfully in many cases.

New rights and freedoms for women will come from enactment of new laws and the effective enforcement of existing ones—not from a new Constitutional Amendment.

SOME REAL WORRIES

Nobody knows for sure what results the Equal Rights Amendment would bring. But here are some "real worries" you ought to think about:

Many state laws enacted to prevent harsh industrial or commercial exploitation of working women are likely to go out the window—whether women want them to or not. The "equality" arguments can be turned right around by powerful employer interests who don't want any of their workers protected by labor laws—either men or women. If the courts don't throw out the women's labor laws right away, the legislatures can be pressured into quick repeal.

Divorced, separated, and deserted wives struggling to support themselves and their children through whatever work they can get may find their claims to support from the father even harder to enforce than they do right now.

For many American women, particularly those in the lower income brackets, that's a heavy price to pay for a theory of equality.

Wives and mothers who are not in the labor force—and they are a substantial majority—may find they can no longer choose to stay at home to care for their families.

Under the Equal Rights Amendment, they may become obligated for furnishing half the family support. The right of choice for these women should be protected.

DON'T BUY A GOLD BRICK!

America's women are increasingly expert consumers.

They've learned the hard way that you can't always trust the language on the label . . . or extravagant advertising claims.

That's true for legislation, too.

The Equal Rights Amendment to the Constitution, for instance, sounds great . . . like the end of sex discrimination.

Sounds easy. . . . But most sex discrimination is a matter of private practice, not of public law, and will not be affected by the Amendment.

And laws that treat women differently are not necessarily "discriminatory" or unfair.

That's why many women's organizations, trade unions and individuals with long experience in human and industrial relations problems, urge rejection of the Equal Rights Amendment.

Let's keep the good laws we've won and see that they're enforced. Let's repeal or amend the bad laws. . . . and go on from there to achieve real equality for every American.

EXHIBIT 6

[From the CONGRESSIONAL RECORD, Feb. 8, 1972]

ELMO ROPER POLL SHOWS WOMEN AGAINST EQUAL RIGHTS AMENDMENT

Mr. ERVIN. Mr. President, one of the recurring myths that surround the equal rights amendment, or unisex amendment, is the allegation that all women are for the amendment. I know that this is not true, particularly among laboring women, because most labor unions, including the AFL–CIO, would not be so strongly opposed to the amendment if their constituency were for it.

Elmo Roper, a well-known pollster, took a sample opinion last year on women's views of women's liberation. I think the results of this poll should be very interesting to Members of the Senate because legislators sometimes fail to consider what the people want when they are constantly confronted by a highly vocal and publicity conscious pressure group, such as many of the women's organizations supporting the equal rights for women amendment.

The Roper poll shows that:

First, 69 percent of American women disagree that, "women are discriminated against and treated as second-class citizens."

Second, 83 percent of American women disagree that "wife should be breadwinner if better wage earner than husband."

Third, 69 percent of American women disagree that, "a divorced woman should pay alimony if she has money and he has not."

Fourth, 77 percent of American women disagree that, "women should have equal treatment regarding the draft."

In interpreting these figures, it is important to recognize that these large majorities of Americans do not want the very things the ERA proposes. The primary sponsors of the ERA, including Congresswoman GRIFFITHS, maintain that: A wife should have the legal responsibility for family support if she is the better wage earner; the alimony laws should apply equally to men and women with the result that a divorced woman should pay if she has the money; the draft laws should apply equally to men and women with the result that women will serve in combat.

So what we have with the equal rights amendment is a proposition that will destroy all legal distinctions between men and women and the majority of men do not want this and the majority of women do not want this.

I hope that every Senator will have a chance to review Elmo Roper's Poll which appeared in the September 26, 1971, issue of Parade magazine. I ask unanimous consent that it be printed in the RECORD.

A SPECIAL ROPER POLL ON WOMEN'S RIGHTS

The Women's Liberation movement is making headlines, but seven out of ten American women feel they are not being discriminated against. What's more -seven out of ten men agree with them.

These are the findings of a special Roper Poll to determine the effects of Women's Liberation on the thinking of Americans.

Perhaps the most startling result uncovered by the poll is the close agreement of men and women on many key issues.

The survey put various questions to a large equal sampling of men and women, with this introduction:

"A lot has been said about the rights of women—in fact, there is a movement called 'Women's Liberation,' as you probably know. I'm going to read you several different state-

ments and for each one I'd like to know whether you agree or disagree."

The results follow:

	Everyone	Men	Women
Men's clubs and lodges should be required to admit women:			
Agree	19	25	13
Disagree	72	67	76
Don't know	9	8	11
Women employees should not emphasize their femininty:			
Agree	34	34	34
Disagree	59	61	58
Don't know	7	5	8
Wife should be breadwinner if better wage earner than husband:			
Agree	16	22	10
Disagree	76	69	83
Don't know	8	9	7
Men should stop appraising women on basis of beauty and sex appeal:			
Agree	43	38	48
Disagree	50	56	44
Don't know	7	6	8
If a woman can play football as well as a man she should be on team:			
Agree	38	42	33
Disagree	57	54	61
Don't know	5	4	6
A divorced woman should pay alimony if she has money and he hasn't:			
Agree	36	52	20
Disagree	53	38	68
Don't know	11	10	12
Should have free low-cost child care centers for working women:			
Agree	65	61	68
Disagree	27	30	25
Don't know	8	9	7
Women should get equal pay with men for doing the same jobs:			
Agree	88	86	89
Disagree	9	12	7
Don't know	3	2	4
Pretty women should not get better jobs/pay than others:			
Agree	74	73	75
Disagree	21	22	20
Don't know	5	5	5
Men should not hold doors or give up seats to women:			
Agree	14	15	12
Disagree	82	80	84
Don't know	4	5	4
Women should have equal job opportunity with men:			
Agree	73	71	74
Disagree	23	25	21
Don't know	4	4	5
Women should have equal treatment regarding the draft:			
Agree	24	31	17
Disagree	71	64	77
Don't know	5	5	6
Women are discriminated against and treated as 2d-class citizens (opinions by percentages):			
Agree	24	24	24
Disagree	70	71	69
Don't know	6	5	7

Mr. ERVIN. Mr. President, I ask how much time still remains for those in opposition to the amendment.

The PRESIDING OFFICER. The Senator has 290 minutes left.

Mr. ERVIN. Would the clerk translate that into hours and minutes?

The PRESIDING OFFICER. The Senator has slightly under 5 hours.

Mr. ERVIN. Mr. President, I sent forward to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read the amendment as follows:

On page 2, line 3, strike out "two" and insert in lieu thereof "six".

Mr. ERVIN. Mr. President, I do not know whether the Senator from Indiana feels impelled to make a statement at this time to correct any misapprehensions that the Senator from North Carolina may have expressed in respect to the proposed amendment.

Mr. President, I pointed out at the beginning of my remarks that the equal rights amendment is based on the theory that God made a serious mistake when he created two sexes instead of one, and that the most effective way to cure this mistake of God's is to adopt the equal rights amendment.

I also pointed out that, while the purpose of most of the advocates of the equal rights amendment is merely to outlaw unfair, unreasonable, and arbitrary discriminations made against women by Federal or State laws, the most extreme advocates of the amendment have a different objective, and that objective is to deny Congress and the legislative bodies of the 50 States the power to take into consideration that there are physiological and functional differences between men and women when they enact legislation.

I also pointed out that, under the equal rights amendment, women would be subjected to the draft, and in addition to being subjected to the draft, would be subjected to voluntary enlistments in the combat units of the Armed Forces.

I also stated as emphatically as the Senator from North Carolina can that the Senator from North Carolina knows that it is unnecessary and believes it is unwise and is convinced that it is unjust for the United States to draft or enlist the daughters of Americans and send them into combat with an enemy under circumstances which make it obvious that their fair bodies will be shattered into fragments by the bombs and shells of the enemy.

Some persons may have believed that the Senator from North Carolina was exaggerating these matters, notwithstanding the fact that the equal rights amendment merely declares, without exceptions or limitation, that equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. These words are absolute and rigid in their nature and without exceptions or limitations. They clearly undertake to convert men and women into identical legal beings, having identical legal rights and having identical legal responsibilities under all circumstances.

Since one of the obligations that our society imposes upon men is to serve in the Armed Forces, even if one is unwilling to volunteer and to serve in combat, this amendment would require that men and women be drafted on exactly the same conditions and serve in combat units and all other units of the Armed Forces under exactly the same conditions.

I have mentioned the fact that Professor Emerson, of Yale University, and three graduates of that institution joined in an article which was published in the Yale Law Journal for April, 1971. This article is entitled "The Equal Rights Amendment—the Constitutional Basis for Equal Rights for Women," and it explains the considered legal opinions of this distinguished professor and these three gifted women lawyers as to exactly what the consequences of the adoption of the equal rights amendment will be to our country.

The equal rights amendment provides that it is to take effect 2 years after its ratification. A moment ago I offered a particular amendment on this point.

I now withdraw that amendment, and offer another amendment in its stead, and ask that the amendment I now offer be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read the amendment, as follows:

On page 2, line 3, strike out "two" and insert in lieu thereof "three".

Mr. ERVIN. Mr. President, the effect of this amendment would be to provide that the equal rights amendment, if adopted, shall take effect 3 years after its ratification, instead of 2 years after its ratification.

I offer this amendment because, after reading what the proponents of the equal rights amendment say it would do to the Army and Air Force and Marine Corps and Navy and National Guard, I do not believe 2 years is enough time for those units of the Armed Forces to adjust themselves to the changes which would be required by the amendment.

I wish to read to the Senate what the article in the Yale Law Journal has to say as to the effect which the equal rights amendment will have upon the Armed Forces of the United States. I start on page 967:

> The Armed Forces have always been one of the most male-dominated institutions in our society. Only men are subject to involuntary conscription. Various regulations of the Armed Forces restrict the access of women to the military, and indeed place an absolute limit on the number permitted to serve. Women with dependent children may not enlist, while men in the same situation may do so. Certain grounds for discharge apply only to women. Numerous other forms of differential treatment pervade the military services.
>
> It is not difficult to explain why the military is structured in this way. In the past, physical strength was essential to military success. Weapons were heavy, long marches on foot were frequent, and hand to hand fighting was common. Women were considered in most respects to be weaker than men. Women were also handicapped by pregnancy. Lack of effective contraceptive methods meant that they were frequently, if not constantly pregnant, and disease and death were not uncommon accompaniments to childbirth. Men were therefore a more reliable and mobile group. Sociological factors reinforced this "division of labor." Women were considered too delicate to be exposed to battle and its attendant pain and discomfort. They were trained to be passive, dependent and without initiative. For men, on the other hand, armed struggle was seen as a catalyst of maturity, a symbol of aggressive masculinity, a test which would "separate the men from the boys." Women who wished to fight had to disguise themselves as men.
>
> In this country women have served in the Armed Forces with full military status only since World War II, when the need for personnel and the existence of many civilian-type jobs in the military made the utilization of women appear feasible to the Armed Forces. A Women's Auxiliary Army Corps with civilian status was created in 1942. It proved administratively unworkable, and in 1943 the Army took women under its direct command. After World War II, Congress decided to keep the women's arm of the services at reduced size. The Women's Army Corps is

now permitted to total only two per cent of the full strength of the services.

While many people look upon such restrictions on women's military service as relieving them of an unadulterated burden or evil, others feel that it would be advantageous for women to receive the training and benefits that accompany military service in this country. No one can doubt that military service has tremendous disadvantages, chief among them the danger of loss of life and the requirement of learning to kill others. Yet there are also benefits afforded the individuals who serve. The Armed Forces furnish in-service vocational and specialist training, medical care, and benefits for dependents. Veterans receive educational scholarships and loans, preference in government employment, pensions, insurance, and medical treatment.

More subtle factors involve the effect of military service on one's self-image and on the way he or she is viewed by others. For large segments of the population, service is taken to prove that an individual has sacrificed for his or her country. He or she deserves to be taken seriously in return. As Professor Norman Dorsen has said:

"[W]hen women are excluded from the draft—the most serious and onerous duty of citizenship—their status is generally reduced. The social stereotype is that women should be less concerned with the affairs of the world than men. Our political choices and our political debate often reflect a belief that men who have fought for their country have a special qualification or right to wield political power and make political decisions. Women are in no position to meet this qualification."

Having served or being liable to serve also tends to make an individual sensitive to and concerned about the country's foreign policy. Those who must carry out the decisions made in the upper echelons of the government will be interested in participating in the political process and trying to prevent the formulation of policies which involve unjustified killing and destruction, and unnecessary risk of injury and death.

Under the present system few women enter the military and receive these benefits and lessons. Partly as a result, the social stigma and ridicule evoked by the idea of a woman in the military persist. Until women are required to serve in substantial numbers, stereotypes about their inability to do so will be perpetuated.

The Equal Rights Amendment will have a substantial and pervasive impact upon military practices and institutions. As now formulated, the Amendment permits no exceptions for the military. Neither the right to privacy nor any unique physical characteristic justifies different treatment of the sexes with respect to voluntary or involuntary service, and pregnancy justifies only slightly different conditions of service for women. Such obvious differential treatment for women as exemption from the draft, exclusion from the service academies, and more restrictive standards for enlistment will have to be brought into conformity with the Amendment's basic prohibition of sex discrimination.

Mr. President, for the purpose of emphasis, I repeat what I have just read:

As now formulated, the Amendment permits no exceptions for the military. Neither the right to privacy nor any unique physical characteristic justifies different treatment of the sexes with respect to voluntary or involuntary service, and pregnancy justifies only slightly different conditions of service for women. Such obvious differential treatment for women as exemption from the draft, exclusion from the service academies, and more restrictive standards for enlistment will have to be brought into conformity with the Amendment's basic prohibition of sex discrimination.

The article continues as follows:

These changes will require a radical restructuring of the military's view of women, which until now has been a narrow and stereotypical one. Until recently, only unmarried women were generally allowed to serve, and when married women were permitted, the dependents received none of the benefits that men's families receive. A woman was presumed to be the second worker in her family rather than the one responsible for its support, and benefits were therefore assumed to be unnecessary. Any woman who became pregnant or adopted a child was discharged. Women, being excluded from many benefits, were thus a particularly economical source of labor. These rules also effectively prevented women from rising in the ranks and becoming officers, for they would have to be willing to forego marriage and children in order to do so. They were therefore denied the exercise of leadership skills and were viewed as inferior, deserving the subordinate tasks to which the military's discriminatory rules consigned them. Women were also seen as less flexible and less valuable workers than men, incapable of serving in many positions. They were assigned to "women's work" as clerks and secretaries, nurses, or technicians. Many interested in training in fields such as photography were denied access to the programs.

This view of women has begun to change. But it is happening slowly in some services and not at all in others. The Equal Rights Amendment will greatly hasten this process and will require the military to see women as it sees men—as a diverse group of individuals, married and unmarried, with and without children, possessing or desiring to acquire many different skills, and performing many varied kinds of jobs. The impact of the Amendment will now be examined in detail with regard to four important areas: the draft, grounds for discharge, assignment and training, and in-service conditions.

1. THE DRAFT

The Military Selective Service Act of 1967 govern the conscription of citizens into the Armed Forces. The Act explicitly applies only to men in requiring registration and induction for training and service in the Army, Navy, Marines, Coast Guard, and Air Force. Men have several times challenged the Act, claiming that it violates constitutional rights of due process and equal protection by discrimination on the basis of sex. The courts have consistently rejected this contention.

Under the Equal Rights Amendment the draft law will not be invalidated. Recognizing the concern of Congress with maintaining the Armed Forces, courts would construe the Amendment to excise the word "male" from the two main sections of the Act, dealing with registration and induction, thereby subjecting all citizens to these duties. A woman will register for the draft at the age of eighteen, as a man now does. She will then be classified as to availability for induction and training. If she meets the physical and mental standards, and is not eligible for any exemptions or deferments, she will join men in susceptibility to induction. The statute declares that no one may be inducted until shelter, water, heating and lighting, and medical care are available. The military will clearly have sufficient time during the period after ratification to make the minor adaptations, such as the expansion of gynecological services, necessary to comply with the statute. This is particularly true since the eligibility of women will not necessarily entail an increase in the number of persons inducted.

I digress from the reading of this article to take issue with the statement of the authors that while the equal rights amendment will invalidate the draft law as now restricted to men, the courts will amend the draft law by excising the word male wherever it appears and inserting in its place female. Courts can declare laws invalid, but courts are not permitted to amend laws so as to make them valid. So if the equal rights amendment has the effect—which in my judgment is undoubted—of invalidating the Selective Service Act, the country will be left for a time without any draft law, pending the time that Congress can revamp the draft law so as to comply with the equal rights amendment.

The Secretary of Defense has the power to set the standards of physical and mental fitness which all inductees must meet. A general intelligence test is used to determine mental qualification, and a physical examination is given to check the general state of health of the individual. Under the Equal Rights Amendment, all the standards applied through these tests will have to be neutral as between the sexes. Moreover, even after the mental and physical standards have been made uniform for both sexes, they will have to be scrutinized carefully to assure that they are related to the appropriate jobs and functions and do not operate so as to disqualify more women than men. Such a result would raise the possibility that the test, though neutral on its face, was in fact being used to discriminate against women. Achieving this goal of uniform, nondiscriminatory standards will require some changes.

I digress from the reading to say that I think it is going to be a matter of great difficulty for the Army, the Navy, the Marine Corps, or the Air Force to make the physical standards for men and women uniform for both sexes. I do not think they have any more power to do that than the equal rights amendment has.

First height standards will have to be revised from the dual system which now exists. At present, men from 5'0'' to 6'8'' tall are permitted to serve as enlisted personnel in the Army and Air Force; the range in the Navy and Marine Corps is from 5'0'' to 6'6''. For male officers, the range of permissible height is from 5'0'' to 6'8'' in all services except the Army, where the minimum is 5'6''. Women in all services and in all ranks may be from 4'10'' to 6'0'' tall. Under the Equal Rights Amendment, the same minimum and maximum will have to be applied to both sexes. Persons, male and female, up to 6'8'' (or 6'6'') would be accepted, if these remain the maximum limits. For enlisted personnel, the services could retain their current minimum for men of 5'0'' as the uniform standard, or adopt the lower 4'10'' minimum for both sexes. But if the Army retains its 5'6'' minimum for officers, it would effectively exclude many women, and the minimum would therefore have to be shown to be closely job-related in order to stand.

The height-weight correlations for the sexes will also have to be modified. At most heights there is a large area of overlap between the normal weight for men and women. For persons above or below this range, an evaluation based on the health of the individual will be made. Since every inductee receives a comprehensive physical examination, this will entail little extra burden.

The same principles will have to be applied to the intelligence test. At present men and women take different tests for enlistment; under the Amendment, both will take the same test. Similarly, the required minimum score will be the same for both sexes. If the test currently used for men is administered to women, and it is shown that women on the whole score lower on it, it will have to be demonstrated that the ques-

tions do test general intelligence and are not taken solely from areas of factual knowledge with which most men and few women in this society are trained to be familiar.

Most of the deferments and exemptions from military service could easily be adapted to a sex-neutral system. Women ministers, conscientious objectors, and state legislators will be treated as the men in those categories now are. Women doctors and dentists will be subject to call under the conditions governing medical and dental specialists. However, some provisions will have to be extended or stricken. The dependency deferment now provides that "persons in a status with respect to persons (other than wive, alone, except in cases of extreme hardship) dependent upon them for support which renders their deferment advisable" may be deferred. It also states that the President may provide for the deferment of persons who have children, or wives and children, with whom they maintain a bona fide family relationship in their homes. This has been interpreted to mean that a married person with a child will generally be deferred.

There are several permissible alternatives to these deferment provisions under the Equal Rights Amendment. Deferment might be extended to women, so that neither parent in a family with children would be drafted. Alternatively, the section could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female, would be deferred. A third possibility would be to grant a deferment to the individual in the couple who is responsible for child care. The couple could decide which one was going to perform this function, and the other member would be liable for service. In a one-parent household Congress would probably defer the parent.

I digress to observe that the authors of this opinion make the interesting observation that a husband and a wife can decide which one of them is going to stay at home to look after the children and that in that case the one who elects not to stay at home and care for the children will be subject to the draft, and the other will be deferred.

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

For the RECORD, I wish the Senator from North Carolina would expand on his reasoning as to why he feels that the point he has just made is so unjust, and contrary to the national interest of the country.

Mr. ERVIN. I am not commenting on that. I am pointing out that the equal rights amendment would provide, which the authors of this article say, that if there is a husband and wife and children, that the wife would go out to battle and the husband would stay home to look after the children, or that both would have to go out and bare themselves to the bullets of the enemy which, under the equal rights amendment, it would require.

Mr. BAYH. That is not in the wording of the equal rights amendment. The Senator knows that very well.

Mr. ERVIN. It says that men and women are identical and equal legal human beings. It gives consideration for many foolish things like that. I think it is foolish. It is absolutely ridiculous to talk about taking a mother away from her children so that she may go out to fight the enemy and leave the father at home to nurse the children. The Senator from Indiana may think that is wise, but I do not. I think it is foolish.

Mr. BAYH. Let me say to my good friend from North Carolina once again that there is nothing in the amendment to require that. Of course the Senator knows, that exempting both mothers and fathers with children from conscription is not foreign to the laws of this land. It happens now.

Mr. ERVIN. The Senator from Indiana may think there is nothing in the amendment which requires that, but the amendment requires that the lawmakers ignore the fact that men are fathers and that women are mothers. It requires them to be treated exactly alike, as if they both belonged to a unisex.

Mr. BAYH. Quite the contrary. I cannot speak for my other colleagues, but I hope that the Senator will realize that none of us can be responsible for the various interpretations that may be placed on lengthy articles, even if the Senator from North Carolina feels they are good enough to be placed in the RECORD.

Mr. ERVIN. I think that my good friend from Indiana is an intellectually honest man. When he puts an article in the RECORD and urges Senators to study it to find out what the amendment would do, I think he feels the article has great validity.

Mr. BAYH. I think the Senator has already been so kind to me that he has quoted in full what I said when I put it in the RECORD. The Senator said I did not agree with everything in the article.

Mr. ERVIN. Will the Senator from Indiana tell me what the amendment would require, if Congress did not exempt parents from the draft, whether it would require them to draft both parents and leave the children to take care of themselves, or take the man and leave the woman, or take the woman and leave the man?

Mr. BAYH. I suggest that the hypothesis posed by the Senator from North Carolina is so remote that it is ridiculous. It is ridiculous to suggest that Congress would require parents to leave children, to be taken care of by others or to be left to fend for themselves. That is a straw man which, with all due respect, diverts our vision and deters consideration of the real merits of the amendment.

Mr. ERVIN. I would say that the Senator from Indiana is fleeing in his answers from my questions, just as the amendment is fleeing from reality.

The ERA states that men and women will be treated exactly alike, that they will be sent into combat, exactly alike, and no amount of sophistication or sophistry can wipe out that plain truth.

Mr. BAYH. Perhaps not sophisticated sophistry but plain old-fashioned horse sense would be more useful in reaching valid conclusions.

Mr. ERVIN. One objection is that the amendment would prohibit those in Congress and the legislatures in the 50 States from using any horse sense in all. It would require them to act like donkeys. [Laughter.]

Mr. BAYH. So we are going to treat all donkeys alike.

Mr. ERVIN. Whether male or female—just exactly alike. That is what the amendment would do.

Mr. BAYH. I cannot differ with that.

Mr. ERVIN. I have only 1 hour to speak on this amendment. I am on restricted time.

Mr. BAYH. I would not want to restrict the Senator's time any further.

Mr. ERVIN. It says here—

Each of these alternative carries very different and significant policy implications for family structure and population growth. Given current draft calls, and the belief that having both parents present is beneficial for the children, it is likely that both parents will be deferred.

Mr. BAYH. But now the Senator——

Mr. ERVIN. I wish the Senator would not interrupt on my time.

Mr. BAYH. Permit me to make an observation, for which I yield myself 30 seconds——

Mr. ERVIN. I offered to yield the floor if the Senator from Indiana wanted to make a speech——

Mr. BAYH. I was so interested to hear what the Senator from North Carolina had to say that I did not want to take advantage of his courtesy——

Mr. ERVIN. But the Senator will not listen. He keeps interrupting me.

Mr. BAYH. I will stop interrupting if the Senator wants to continue his speech. He certainly has that right.

Mr. ERVIN. I would like to read the article and then I do not mind interruptions.

Mr. BAYH. I say to my friend, the only reason I bother to interrupt is that he makes assertion which are not true and attributes them to me. I do not think he wants to do that intentionally.

Mr. ERVIN. I do not think the Senator from Indiana meant to deceive the Senator from North Carolina when he put this article in the RECORD and told the Senator from North Carolina and other Members of the Senate that they could find out from reading the article that it was a masterly presentation of what the amendment would provide. I do not think the Senator from Indiana attempted to deceive anyone. I think he wanted to give me some light.

Mr. BAYH. The Senator from Indiana did say that the Senator from North Carolina very thoughtfully read the entire statement into the RECORD. In presenting the article for everyone's consideration I said that I did not agree with everything that was in the article. I stand by what I said the Senator from North Carolina said I said.

Mr. ERVIN. The Senator from Indiana is like the man who says he does not believe everything he reads in the Bible, that he does not believe Jonah swallowed the whale. I am reading a part in the article what someone thinks it is, but I do respectfully submit that I would like to make my argument.

I would like to read to the Senate an article which the distinguished Congresswoman from Michigan (Mrs. GRIFFITHS), sent to every Member of the House with the statement that it would explain how the amendment would work, and which the Senator from Indiana stated would expand the intellectual

horizons of the Senate as to what the amendment would do.

Now the Senator from Indiana did note that he dissented in some unspecified ways but he did not tell us in which ways the article was wrong so as to guide us.

Mr. BAYH. The Senator from North Carolina knows the feelings and the position of the Senator from Indiana. He knows which is fish and which is fowl.

Mr. ERVIN. As far as I am concerned, the amendment is foul.

Now the article states:

Each of these alternatives carries very different and significant policy implications for family structure and population growth. Given current draft calls, and the belief that having both parents present is beneficial for the children, it is likely that both parents will be deferred.

I do not think we will quarrel about that.

Continuing reading:

However, Congress can choose any of the above policies, for they do not discriminate between men and women.

The Selective Service Act exempts from the draft the sole surviving son of a family which has lost a member, male or female, in the service of the country. Under the Equal Rights Amendment this exemption for men only cannot stand, for it will mean drafting women when men in identical circumstances are excused. The reasons for the exemption are twofold. One is the feeling that once a family has lost a member, or several members, it cannot be asked to bear a final loss. The other concern is that the family name and line be preserved.

In another part of the article, however, it says that the family name shall be abolished, that the right to have the family name that one inherits shall be abolished.

That means that even the children could select their own names if the children wanted to take their own names.

Mr. BAYH. Will the Senator read on further?

Mr. ERVIN. I will, if the Senator will refrain from interrupting me so much. I will read the whole of the 114 pages, provided the time at my disposal will permit it. I am reading about men and women being sent into combat, which means that women will have their forms devastated by the bombs and shells of the enemy.

Mr. BAYH. Mr. President, I hope that the Senator will have time to read all of that because it is too enlightening to miss.

Mr. ERVIN. I have read it myself. And I commend that the Senator from Indiana read it. I think he will agree with me that this amendment is pretty unwise if he does read it.

Mr. BAYH. Mr. President, may I ask one question? The Senator from North Carolina recommends that I read it. Does that mean that the Senator agrees with it?

Mr. ERVIN. I agree that the Yale Law Journal article shows, at a very minimum, what the ERA will accomplish.

Mr. BAYH. The logic of the Senator from Indiana is the same as the logic of the Senator from North Carolina. We agree with the part that proves our point and disagree with the part that does not.

Mr. ERVIN. No. The entire article proves the point of the Senator. The entire article proves that the amendment will disable the Congress and the legislatures in the 50 States so that they cannot even consider the fact that God created men as male and female whether they adopt the legisltaion. That is what the amendment does. That is the provision of the amendment, and this proves that is exactly what will happen.

Mr. President, the second reason for the exemption will no longer be permissible, because it results in discrimination against women. That is, the one about the family name, the discrimination against women is a discrimination against perpetuating the family name.

But the first reason does justify extending the exemption to women, for the purpose is to spare a family its last child subject to induction. Thus the sole surviving child will be exempt.

The computation of the draft quota for a given area is based on the actual number of men in the area liable for training but not deferred after classification. When the Equal Rights Amendment becomes operative the number of women available will be included in the pool of available registrants.

The Selective Service Act provides for the administration of the draft system by local and appeal draft boards. The Act explicitly states that no citizen shall be denied membership on any board on account of sex. However, women are now only a small percentage of total draft board membership. Black registrants have challenged their induction on similar facts, claiming that they cannot be legally inducted by a board which is disproportionately white or which has no black members. None of these claims has met with success. The chances that women will be excused from induction because of the sexual imbalance on the boards is therefore small. Adoption of the Equal Rights Amendment, however, will undoubtedly stimulate the appointment of greater numbers of women to draft boards.

It is possible that an all volunteer army will be established in the United States in the foreseeable future. In that event, equalization of the draft becomes of academic interest only. Even if the volunteer system were approved, however, the draft would probably remain in effect for some years. More important, under either system of recruitment the Equal Rights Amendment will require a change in the status of women in the military and the conditions under which they serve.

2. GROUNDS FOR DISCHARGE

In addition to the grounds for discharge applicable to both sexes, several grounds apply only to women. One such rule requires that a married or unmarried woman who becomes pregnant must be discharged. Another requires that a woman with dependent children cannot serve. Men, married or single, who father children or have dependent children are not discharged for such reasons.

Several women have recently brought suits challenging these and similar military regulations on equal protection grounds. Under the pressure of litigation the Air Force has modified some of its rules. Whatever the outcome of this litigation, however, these policies will have to be reexamined and reformulated when the Amendment is passed. If the rules continue to require discharge of women with dependent children, then men in a similar situation will also have to be discharged. Since this will make it almost impossible to have any career officers, such a rule is unlikely to be adopted. The nondiscriminatory alternative is to allow both men and women with children to remain in the service and to take their dependents on assignments in non-combat zones, as men are now permitted to do.

Rules requiring discharge because of pregnancy will also change. The Army has recently provided that married women who plan to remain in the service with their children may receive a three and a half month leave to bear the child. Such a leave is related to a unique physical characteristic of women, and if shown to be directly related to the physical condition of pregnancy, can be applied to women only.

That is the only distinction I found that this shows between men and women.

Distinctions between single and married women who become pregnant will be permissible only if the same distinction is drawn between single and married men who father children. This is required because once the Army has allowed married women to continue to serve when they have children, it is clear that pregnancy and childbearing alone are not incompatible with military service.

The Senator from North Carolina is distressed to say that is to him a rather strange thought, that pregnancies and childbearing are not incompatible with military service. In other words, if a woman in the military is going to have to leave a little infant child to fight the enemy, even if pregnant with another, it might mean that she would give birth to another child when she is up there fighting.

A rule excluding single women who become pregnant would thus not be based on physical characteristics, but rather would rest on disapproval of extramarital pregnancy.

It says that the Army should not in effect disapprove of extramarital pregnancies.

Such standards must be applied equally to both sexes. Thus, if unmarried women are discharged for pregnancy, men shown to be fathers of children born out of wedlock would also be discharged. Even if this form such a rule would be suspect under the Amendment, because it would probably be enforced more frequently against women.

I have to agree with that. One can tell whether a woman is pregnant much easier than he can tell if a man has begotten a woman with child.

Even in this form such a rule would be suspect under the amendment, because it would probably be enforced more frequently against women. A court will therefore be likely to strike down the rule despite the neutrality in its terms, because of its differential impact. To avoid these problems, the Armed Forces can treat both sexes similarly by permitting single people to father or bear children, and by regulating only the unique physical characteristic of pregnancy.

All people who have children will be treated equally by the Armed Forces in terms of child care. The military may want to provide day care; if it does not, it may allow a parent to be discharged to take care of his or her child if he or she cannot provide for adequate care while on active duty.

3. ASSIGNMENT AND TRAINING

All men who are drafted receive four to six months of basic training. All draftees are eligible for combat duty. The men are assigned to one of five broad areas of duty—administration, intelligence, training and tactics, supply, or combat. They are assigned and organized along two different but overlapping systems of classification. One is a numerical system, and the other is a functional one. "Corps" is the general name for the functional unit, such as the Army En-

gineer Corps or the Army Nurse Corps, though the term "corps" is also used to designate a numerical grouping of two to five divisions. Although the members of a functional corps are physically dispersed in job assignments, the corps keeps separate records, and promotions and assignments are routed through its office.

Almost all of the women in the Army are members of the Army Nurse Corps or the Women's Army Corps. Although the Army Nurse Corps is organized along job lines, the WAC has no unifying principle except that its members are women. It thus stands as a symbol of the unwillingness of the Army to abandon distinctions based on Sex. Under the Equal Rights Amendment the WAC would be abolished and women assigned to other corps on the basis of their skills.

Women are only partially integrated into the training and assignment procedures applicable to men. They receive some basic training but it does not equip them for combat duty. They serve mainly in administrative and clerical jobs or as medical technicians.

Whether women ought to serve in combat units has provoked lengthy debate.

I digress from reading to say that the militant advocates of this amendment say women should be compelled to serve in combat. The Senator from North Carolina respectfully begs leave to disagree with that conclusion. I think all mothers and fathers in America disagree with it. I do not think any of the fathers and mothers in America want their daughters drafted for military service and assigned to duty in combat.

I repeat the last sentence I read from the text:

Whether women ought to serve in combat units has provoked lengthy debate. Before discussing the arguments raised against it, it is important to place the problem in perspective. Some public debate has implied that hundreds of thousands of women will be affected by such a requirement. This is not true. Combat soldiers make up only a small percentage of military personnel. Even in combat zones many jobs of logistic and administrative support are no different or more difficult than the work done in non-combat zones. Thirty years ago, women were found capable of filling over three-quarters of all Army job classifications, and there is no reason to prevent them from doing these jobs in combat zones. The issue of assigning women to actual combat duty, therefore, involves a relatively small segment of total military assignments.

Opponents of the Amendment claim that women are physically incapable of performing combat duty. The facts do not support this conclusion. The effectiveness of the modern soldier is due more to equipment and training than to individual strength. Training and combat may require the carrying of loads weighing 40 to 50 pounds, but many, if not most, women in this country are fully able to do that.

I digress to say that the Senator from North Carolina recalls many long marches with 60 pounds on his back and a 9-pound rifle on his shoulder. Frankly, I do not commend exercise of that character to women, even the ones who want to serve in the Army or in combat outfits.

And women are physically as able as men to perform many jobs classified as combat duty, such as piloting an airplane or engaging in naval operations. In order to screen out those of both sexes incapable of combat service, it will be permissible to administer a test to measure ability to do the requisite physical tasks. Those who pass, or who will foreseeably be able to do so after training. will receive combat training. The test will have to be closely related to the actual requirements of combat duty. There will be many women able to pass such a test.

The Senator from North Carolina digresses to say that he does recall reading at one time that the female of the species is more deadly than the male, and there may be more than a modicum of truth in the assertion, as well as in form, but nevertheless, the Senator from North Carolina does not think there is a high percentage of women who should be sent into combat service. In fact, the Senator from North Carolina does not think any of them should be sent as this amendment would require they be sent.

Another frequent objection to women in combat service is based on speculation about the problems that will arise in terms of discipline and sexual activity. No evidence has been found that participation by women will cause difficult problems. Women in other countries, including Israel and North Vietnam, have served effectively in their armed forces. There is no reason to assume that in a dangerous situation women will not be as serious and well disciplined as men.

The Senator from North Carolina would digress from the reading to say that he had a member of his staff make inquiry concerning the oft-repeated assertion by supporters of the amendment with respect to service by women in the armed forces in Israel. He has been informed as a result of that inquiry by members of the staff of the Israeli Embassy that while women serve in the Israeli forces, they are not used for combat duties. But if the ERA were the law in Israel, there would be women serving in combat.

Finally, as to the concern over women engaging in the actual process of killing, no one would suggest that combat service is pleasant or that the women who serve can avoid the possibility of physical harm and assault. But it is important to remember that all combat is dangerous, degrading and dehumanizing. That is true for all participants. As between brutalizing our young men and brutalizing our young women there is little to choose.

I digress to say that is a view expressed by these four strong supporters of the equal rights amendment.

4. IN-SERVICE CONDITIONS

Women in the Armed Forces receive the same pay and are ranked the same as men. Most service and veterans' benefits are the same for both sexes. On the other hand the rules on dependents' allowances, in-service housing and medical benefits discriminate against women. Male officers are provided quarters on base, or a basic quarters allowance for their dependents if they live off base; male officers also receive a dependents' allowance based on their grade and the number of dependents, regardless of any money the officer's wife may earn. The husband of a female officer, however, is not recognized as a dependent unless he is physically or mentally incapable of supporting himself and is dependent on his wife for more than half of his support. These discriminations are now under attack in a suit against the Air Force. Should they not be stricken down, the Equal Rights Amendment will require that result.

The Senator from North Carolina digresses to observe that under this interpretation of the equal rights amendment, all that a lazy husband has to do is to put his wife in the armed services and then he could be rated as one of her dependents and not only escape military service himself but also enjoy the emoluments of her military service.

Women will receive housing, allowances, and medical benefits on the same basis as men.

Living conditions in the service will be changed by adoption of the Equal Rights Amendment to the extent that they separate men and women for functions in which privacy is not a factor. Officers' clubs, enlisted mens' clubs, and other social organizations and activities on military bases will be open to women as well as men. Athletic facilities will also have to be made available to women personnel. Eating facilities will likewise be integrated by sex. Sleeping quarters could remain separate under the privacy exception to the Amendment.

The Senator from North Carolina digresses to observe that that is a remarkable statement because the amendment has no privacy protection whatever. The amendment states that State laws making any distinction between men and women shall be unconstitutional and that would include any provision of the Constitution that could be construed to give anybody a right of privacy. That is true because the proposed amendment is expressly rigid in its terms: It brooks of no exception, it brooks of no limitation whatever, so it would abolish any right of privacy that exists.

5. SUMMARY

The Equal Rights Amendment will result in substantial changes in our military institutions. The number of women serving, and the positions they occupy, will be far greater than at present. Women will be subject to the draft, and the requirements for enlistment will be the same for both sexes. In-service and veterans' benefits will be identical. Women will serve in all kinds of units, and they will be eligible for combat duty. The doube standard for treatment of sexual activity of men and women will be prohibited.

Changes in the law, where necessary to bring the military into compliance with the Amendment, will not be difficult to effect. The statutes governing the military will be amended by Congress, and the services can revise their own regulations. If these changes are made promptly, no disruption in the functioning of the military need result.

The drafting of women into the military will expose them to tasks and experiences from which many of them have until now been sheltered. The requirement of serving will be as unattractive and painful for them as it now is for many men. On the other hand, their participation will cure one of the great inequities of the current system. As long as anyone has to perform military functions, all members of the community should be susceptible to call. When women take part in the military system, they more truly become full participants in the rights and obligations of citizenship.

I would like to digress from the reading to emphasize the statement that the participation of women in the Armed Forces and in combat units of the Armed Forces and in combat will cure one of the great inequities of the system. It is not to be wondered that Dr. Pincus, professor of neurology in the Yale Medical School of Yale University, after reading this article, said that this equal rights

amendment or the resolution for equal rights could properly be called the Gulf of Tonkin resolution for the American social system.

I continue to read:

VI. Conclusion

The word "Conclusion" does not mean it is the conclusion of this 114-page document; it is merely the conclusion of the part which discusses the effect of the amendment on men and women in the military forces which will be encompassed by the amendment. The article makes it very clear that men and women will be drafted into the compulsory military services on exactly the same terms, that men and women will be enlisted for combat service on exactly the same terms, that men and women will be sent into combat on exactly the same terms.

It makes clear that if the amendment should be adopted, Congress will be powerless to change any of the things which the amendment would require.

I respectfully submit that Congress now has the power either to draft or refuse to draft women, the power to permit or refuse to permit women to enlist in the combat units of the Armed Forces and the power to permit or refuse to permit women to be sent into combat. Why should Congress not keep this power? It is a discretionary power. Why should Congress be put in a straitjacket by this amendment and, in the words of the Chief Counsel for the Department of Defense, be required to choose between drafting nobody and sending nobody into combat service or drafting and sending into combat services men and women on exactly the same terms and for exactly the same purposes?

I understand the amendment, but there are many things which I cannot understand about those who advocate this amendment. Why do they want to put Congress and the legislatures of the 50 States into a straitjacket which requires them to be blind to the fact that God created mankind male and female, and require them, in every law they enact, to treat men and women exactly as if they belonged to a unisex, instead of two sexes?

I continue to read:

VI. CONCLUSION

The transformation of our legal system to one which establishes equal rights for women under the law is long overdue. Our present dual system of legal rights has resulted, and can only result, in relegating half of the population to second class status in our society. What was begun in the Nineteenth Amendment, extending to women the right of franchise, should now be completed by guaranteeing equal treatment to women in all areas of legal rights and responsibilities.

We believe that the necessary changes in our legal structure can be accomplished effectively only by a constitutional amendment. The process of piecemeal change is long and uncertain; the prospect of judicial change through interpretation of the Fourteenth Amendment is remote and the results are likely to be inadequate. The Equal Rights Amendment provides a sound constitutional basis for carrying out the alterations which must be put into effect. It embodies a consistent theory that guarantees equal rights for both sexes while taking into account unique physical differences between the sexes. In the tradition of other great constitutional mandates, such as equal protection for all races, the right to freedom of expression, and the guarantee of due process, it supplies the fundamental legal framework upon which to build a coherent body of law and practice designed to achieve the specific goal of equal rights.

I digress from the reading to note that this is a rather surprising statement—to have the advocates of this amendment praise due process and praise equal protection. I say that because this amendment is intended and designed to destroy the capacity of Congress and the State legislatures, under the due process and the equal protection clause of the Constitution, to provide for women the protections which life and experience and history show are necessary to facilitate the existence and development of the race.

I resume reading:

The call for this constitutional revision is taking place in the midst of other significant developments in the movement for women's liberation in this country. The movement as a whole is in a stage of ferment and growth, seeking a new political analysis based upon greater understanding of women's subordination and of the need for new directions. The resulting political discussion has brought forth many possibilities, including changes in work patterns, new family structures, alternative forms of political organization, and redistribution of occupations between sexes.

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

Mr. ERVIN. Mr. President, my argument has convinced me that even 3 years is not sufficient time to bring about conditions necessary for this amendment. So I withdraw the amendment which I have been discussing and send forward another amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment is withdrawn.

The clerk will state the amendment.

The legislative clerk reads as follows:

On page 2, line 3, strike out "two" and insert in leiu thereof "five".

Mr. ERVIN. Mr. President, I resume:

A number of feminists have argued for increased separation of women from men in some spheres of activity or stages of life. Dialogue and experimentation with many forms of social, political and economic organization will undoubtedly go on as long as the women's movement continues to grow.

Underlying this wide-ranging debate, however, there is a broad consensus in the women's movement that, within the sphere of governmental power, change must involve equal treatment of women with men.

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

Mr. ERVIN. I yield.

Mr. MANSFIELD. Instead of offering amendments and then withdrawing them, would the Senator consider the possibility of allowing the Senate to vote on at least one amendment? Any one?

Mr. ERVIN. Yes. I would not mind having a rollcall on this last one.

Mr. MANSFIELD. The one that has been withdrawn?

Mr. ERVIN. No, I have offered another one to take the place of the one that was withdrawn.

But I suggest to the majority leader that there are 20 Senators absent; according to my information, there are 20 Members of this body who are not here today.

Mr. MANSFIELD. All the more reason to vote.

Mr. ERVIN. Including at least one or two who will vote with me on this issue. I am perfectly willing, after I read another paragraph and a half, to withdraw the last amendment I have offered and agree to adjourn, and when we meet in the morning, I will offer first an amendment which contains these words:

This article shall not impair, however, the validity of any laws for the United States or any State which exempt women from compulsory military service or from service in combat units of the armed forces.

I assure the Senator that I will be ready to vote on that at least within the time limitation we agreed on, which would be not more than 1 hour to the side.

Mr. BAYH. I think it would be helpful to the whole Senate if, in addition to that one amendment, the Senator from North Carolina might enumerate some of the other amendments that he intends to propose, so that those who are absent might be prepared to consider them tomorrow.

Mr. ERVIN. I shall be delighted to do that.

I propose to offer an amendment which would exempt women from compulsory military service and enlistment in the combat units of the Armed Forces.

I propose to offer an amendment which would preserve the laws which now extend to women in general and to wives, mothers, and widows in particular exemptions and protections which I say that the experience of the race shows is necessary for the development and education of the race.

Third, I propose to offer an amendment which will make it plain that the primary responsibility for supporting children will continue to rest upon the fathers, and that this amendment will not invalidate any laws which now require husbands to pay alimony to their wives.

Next, I propose to offer an amendment which will preserve the laws which now extend the right of privacy for men and women and boys and girls in public restrooms, in public schools, and in public correctional institutions.

Finally, I propose to offer an amendment which will make it certain that the laws which make it a crime for a mature man to seduce an innocent and virtuous woman under a promise of marriage, the laws which now make it a crime for a mature man to have carnal knowledge of an immature girl under the age of consent, and the White Slavery Act, or the Mann Act, which prohibits the transportation of women in interstate and foreign commerce for purposes of prostitution and debauchery, will continue to be the law of the land, instead of being outlawed, as this article from the Yale Law Journal says they will be under this amendment.

That is all the amendments I have.

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

Mr. ERVIN. I yield.

Mr. MANSFIELD. Mr. President, the

Senator has mentioned that one of the reasons why he is somewhat averse to having a vote this afternoon is that there are 20 Members absent. That really should be one of the reasons why the distinguished Senator should want a vote this afternoon, to help make certain that the Senate would not be turning into a Tuesday-to-Thursday club. But I recognize the realities of the situation.

I, of course, take the Senator at his word that the amendment now pending will be voted on at a reasonable time tomorrow, in line with the time limitation on amendments, that others will follow that, and if the distinguished chairman of the committee, the manager of the bill, would allow me, I would like to suggest the absence of a quorum, subject to making a motion to adjourn.

Mr. BAYH. Mr. President, I concur in the judgment of the leadership. I want to say to my friend from North Carolina that I think the issues have been clearly drawn by his enumeration. He and I have discussed these; I think they are legitimate points for discussion, and they are legitimate points for differences of opinion. As strongly as I feel that the Senator from North Carolina is wrong, I can see his reasoning. I know there are some who will share it. But now the Senate as a whole, and the country because of the presence of our friends in the news gallery, will be aware of the issues which will be decided tomorrow. There is no excuse for anyone not being here.

Mr. ERVIN. Mr. President, I hope the news media will carry something about what is involved in this amendment, and I hope the absent Senators will either read that in the news media or will read the CONGRESSIONAL RECORD, and therefore be able to vote with a certain degree of light instead of voting in darkness. I am sure many of them have studied this problem and are ready to vote anyway.

Mr. MANSFIELD. Mr. President, if the Senator will yield, the Senator was quite explicit in indicating the type of amendments he intends to offer, and if the members of the fourth estate were listening, I too would hope that they would give a degree of publicity to the distinguished Senator, who has been on his feet all afternoon explaining his views, and doing so, I think, intelligently and with a degree of understanding.

Mr. ERVIN. I thank the Senator.

I ask unanimous consent that the remainder of the article from which I have been reading be printed in the RECORD at this point.

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

EQUAL RIGHTS AMENDMENT

Moreover, the increasing nationwide pressure for passage of an Equal Rights Amendment, among women both in and out of the active women's movement, makes it clear that most women do not believe their interests are serve by sexual differentiation before the law. Legal distinctions based upon sex have become politically and morally unacceptable.

In this context the Equal Rights Amendment provides a necessary and a particularly valuable political change. It will establish complete legal equality without compelling conformity to any one pattern within private relationships. Persons will remain free to structure their private activity and association without governmental interference. Yet within the sphere of state activity, the Amendment will establish fully, emphatically, and unambiguously the proposition that before the law women and men are to be treated without difference.

Mr. MANSFIELD. Mr President, I suggest the absence of a quorum, with the time for the quorum call being taken from neither side.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ERVIN. Mr. President, I withdraw the last amendment submitted by me.

The PRESIDING OFFICER. The amendment is withdrawn.

EQUAL RIGHTS

Mr. PEARSON. Mr. President, in 1923, Senator Charles Curtis and Representative Dan Anthony, both of Kansas, introduced an amendment to the Constitution denying discrimination on account of sex. At that time, the women of this Nation were on the verge of voting in their first election, having 3 years earlier been granted this privilege through ratification of the 19th amendment.

Now, nearly 50 years later, the Senate has taken up consideration of a new equal rights amendment, and never have the chances for approval and ultimate ratification appeared more favorable.

I think it is clear that such an amendment is needed. In all areas of our society, including citizen responsibilities, education, business, and family life, there is more than sufficient evidence to document the unnecessary restrictions which have been placed on women. Numerous organizations, including the two major political parties, have recognized this fact, and have endorsed adoption of the equal rights amendment.

Mr. President, history advises us that the role of women throughout our civilization has been one of subordination. This tenet can also be traced throughout our legal history, as discrimination on account of sex has been prescribed not only by statutory law, but by common law as well.

No one denies that anything other than good faith was intended in the development and practice of such discrimination. Yet the guiding light of our society has always been equal opportunity for all citizens in all areas, and it is time we recognize that women have been denied the opportunities rightly due them.

Mr. President, I shall support approval of the equal rights measure in the Senate, and I shall support it without the amendments which I am aware will cripple or totally negate its intended effect. The great majority of women want to share fully the burdens and responsibilities of society. Let us not deny them this measure of respect and confidence.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, March 20, 1972, he presented to the President of the United States the enrolled bill (S. 2097) to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 3353) to provide for the striking of medals in commemoration of the first U.S. International Transportation Exposition.

ORDER FOR ADJOURNMENT UNTIL 9:15 TOMORROW

Mr. BYRD of West Virgina. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:15 a.m. tomorrow

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

ORDER FOR RECOGNITION OF SENATOR HARRIS TOMORROW

Mr. BYRD of West Virginia. Mr. President I ask unanimous consent that immediately following the recognition of the two leaders on tomorrow under the standing order, the distinguished Senator from Oklahoma (Mr. HARRIS) be recognized for not to exceed 15 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND FOR CHAIR TO LAY BEFORE THE SENATE THE UNFINISHED BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the close of the 15-minute unanimous-consent orders on tomorrow, 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.

ORDER FOR RECOGNITION OF SENATOR KENNEDY ON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, following the remarks of the distinguished Senator from Minnesota (Mr. MONDALE), the distinguished Senator from Massachusetts (Mr. KENNEDY) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9:15 a.m. After the two leaders have been recognized under the standing order. the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Senator HARRIS, Senator NELSON, Senator MONDALE, and Senator KENNEDY.

There will then ensue 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 Senate will resume consideration of the unfinished business, House Joint Resolution 208, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women. There is a time limitation thereon, and there is also a limitation of 2 hours on any amendment. Amendments will be called up and voted on tomorrow. There will be rollcall votes tomorrow.

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:15 a.m. tomorrow.

The motion was agreed to; and at 3:56 p.m. the Senate adjourned until tomorrow, Tuesday, March 21, 1972, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate March 20, 1972:

U.S. COAST GUARD

The following named officers of the U.S. Coast Guard for promotion to the grade of rear admiral:

William H. Brinkmeyer.
Ricardo A. Ratti.

IN THE AIR FORCE

The following named officers for Reserve of the Air Force promotion in the Air National Guard, under the appropriate provision of section 8374, title 10, United States Code, as amended.

LINE OF THE AIR FORCE

Major to lieutenant colonel

Ronald B. Appel. Jr., [redacted].
Duane M. Benton, [redacted].
Luther J. Braswell, [redacted].
Robert L. Campbell, [redacted].
Darrel D. Cline, [redacted].
Jerry W. Cochrane, [redacted].
James E. Daniel, [redacted].
John L. Dean, [redacted].
Cecil B. Doss, Jr., [redacted].
Albert G. Dyer, [redacted].
Norman Evans, [redacted].
Edward J. Face, [redacted].
Joseph N. Florio, [redacted].
Herman C. Ford, [redacted].
John C. Hawthorne, [redacted].
Charles W. Jarrett, [redacted].
Walter A. Jarrett, [redacted].
Francis J. Kirk, [redacted].
Richard A. Laidley, [redacted].
Galen M. Lambert, [redacted].
Dean T. Landon, [redacted].
William P. Lemmond Jr., [redacted].
Hall, T. Martin, [redacted].
Alvah S. Mattox, Jr., [redacted].
Hillary B. Meeks, [redacted].
Jack H. Mesner, [redacted].
Charles L. Milton, [redacted].
David C. Montgomery, [redacted].
Richard E. Moore, [redacted].
Gary C. Morrison, [redacted].
Earl F. Pardy, Jr., [redacted].
Leroy H. Schneider, [redacted].
James E. Snight, [redacted].
William E. Sprague, [redacted].
Albert J. Tagg, [redacted].
Leroy Thompson, [redacted].
Keith H. Wolfe, [redacted].

IN THE NAVY

Robert R. Groom (civilian college graduate) to be a permanent lieutenant and a temporary lieutenant commander in the Dental Corps of the Navy, subject to the qualification therefor as provided by law.

The following-named (Naval Reserve officers) to be permanent lieutenants (junior grade) and temporary lieutenants in the Dental Corps of the Navy, subject to the qualification therefor as provided by law:

William T. Bell
Donald J. Clausen
Daniel M. Harrigan
Frederick L. Hecht
Robert M. Rohen
John F. Suber
Jerry D. Thomley
William T. Wilson

Glenn C. Parrish (Naval Reserve officer) to be a permanent lieutenant and a temporary lieutenant commander in the Medical Corps of the Navy, subject to the qualification therefor as provided by law.

The following-named (Naval Reserve Officers' Training Corps candidates) to be permanent ensigns in the line or staff corps of the Navy, subject to the qualification therefor as provided by law:

Steven M. Abelman
Krist T. Ackerbauer
Charles N. Adams III
James V. Ahearn, Jr.
Robert R. Ainslie
David E. Albin
John L. Alexander
James M. Allen
Kristin L. Allen
John S. Allison, Jr.
Lorin E. Andersen
John H. Anderson, Jr.
John N. Anderson
Larry E. Anderson
Stephen F. Anderson III
Kenton G. Andrews
Gary T. Archibald
Robert E. Ansley, Jr.
Richard L. Arfman
Brian S. Armstrong
Charles B. Askey
Jeromye L. Avery
Jack N. Bailey
Robert K. Baird
Neil D. Baker
Wilfred Baltazar, Jr.
David H. Barber
Timothy J. Barnes
Ralph C. Bartlett
Garrick W. R. Bauer
Anthony J. Bechem
Paul R. Becker
Kenneth R. Beeunas
Raymond B. Beimel
Vincent J. Beirne
John B. Bell
Frederick C. Bensch
James E. Benson
Paul R. Bernander
Michael S. Bertin
Robert E. Besal
Daryl L. Bever
Norman S. Biehler
Edward S. Bishop
David F. Blake
James M. Blakely
Jonathan H. Blanding
Edward H. Blohm, Jr.
Mark A. Bloom
Anthony K. Bollen
Robert M. Bond
William D. Bondy
William T. Boone
William G. Borden
Joseph E. Bottomley
Jon T. Boyd
Pelham G. Boyer
Joseph B. Brady
Philip E. Bray
Jonathan J. Bridge
Edward T. Brill
Michael A. Brogan
David A. Brown
Frank H. Brown
Franz K. Brown
Jesse H. Brown
Kelly A. Brown
Richard M. Bruns
Gary E. Buker
Thomas A. Bunker
Richard J. Burdge, Jr.
Michael E. Burke
Larry W. Burkhart
Timothy D. Caldwell
James R. Cambre
Christopher S. Canetti
Katsumi O. Cannell
Leonard W. Capello
Donald L. Capron
Dale R. Carlson
Orin O. Carman
William A. Caroli
Christopher E. Case
Anthony J. Cassano, Jr.
Douglas W. Charlton
Benjamin L. Chastain
Richard A. Chiasson
Peter C. Chisholm
Paul E. Cincotta
Irving B. Clayton III
Kevin R. Collins
Kevin E. Condon
Thomas P. Connair
Paul M. Connolly
Thomas I. Converse
Howard D. Coogler
Wilbur O. Cooke, Jr.
Michael R. Cooper
Kenneth E. Corkum
Mark E. Costello
Stephen T. Cox
John T. Crawford
Dennis P. Crimmins II
Douglas L. Crinklaw, Jr.
Raymond S. Cross
James R. Crossen
Indy C. Crowley
Terry S. Crozier
John F. Cullinan
James P. Cunningham
Samuel R. Curcio, Jr.
Bruce J. Currivan
John F. Dalby
Joseph T. Daly III
David M. Dankert
Wayne C. Darnell
Mark C. Davis
Robert E. Davis
Terry L. Daugherty
Rocklun A. Deal
Thomas C. Deas, Jr.
William D. Degolian
Michael J. Deibler
Christopher P. Depoix
John P. Deregt
Norman E. Derouin, Jr.
William M. Desgalier
Ted E. Dewalt
Craig R. Dolan
Robert E. Dolan
John R. Donahue
John P. Donnell
Richard H. Donohue
Donald R. Dreyer
Daniel E. Dubina
Neale A. Duffett
John S. Earwaker III
Justin D. Edmonds
John S. Elliker, Jr.
Mark E. Ellis
John D. Epley
David S. Epstein
Douglas J. Erbele
Hobart R. Everett, Jr.
James Everett IV
Uson Y. Ewart
Bruce K. Farwell
William A. Faust
David A. Fenci
Donald B. Fennessey
Richard W. Fife
David J. Firth
Alan D. Fisher
Steven S. Fitzgerald
Raymond M. Flamm
Gary J. Flor
Clifford W. Folland
Steven V. Fondren
Van Y. Fong
Larry A. Foster
Robert B. Frazier
James M. Frederickson
Curtis M. French
Brian D. Frenzel
Thomas A. Fulham, Jr.
Edward F. Gallagher, Jr.
Bruce T. Garrett
Patrick M. Garrett
Alan C. Gault, Jr.
James F. Gay
Gregory W. Gebhardt
Paul S. Giarra
Ronald M. Gibbs
David H. Gibbons
Steven M. Glover
Douglas T. Gordon
Leonard A. Goreham
Michael P. Gracey
David G. Grau
Kerry D. Greene
Daniel E. Griffin
Hines N. Griffin
Jan W. Gripp
Edmund S. Gross
Austin B. Gunsel
William F. Hackett
Karl A. Hadley
Donald L. Hafer
Dennis K. Hakin
Peter G. Hanson
John T. Hardin
Joseph A. Harland
Raymond M. Harris, Jr.
Donald D. Harvey III
Franz Hatfield
Frederick R. Hearty
Michael C. Heck
Frederick G. Heppner
John M. Herzog
James R. Hess
Ronald C. Hessdoerfer
Gordon Heyworth
James A. Higbie
Peter L. Hilbig
Gordon R. Hill
Larkin D. Hipp
Henry R. Hitpas II
Robert N. Hobbs
Louis A. Hoffman, Jr.
Paul Edward Holley, Jr.
Robert C. Holmes, Jr.
Ronald D. Honey
Dennis D. Horsell
Nathan A. Horowitz
John M. House
Mark A. Housel
Kevin M. Huban
Leonard W. Huck, Jr.
William A. Hudson
William G. Hudson III
Anthony L. Impellitteri
Eric B. Jackson
John E. Jackson
Jack W. Jahn
Christopher P. Jamison
Thomas M. Jaskunas
Garrison W. Jaquess
William V. Jenkins
William E. Jennings III
Andrew A. Jensen
Martin W. Johnsen
Kenneth R. Johnson
David B. Jolly
Thomas H. Jones
William B. Jones
Peter L. Kallin
George J. Karlsven, Jr.
Walter J. Kasianchuk
Michael E. Kassner
Roger L. Kave
John M. Kearney
James F. Keim
Douglas W. Keith
Christopher J. Kemper
James B. Kendall
Kristopher M. Kennedy
Jared T. Kieling
Mark D. Kilmartin
Murray O. King, Jr.
Robert F. Kissling, Jr.
Patrick J. Klinker
Carl T. Knos
Richard F. Kodzis
Lawrence R. Krahe, Jr
Victor E. Kratzer
Richard F. Krochalis
Richard E. Kuhn
Terence P. Labrecque
William P. Larsen III
Michael P. Lazar
Daniel V. Leclair
David M. Laffoon
Milton D. Lane
Leopold H. Lemmelin II
John M. Lemmon
Raymond E. Leonard III
William H. Lewis III
Richard J. Liebl
George P. Lillard III
Stuart C. Lilly

Peter R. Lindsay
Jerry D. Lindstrom
David J. Llewellyn
Andrew F. Loomis
John B. Love
Rawlins Lowndes
George W. Lynn
Edward F. McClave
Daniel R. McCort
Harry J. McDevitt
Randal S. McDonald
Daniel McGrath
Daniel B. McGrath
James B. McKinney
William J. McKenney
Charles R. McLean
William D. McLean
James A. McCrae
John M. McCutchen
Brian L. McElmurry
Michael K. McEvoy
John M. McGrail
Gibson E. McMillan, Jr.
Scott J. N. McNabb
Breathitt R. McVay, Jr.
Robert C. Macdermid
William M. Machovina
Bruce K. MacLean
Steven M. Macpherson
Larry G. Madison
Gregory A. Major
John P. Makin
Nicholas A. Malarchik
Patrick J. Mallon
Paul F. Malloy
Michael W. Mann
Bruce D. Mason
Lee C. Mason II
William T. Matthews
Michael T. Meagher
Frank B. Mease
James Meetze
Charles F. Mello
Peter N. Mikhalevsky
Francis R. Miller
Michael W. Monkhouse
Leland R. Montgomery
Mark S. Moranville
James W. Morgan
John B. Morgan
Donald S. Morrison
Martin L. Morrissey
Lawrence J. Morse
David R. Mortensen
Robert G. Morton
Sammy Lee Moser
James N. Mullican
Timothy R. Murphy
Groege W. Myers, Jr.
Fred H. Naeve, Jr.
William M. Naylor
William D. Needham
William R. Netro
Russell S. Noble
Lynn W. Norden
Timothy J. Norrbom
John W. Norris
Stefan A. Nyarady
Philip J. O'Brien
John T. Oconnell
Arthur J. Ogrady
Clifford M. Olson
Ernest G. Ovitz III
Steven W. Palmer
Richard S. G. Park
Timothy A. Patton
Douglas T. Peart
Andrew J. Peck
Kenneth A. Pedone
Kenneth W. Peters
Mark A. Pickett
Russell A. Pickett
Edward W. Pinion
Rand R. Pixa
Richard P. Pope
Francis J. Popek
Carl R. Porterfield
William O. Poston
Jeffrey P. Powell
George L. Powers
Michael K. Price
William R. Price III
Larry R. Prill
Jeffrey D. Pulis
Michael N. Quarles
Donald R. Quartel, Jr.
Paul F. Quinn
Thomas L. Reeder III
Michael C. Rees
Jerry D. Reeves
James R. Reisdorfer
Jeffrey A. Reise
David P. Reistetter
Donald L. Reppert
Robert T. Rich
Howard V. Richardson III
Richard P. Riley
Thomas E. Ritchie
James A. Robb
Steven N. Robinson
Dennis E. Rocklein
Jeffrey L. Roddahl
Willard P. Roderick
Steven L. Romine
Christian Rondestvedt
Thomas W. Rossley
John H. Rothwell
Peter S. Rothwell
Siguard K. Rottingen
James S. Rountree
James W. Roush
Gerald M. Rowe
Glenn H. Russell
William D. Russell
Jeffrey B. Ryan
William P. Ryan, Jr.
Jack G. Salyer
Thomas B. Salzer
Gregory L. Sample
Robert J. Sanders, Jr.
John B. Santino
Michael Sarraino
Marc Schaefer
Frederick J. Scheibl
George S. Scherer
Gregory J. Schlass
James M. Scholz
John M. Schooley
William Schopflin II
Donald E. Schrade
Randall C. Schultz
Murray J. Scott
Dean G. Sedivy
Robert N. Seebeck
Michael J. Seeley
William A. Seiss
William W. Selman
David M. Sevier
Siegfried L. Shalles
James T. Shaw III
John D. Shaw
Jon V. Shay
Richard W. Shriver
William H. Shurtleff IV
Philip W. Signor III
Irving Silver
Terrence C. Silverberg
Charles C. Simpson III
William M. Simpson, Jr.
Michael J. Sise
Donald E. Sliwinski
Joseph W. Sloan, Jr.
John A. Slusser
Charles E. Smith
Glenn R. Smith
Leigh R. Smith
Loren W. Smith
Robert E. Smith
Scott M. Smith
Dale O. Snodgrass
Richard E. Snook
Michael G. Somadelis
George F. Sparks
George E. Spaulding
Scott L. Speicher
Charles W. Spradlin, Jr.
Donald C. Stanton
Richard D. Stark, Jr.
John A. Stauter, Jr.
Howard L. Steele III
John E. Steele
Peter W. Steele
Rodney C. Steffens
Kenneth M. Stein
Clyde E. Sterling
Don T. Stevens
John R. Stewart, Jr.
Jeffrey L. Stine
Jeffrey M. Stone
Bradley D. Storm
Kevin S. Stotmeister
Michael Strong
Lawrence W. Strunk
Joseph Stusnick III
David B. Sutton
Jhan C. Swanson
Anthony G. Tamaccio
Bradley S. Tammes
Daniel F. Tandy
Terry A. Tarantino
Dennis L. Teitsworth
Richard C. Tennant
Nicholas J. Tennyson
Timothy L. Thickstun
Thomas W. Thiesse
Michael R. Thomas
John A. Thomson
Charles L. Threet, Jr.
Terran J. Tidewell
Frank A. Titus II
Michael R. Tofalo
James M. Tompkins
David M. Torbenson
Joseph E. Torgesen
John R. Traughber
Michael D. Trudeau
Anthony J. Twardziak, Jr.
Paul E. Tyre, Jr.
Jay P. Unwin
Peter M. Vandyk
Jerome J. Vanparys
Thomas G. Vetter
Dennis A. Vidmar
Kenneth A. Vincent
Michael P. Vincent
James C. Voter
Paul J. Vuchetich
Wayne L. Wagoner III
John G. Waldmann
James R. Wallace
James A. Walters
Charels R. Waters
Michael A. Wathen
Ralph S. Watts
Stephen F. Waylett
Gregg C. Weatherly
Walter L. Weber
James A. Werner
Paul D. Wesley
Lynn G. Wessman
Robert A. Wesolowski
James R. Wheeler
David G. White
George W. White
Millar J. C. White
William S. White
William T. White
Norman R. Wright
William J. Willkie
Herlis A. Williams, Jr.
John P. Wilmeth
Dallas G. Wilfong III
Paul S. Winberry
Neil S. Wingert
John S. Woodward
James R. Worth
James L. Wright
Richard C. Wright II
Robert J. Wright
William D. Wright, Jr.
Joseph C. Yancy, Jr.
Michael E. Yates
Robert W. Yerkes
William A. Young
Petter C. Zackrison
Ralph C. Zagrabbe
Philip L. Zeeck
Howell C. Ziegler
William R. Zeird

The following named (civilian college graduates) to be permanent lieutenants (junior grade) and temporary lieutenants in the Dental Corps of the Navy, subject to the qualification therefor as provided by law:

Jonathan F. Davies
Julius W. Eickenhorst
Richard I. Glasgow

Stephen A. Grzenda (Naval Reserve officer) to be a permanent lieutenant and a temporary lieutenant commander in the Medical Corps of the Navy, subject to the qualification therefor as provided by law.

Michael W. Law (civilian college graduate) to be a permanent captain in the Medical Corps in the Reserve of the U.S. Navy, subject to the qualification therefor as provided by law.

Bruce D. Noonan (civilian college graduate) to be a permanent lieutenant (junior grade) and a temporary lieutenant in the Medical Corps of the Navy, subject to the qualification therefor as provided by law.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 20, 1972:

DEPARTMENT OF LABOR

Michael H. Moskow, of New Jersey, to be an Assistant Secretary of Labor.

U.S. ARMY

The following-named officer for appointment in the Regular Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3284 and 3306:

To be brigadier general, Veterinary Corps

Col. Charles Van Loan Elia, [redacted], Veterinary Corps, U.S. Army.

U.S. NAVY

Vice Adm. David C. Richardson, U.S. Navy, for appointment to the grade of vice admiral on the retired list, pursuant to title 10, United States Code, section 5233.

Rear Adm. George C. Talley, Jr., U.S. Navy, having been designated for commands and other duties of great importance and responsibility determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

Rear Adm. Robert L. J. Long, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

The following-named officers of the Naval Reserve for temporary promotion to the grade of rear admiral, subject to qualification therefor as provided by law:

LINE

Judson L. Smith
Anthony A. Braccia
John D. Gavan
Robert A. Hobbs
Burnett H. Crawford, Jr.
Hugh R. Smith, Jr.

MEDICAL CORPS

David B. Carmichael, Jr.

SUPPLY CORPS

Raymond Hemming
Bernard S. Browning

CHAPLAIN CORPS

Mark R. Thompson

DENTAL CORPS

Roman G. Ziolkowski

IN THE AIR FORCE

The nominations beginning John R. Carlson, to be major, and ending Ralph Zimmerman, to be major, which nominations were received by the Senate and appeared in the Congressional Record of Mar. 2, 1972.

IN THE ARMY

The nominations beginning Royal E. McShea, to be colonel, and ending Glenn M. Melton, to be 2d lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on Mar. 2, 1972.

IN THE NAVY

The nominations beginning Kevin M. Alaspa, to be ensign, and ending Michael W. Patterson, to be permanent lieutenant (junior grade) and temporary lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on Mar. 2, 1972;

The nominations beginning Robert W. Abel, to be captain, and ending Johanna L. H. Young, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on Mar. 2, 1972; and

The nominations beginning Frederick W. Chapman, to be commander, and ending Richard S. Geary, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on Mar. 2, 1972.

IN THE MARINE CORPS

The nominations beginning Dorsey J. Bartlett, to be colonel, and ending Albert Pitt, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on Mar. 2, 1972.